

*Required fields are shown with yellow backgrounds and asterisks.*

Page 1 of \* 20

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No.\* SR - 2012 - \* 086

Amendment No. (req. for Amendments \*)

Proposed Rule Change by NASDAQ Stock Market

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Pilot	Extension of Time Period for Commission Action *	Date Expires *	19b-4(f)(1)	19b-4(f)(2)	19b-4(f)(3)	19b-4(f)(4)	19b-4(f)(5)	19b-4(f)(6)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

Relating to BONO and ITTO ports

**Contact Information**

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name \* Angela Last Name \* Dunn

Title \* Associate General Counsel

E-mail \* angela.dunn@nasdaqomx.com

Telephone \* (215) 496-5692 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 07/13/2012

By Edward S. Knight

(Name \*)

Executive Vice President and General Counsel

(Title \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Edward S Knight,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information (required)**

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change (required)**

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

## 1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to modify Chapter XV, Sec. 3 entitled “NASDAQ Options Market - Access Services,” related to fees assessed by NASDAQ for connectivity to the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on September 3, 2012.

The text of the proposed rule change is set forth below. Proposed new text is underlined and deleted text is in brackets.

\* \* \* \* \*

### **Chapter XV Options Pricing**

**NASDAQ Options Market Participants may be subject to the Charges for Membership, Services and Equipment in the Rule 7000 Series as well as the fees in this Chapter XV.**

\* \* \* \* \*

### **Sec. 3 NASDAQ Options Market - Access Services**

The following charges are assessed by Nasdaq for connectivity to the NASDAQ Options Market:

#### (a) TradeInfo

- Members not subscribing to the Nasdaq Workstation using TradeInfo will be charged a fee of \$95 per user per month.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

(b) Port Fees, per port per month, as follows:

Order Entry Port Fee	\$500.00
CTI Port Fee	\$500.00
OTTO Port Fee	\$500.00
ITTO Port Fee <sup>1</sup>	\$500.00
BONO Port Fee <sup>1</sup>	\$500.00
Order Entry DROP Port Fee	\$500.00
OTTO DROP Port Fee	\$500.00
SQF Port Fee	\$250.00

<sup>1</sup> ITTO and BONO Ports are available to NASDAQ Stock Market LLC members and non-member subscribers.

\* \* \* \* \*

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of NASDAQ pursuant to authority delegated by the Board of Directors of NASDAQ on July 10, 2012. NASDAQ staff will advise the Board of Directors of NASDAQ of any action taken pursuant to delegated authority. No other action by NASDAQ is necessary for the filing of the rule change.

Questions regarding this rule filing may be directed to Angela Saccomandi Dunn, Associate General Counsel, at (215) 496-5692.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

NASDAQ is proposing to amend Chapter XV, Sec. 3(b) to expand its offering of the Best of NASDAQ Options (“BONO<sup>SM</sup>”)<sup>3</sup> and NASDAQ ITCH to Trade Options (“ITTO”)<sup>4</sup>. ports to any market participant who wishes to subscribe to it for purposes of receiving the BONO and ITTO data feeds,<sup>5</sup> regardless of whether or not they are a

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<sup>3</sup> BONO<sup>SM</sup> is a data feed that provides the NOM Best Bid and Offer (“NOM NBBO”) and last sale information for trades executed on NOM. The NOM NBBO and last sale information are identical to the information that NOM sends the Options Price Regulatory Authority (“OPRA”) and which OPRA disseminates via the consolidated data feed for options. BONO is the options equivalent of the NASDAQ Basic data feed offered for equities under NASDAQ Rule 7047.

<sup>4</sup> ITTO is a data feed that provides quotation information for individual orders on the NOM book, last sale information for trades executed on NOM, and Order Imbalance Information as set forth in NOM Rules Chapter VI, Section 8. ITTO is the options equivalent of the NASDAQ TotalView/ITCH data feed that NASDAQ offers under NASDAQ Rule 7023 with respect to equities traded on NASDAQ. As with TotalView, members use ITTO to “build” their view of the NOM book by adding individual orders that appear on the feed, and subtracting individual orders that are executed. See Chapter VI, Section 1 at subsection (a)(3)(B).

<sup>5</sup> The BONO and ITTO data feeds are described in Chapter XV, Section 4. The Exchange assesses monthly fees for firms that are distributors of BONO and ITTO market data. A “distributor” of NASDAQ options market data is any entity that receives a feed or data file of NASDAQ data directly from NASDAQ or indirectly through another entity and then distributes the data either internally (within that entity) or externally (outside that entity). The Exchange assesses user fees for BONO and ITTO data on a per-user basis. These fees vary based on whether they are for Professional users or Non-Professional users. The term “Non-Professional” shall have the same meaning as in NASDAQ Rule 7011(b)(2). Rule 7011(b)(2) defines a “Non-Professional” as a natural person who is neither: (A) Registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (B) engaged as an “investment adviser” as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (C) employed by a bank or other organization exempt from registration under federal or state securities laws to

member of the Exchange. When the Exchange filed to adopt pricing for the BONO and ITTO data feeds, the Exchange noted in its filing that "...NASDAQ has made a voluntary decision to make this market data available. NASDAQ is not required by the Exchange Act in the first instance to make the data available, unlike the best bid and offer which must be made available under the Act. NASDAQ has chosen to make the noted data available to improve market quality, to attract order flow, and to increase transparency; and will continue to make the data available until such time as NASDAQ changes its rule." Further, "NASDAQ believes that its ITTO and BONO<sup>(SM)</sup> which includes the NOM NBBO and last sale information for trades executed on NOM in BONO,<sup>(SM)</sup> are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS."<sup>6</sup>

The Exchange currently assesses fees for connectivity to NOM Participants for various types of ports,<sup>7</sup> among them the BONO and ITTO ports. These ports are currently available to NOM Participants.<sup>8</sup> The BONO and ITTO ports are necessary in order for subscribers to BONO and ITTO to receive those data feeds. The Exchange

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perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. A Professional user is any user that is not a non-Professional. For BONO data, the proposed per-user fees are \$5 per Professional user; and \$1 per non-Professional user. For ITTO data, the proposed per-user fees are \$10 per Professional user; and \$ 1 per Non-Professional user.

<sup>6</sup> See Securities Exchange Act Release No. 64652 (June 13, 2011), 76 FR 35498 (June 17, 2011) (SR-NASDAQ-2011-075).

<sup>7</sup> The Exchange assesses fees for a CTI Port, OTTO Port, ITTO Port, BONO Port, Order Entry DROP Port, OTTO DROP Port and SQF Port in Section 3(b) of Chapter XV.

<sup>8</sup> NOM Participants are assessed a \$500 per port per month fee to obtain a port for either BONO or ITTO data.

proposes to make the BONO and ITTO ports available to any market participant that may subscribe to the BONO and ITTO data to enable those non-NOM Participants to avail themselves of those data feeds. Similar to the BONO and ITTO data feeds in Sec. 4 of Chapter XV, The NASDAQ Stock Market LLC will issue an invoice to non-NOM Participants for BONO and ITTO ports fees on behalf of the NASDAQ OMX Global Data Products group.<sup>9</sup>

The Exchange proposes to include a footnote within Sec. 3(b) of Chapter XV to specify that the BONO and ITTO ports, unlike the other ports in Sec. 3(b) are available to non-NOM Participants.

b. Statutory Basis

NASDAQ believes that its proposal to amend its pricing is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>11</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using any facility or system which NASDAQ operates or controls. The Exchange believes that the availability of the BONO and ITTO ports, which will enable market participants to obtain the BONO and ITTO data feeds, will enhance transparency and enable buyers and sellers to obtain better prices.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and

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<sup>9</sup> Today, the BONO and ITTO market data distributor fees are invoiced by The NASDAQ Stock Market LLC. NOM will continue to invoice and collect fees for all ports specified in Sec. 3(b) of Chapter XV including BONO and ITTO ports for NOM Participants.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. NASDAQ believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of proprietary data and providing the means to make that data available to various market participants. NASDAQ has made a voluntary decision to make the BONO and ITTO market data available. NASDAQ has chosen to make the noted data available to improve market quality, to attract order flow, and to increase transparency; and will continue to make the data available until such time as NASDAQ changes its rules. It is for this reason that the Exchange believes permitting all market participants to obtain a BONO and/or ITTO port is reasonable to enable market participants to avail themselves of the BONO and ITTO data feeds through the use of the ports.

Further, the Exchange believes permitting all market participants to obtain a BONO and/or ITTO port is equitable and not unfairly discriminatory because unlike all other ports listed in Sec. 3(b) of Chapter XV, the Exchange has filed to make the BONO and ITTO data available to all market participants.<sup>12</sup> By allowing all market participants to obtain a BONO and/or ITTO port would allow all subscribers to equally access the BONO and ITTO information. NASDAQ believes that its BONO and ITTO data, which include the NOM NBBO and last sale information for trades executed on NOM is precisely the type of market data that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS--by lessening regulation of the market in proprietary data--would itself further the Act's goals of

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<sup>12</sup> See note 6.



facilitating efficiency and competition, “[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NOM NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.”<sup>13</sup>

4. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a by-product of the execution service. The fees assessed by the Exchange must remain competitive with fees assessed by other venues and therefore must continue to be reasonable and equitably allocated to those members that desire to subscribe to services at the Exchange rather than competing venues.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

5. Extension of Time Period for Commission Action

Not applicable.

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<sup>13</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

6. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>14</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

7. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2012-086)

July \_\_, 2012

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The NASDAQ Stock Market LLC Relating to BONO and ITTO ports

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on July 13, 2012. The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify Chapter XV, Sec. 3 entitled "NASDAQ Options Market - Access Services," related to fees assessed by NASDAQ for connectivity to the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on September 3, 2012.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

The text of the proposed rule change is set forth below. Proposed new text is underlined and deleted text is in brackets.

\* \* \* \* \*

## **Chapter XV Options Pricing**

**NASDAQ Options Market Participants may be subject to the Charges for Membership, Services and Equipment in the Rule 7000 Series as well as the fees in this Chapter XV.**

\* \* \* \* \*

### **Sec. 3 NASDAQ Options Market - Access Services**

The following charges are assessed by Nasdaq for connectivity to the NASDAQ Options Market:

(a) TradeInfo

- Members not subscribing to the Nasdaq Workstation using TradeInfo will be charged a fee of \$95 per user per month.

(b) Port Fees, per port per month, as follows:

Order Entry Port Fee	\$500.00
CTI Port Fee	\$500.00
OTTO Port Fee	\$500.00
ITTO Port Fee <sup>1</sup>	\$500.00
BONO Port Fee <sup>1</sup>	\$500.00
Order Entry DROP Port Fee	\$500.00
OTTO DROP Port Fee	\$500.00
SQF Port Fee	\$250.00

<sup>1</sup> ITTO and BONO Ports are available to NASDAQ Stock Market LLC members and non-member subscribers.

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The text of the proposed rule change is available on the Exchange's Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to amend Chapter XV, Sec. 3(b) to expand its offering of the Best of NASDAQ Options (“BONO<sup>SM</sup>”)<sup>3</sup> and NASDAQ ITCH to Trade Options (“ITTO”)<sup>4</sup>.ports to any market participant who wishes to subscribe to it for purposes of receiving the BONO and ITTO data feeds,<sup>5</sup> regardless of whether or not they are a

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<sup>3</sup> BONO<sup>SM</sup> is a data feed that provides the NOM Best Bid and Offer (“NOM NBBO”) and last sale information for trades executed on NOM. The NOM NBBO and last sale information are identical to the information that NOM sends the Options Price Regulatory Authority (“OPRA”) and which OPRA disseminates via the consolidated data feed for options. BONO is the options equivalent of the NASDAQ Basic data feed offered for equities under NASDAQ Rule 7047.

<sup>4</sup> ITTO is a data feed that provides quotation information for individual orders on the NOM book, last sale information for trades executed on NOM, and Order Imbalance Information as set forth in NOM Rules Chapter VI, Section 8. ITTO is the options equivalent of the NASDAQ TotalView/ITCH data feed that NASDAQ offers under NASDAQ Rule 7023 with respect to equities traded on NASDAQ. As with TotalView, members use ITTO to “build” their view of the NOM book by adding individual orders that appear on the feed, and subtracting individual orders that are executed. See Chapter VI, Section 1 at subsection (a)(3)(B).

<sup>5</sup> The BONO and ITTO data feeds are described in Chapter XV, Section 4. The Exchange assesses monthly fees for firms that are distributors of BONO and ITTO market data. A “distributor” of NASDAQ options market data is any entity

member of the Exchange. When the Exchange filed to adopt pricing for the BONO and ITTO data feeds, the Exchange noted in its filing that "...NASDAQ has made a voluntary decision to make this market data available. NASDAQ is not required by the Exchange Act in the first instance to make the data available, unlike the best bid and offer which must be made available under the Act. NASDAQ has chosen to make the noted data available to improve market quality, to attract order flow, and to increase transparency; and will continue to make the data available until such time as NASDAQ changes its rule." Further, "NASDAQ believes that its ITTO and BONO<sup>(SM)</sup> which includes the NOM NBBO and last sale information for trades executed on NOM in BONO,<sup>(SM)</sup> are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS."<sup>6</sup>

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that receives a feed or data file of NASDAQ data directly from NASDAQ or indirectly through another entity and then distributes the data either internally (within that entity) or externally (outside that entity). The Exchange assesses user fees for BONO and ITTO data on a per-user basis. These fees vary based on whether they are for Professional users or Non-Professional users. The term "Non-Professional" shall have the same meaning as in NASDAQ Rule 7011(b)(2). Rule 7011(b)(2) defines a "Non-Professional" as a natural person who is neither: (A) Registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (B) engaged as an "investment adviser" as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (C) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. A Professional user is any user that is not a non-Professional. For BONO data, the proposed per-user fees are \$5 per Professional user; and \$1 per non-Professional user. For ITTO data, the proposed per-user fees are \$10 per Professional user; and \$ 1 per Non-Professional user.

<sup>6</sup> See Securities Exchange Act Release No. 64652 (June 13, 2011), 76 FR 35498 (June 17, 2011) (SR-NASDAQ-2011-075).

The Exchange currently assesses fees for connectivity to NOM Participants for various types of ports,<sup>7</sup> among them the BONO and ITTO ports. These ports are currently available to NOM Participants.<sup>8</sup> The BONO and ITTO ports are necessary in order for subscribers to BONO and ITTO to receive those data feeds. The Exchange proposes to make the BONO and ITTO ports available to any market participant that may subscribe to the BONO and ITTO data to enable those non-NOM Participants to avail themselves of those data feeds. Similar to the BONO and ITTO data feeds in Sec. 4 of Chapter XV, The NASDAQ Stock Market LLC will issue an invoice to non-NOM Participants for BONO and ITTO ports fees on behalf of the NASDAQ OMX Global Data Products group.<sup>9</sup>

The Exchange proposes to include a footnote within Sec. 3(b) of Chapter XV to specify that the BONO and ITTO ports, unlike the other ports in Sec. 3(b) are available to non-NOM Participants.

## 2. Statutory Basis

NASDAQ believes that its proposal to amend its pricing is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>11</sup> in

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<sup>7</sup> The Exchange assesses fees for a CTI Port, OTTO Port, ITTO Port, BONO Port, Order Entry DROP Port, OTTO DROP Port and SQF Port in Section 3(b) of Chapter XV.

<sup>8</sup> NOM Participants are assessed a \$500 per port per month fee to obtain a port for either BONO or ITTO data.

<sup>9</sup> Today, the BONO and ITTO market data distributor fees are invoiced by The NASDAQ Stock Market LLC. NOM will continue to invoice and collect fees for all ports specified in Sec. 3(b) of Chapter XV including BONO and ITTO ports for NOM Participants.

<sup>10</sup> 15 U.S.C. 78f(b).

particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using any facility or system which NASDAQ operates or controls. The Exchange believes that the availability of the BONO and ITTO ports, which will enable market participants to obtain the BONO and ITTO data feeds, will enhance transparency and enable buyers and sellers to obtain better prices.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. NASDAQ believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of proprietary data and providing the means to make that data available to various market participants. NASDAQ has made a voluntary decision to make the BONO and ITTO market data available. NASDAQ has chosen to make the noted data available to improve market quality, to attract order flow, and to increase transparency; and will continue to make the data available until such time as NASDAQ changes its rules. It is for this reason that the Exchange believes permitting all market participants to obtain a BONO and/or ITTO port is reasonable to enable market participants to avail themselves of the BONO and ITTO data feeds through the use of the ports.

Further, the Exchange believes permitting all market participants to obtain a BONO and/or ITTO port is equitable and not unfairly discriminatory because unlike all other ports listed in Sec. 3(b) of Chapter XV, the Exchange has filed to make the BONO

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<sup>11</sup> 15 U.S.C. 78f(b)(4).



and ITTO data available to all market participants.<sup>12</sup> By allowing all market participants to obtain a BONO and/or ITTO port would allow all subscribers to equally access the BONO and ITTO information. NASDAQ believes that its BONO and ITTO data, which include the NOM NBBO and last sale information for trades executed on NOM is precisely the type of market data that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS--by lessening regulation of the market in proprietary data--would itself further the Act's goals of facilitating efficiency and competition, "[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NOM NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data."<sup>13</sup>

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a by-product of the execution service. The fees assessed by the Exchange must remain competitive with fees assessed by other venues and therefore must

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<sup>12</sup> See note 6.

<sup>13</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

continue to be reasonable and equitably allocated to those members that desire to subscribe to services at the Exchange rather than competing venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>14</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2012-086 on the subject line.

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2012-086. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2012-086 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).