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 No. SR–NYSEMKT–2013–50 and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[63]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15631 Filed 6–28–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69844; File No. SR–NASDAQ–2013–084]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Third Party Market Data Delivered by NASDAQ

June 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 the existing fees clients voluntarily pay to receive third party market data delivered by NASDAQ as set forth in NASDAQ Rule 7034. NASDAQ proposes to implement the proposed rule change on a date that is on, or shortly after, the expiration of the pre-operative delay provided for in Rule 19b–4(f)(6)(iii).[3] The text of the proposed rule change is available on the Exchange's Web site 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, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

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

1. Purpose

Wireless technology has been in existence for many years, used primarily by the defense, retail and telecommunications industries. Wireless connectivity involves the beaming of signals through the air between towers that are within sight of one another. Because the signals travel a straight, unimpeded line, and because light waves travel faster through air than through glass (fiber optics), message latency is reduced. The continued use of this technology by the defense industry and regulation of the spectrum by the FCC demonstrates the secure nature of wireless networks.

Over the last year, wireless technology has been introduced in the financial services industry. In offering optional wireless connectivity, NASDAQ is responding to requests from clients that wish to utilize the technology. Clients have sought to buy roof rights so that they can install their own microwave dishes on the roof at the NASDAQ data center in Carteret, New Jersey. Some have already installed microwave dishes on nearby towers with fiber connectivity to the data center, or have reserved space to do so. Rather than sell roof rights to individual clients, which would quickly result in the lack of physical space on the data center roof to accommodate all clients fairly and equally, NASDAQ proposes to supply market data, via a vendor-supplied wireless network, for all data center clients that wish to avail themselves of it.

NASDAQ is proposing to utilize wireless technology to make available to its co-located clients third-party data from the CME Group, and to amend NASDAQ Rule 7034 to modify the existing fees for the delivery of third party market data to market center clients via a wireless network. Specifically, NASDAQ will add fees for access to third-party data from the CME Group. NASDAQ will utilize network vendors to supply wireless connectivity from the Carteret data center to CME Group's Aurora, Illinois data center. The vendors will install, test and maintain the necessary communication equipment for this wireless network between the data centers.[4]

Wireless connectivity to CME Group data is similar to existing access to other data. Clients who choose this optional service will use their existing NASDAQ cross connect handoffs (1G, 10G, or 40G) to receive the multicast market data for CME Group, and NASDAQ will continue to act as re-distributor of the third party market data feeds, capturing the data at CME Group's data centers and transporting the data to NASDAQ's Carteret data center. The Exchange has opted to offer the CME Group data that is most in demand by NASDAQ customers to start. Additional feeds may be added based on overall client demand and bandwidth availability.

CME Group data is already available via fiber optic network, and therefore the wireless connectivity will be an optional offering, an alternative to fiber optic network connectivity, and will provide lower latency. In other words, this proposal does not offer a new market data product, but merely an alternative means of connectivity. NASDAQ's wireless connectivity offering, in conjunction with NASDAQ's equidistant cross connect handoffs (1G, 10G, or 40G), will ensure that all clients electing to use this wireless connectivity offering will receive the chosen market data at the same low latency, equalizing any variances that might otherwise result from differences in the location of client cabinets within the facility or different wireless networks utilized by clients independently of this offering.

[63] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 242.19b–4(f)(6)(iii).

[4] The vendors supporting wireless transmission of CME data will install equipment on transmission towers nearby to NASDAQ and CME facilities. This is unlike NASDAQ's current authority to offer different third-party data via wireless equipment located on the rooftop of NASDAQ's Carteret co-location facility. *See* Exchange Act Release No. 68735 (Jan. 25, 2013); 78 FR 6842 (Jan. 31, 2013) (order approving SR–NASDAQ–2012–119). Accordingly, it is unnecessary to discuss the competitive impact of limiting roof rights to the Carteret facility, which NASDAQ addressed in its previous filing.

To obtain CME Group data via wireless connectivity, clients will be charged a $5,000 installation fee (a non-recurring charge) and a monthly recurring charge (MRC) of $23,500 for connectivity. The rates are higher for the CME Group feeds compared to the other exchange feeds because the distance between the NASDAQ data center in New Jersey and the CME Group data center in Aurora, Illinois is 45 times longer than the distances to the other New Jersey data centers, which requires a more extensive and expensive wireless network to deliver this distant market data.

Clients will place orders for the wireless connectivity via NASDAQ's CoLo Console.[5] As with already-approved products, subscribers to CME Group's data via a wireless network will be required to subscribe for a minimum of one year, which is standard practice for co-location offerings. The minimum subscription period ensures that the Exchange and vendor can recoup the substantial investment required to establish the wireless system. As an incentive to clients, NASDAQ will waive the first month's MRC. The proposed MRC fee covers connectivity only; CME Group will charge data recipients directly the user fees for the market data received, and charge NASDAQ redistribution fees, as occurs today. No changes in CME Group's market data fees will occur as a result of this proposed offering.

NASDAQ OMX will perform substantial network testing prior to offering the service for a fee to members. After this ''beta'' testing period, upon initial roll-out of the service, clients will be offered the service for a fee, and on a rolling basis, the Exchange will enable new clients to receive the feed(s) for a minimum of 30 days before incurring any monthly recurring fees. The wireless network will continue to be closely monitored and the client informed of any issues. Similar to receiving market data over fiber optic networks, the wireless network can encounter delays or outages due to equipment issues. As wireless networks may be affected by severe weather events, clients will be expected to have redundant methods to receive this market data and will be asked to attest to having alternate methods or establishing an alternate method in the near future when they order this service from the Exchange.

This new data feed delivery option will be available to all clients of the data center, and is in response to industry demand, as well as to changes in the technology for distributing market data. Clients opting not to pay for the wireless connectivity will still be able to receive market data via fiber optics and standard telecommunications connections, as they do currently, and under the same fees. Receipt of trade data via wireless technology is completely optional. In addition, clients can choose to receive market data via other third-party vendors (Extranets or Telecommunication vendors) via fiber optic networks or wireless networks.

The proposed fees are based on the cost to NASDAQ and the vendor of installing and maintaining the wireless connectivity and on the value provided to the customer, which receives low latency delivery of data feeds. The costs associated with the wireless connectivity system are incrementally higher than fiber optics-based solutions due to the expense of the wireless equipment, cost of installation and testing and ongoing maintenance of the network. The fees also allow NASDAQ to make a profit, and reflect the premium received by the clients in terms of lower latency over the fiber optics option. Clients can choose to build and maintain their own wireless networks or choose their own third party network vendors but the upfront and ongoing costs will be much more substantial than this Exchange wireless offering.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and with Sections 6(b)(4), (b)(5) and (b)(8) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. NASDAQ's proposal to offer wireless connectivity supports important policy objectives of the Act, including the broadest, fairest possible dissemination of market data.

The Exchange believes that the proposed fees for wireless connectivity to NASDAQ are consistent with Section 6(b)(4) of the Act for multiple reasons. The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading activities of those members who believe that co-location enhances the efficiency of their trading. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of such members. If a particular exchange charges excessive fees for co-location services, affected members will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including co-locating with a different exchange, placing their servers in a physically proximate location outside the exchange's data center, or pursuing trading strategies not dependent upon co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also revenues associated with the execution of orders routed to it by affected members. Although currently no other exchange offers wireless connectivity, there are no constraints on their ability to do so, and it is probable that other exchanges will make a similar offering in the near future. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for co-location services, including fees for wireless connectivity.

A co-location customer may obtain a similar service by contracting with a wireless service provider to install the required dishes on towers near the data centers and paying the service provider to maintain the service. However, the cost involved in establishing service in this manner is substantial and could result in uneven access to wireless connectivity. The Exchange's proposed fees will allow these clients to utilize wireless connectivity and obtain the lower latency transmission of data from third parties and NASDAQ that is available to others, at a reasonable cost.[8]

[5] The ''CoLo Console'' is a web-based ordering tool NASDAQ offers to enable members to place co-location orders.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4), (5) and (8).

[8] The wireless network offered by the Exchange via the provider, although constrained by bandwidth with respect to the number of feeds it can carry, can be made available to an unlimited number of customers. The factors that differentiate this proposal from the Exchange's offerings of and initial fees for low latency network telecommunication connections approved by the Commission in Securities Exchange Act Release No. 66013 (December 20, 2011) 76 FR 80992 (December 27, 2011) (SR–NASDAQ–2011–146) are a function of technology and program concept, but neither approach implicates a burden on competition, for similar reasons: Each offers, at a competitive price, a service that customers may obtain by dealing directly with the provider rather than the Exchange; and each is expected to result in a reduction in fees charged to market participants, the very essence of competition. Pursuant to the SEC's prior approval, the Exchange offers customers the opportunity to obtain low latency telecommunications

Moreover, the Exchange believes the proposed fees for wireless connectivity to NASDAQ are reasonable because they are based on the Exchange's and vendor's costs to cover hardware, installation, testing and connection, as well expenses involved in maintaining and managing the enhanced connection. The proposed fees allow the Exchange to recoup these costs and make a profit, while providing customers the ability to reduce latency in the transmission of data from third parties and NASDAQ, and reducing the cost to them that would be involved if they build or buy their own wireless networks. The Exchange believes that the proposed fees are reasonable in that they reflect the costs of the connection and the benefit of the lower latency to clients.

The Exchange also believes that the proposed wireless connectivity fees are consistent with Section 6(b)(5) of the Act in that the fees are equitably allocated and non-discriminatory. All Exchange members that voluntarily select this service option will be charged the same amount for the same services. As is true of all co-location services, all co-located clients have the option to select this voluntary connectivity option, and there is no differentiation among customers with regard to the fees charged for the service. Further, the latency reduction offered will be the same for all co-located clients, irrespective of the locations of their cabinets within the data center. The same cannot be said of the alternative where entities with substantial resources invest in private services and thereby obtain lower latency transmission, while those without resources are unable to invest in the necessary infrastructure.

The Exchange's proposal is also consistent with the requirement of Section 6(b)(5) of the Act that Exchange rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposal is consistent with these requirements insomuch as it makes available to market participants, at a reasonable fee and on a non-discriminatory basis, access to low latency means of receiving market data feeds. Some market participants have already adopted wireless technology, using towers near the data centers, and others have approached the Exchange seeking to rent roof rights to mount their towers. Rather than lease out roof space to the highest bidders, a process that would stratify and limit access to the low latency delivery, this approach allows unlimited numbers of users to utilize the this Exchange service which utilizes vendors who rely on nearby towers to house the wireless equipment to receive the market data. It will allow the same low latency delivery to those unable to invest in the more expensive option of building or acquiring their own wireless network, as it does for those whose pockets are deeper.

Initially, NASDAQ will perform substantial network testing prior to making the service available to members. After this testing period, the wireless network will continue to be closely monitored and maintained by the vendor and the client will be informed of any issues. Additionally, during the initial roll-out of the service and on a rolling basis for future clients, the Exchange will enable clients to test the receipt of the feed(s) for a minimum of 30 days before incurring any monthly recurring fees. Similar to receiving market data over fiber optic networks, the wireless network can encounter delays or outages due to equipment issues. As wireless networks may be affected by severe weather events, clients will be expected to have redundant methods to receive this market data and will be asked to attest to having alternate methods or establishing an alternate method in the near future when they order this service from the Exchange.

Finally, for the reasons stated below in Section 4 of Form 19b-4, the proposed fees for wireless connectivity are consistent with Section 6(b)(8) of the Act in that they do not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, this proposal will promote competition for distribution of market data by offering an optional and innovative product enhancement. Wireless technology has been in use for decades, is available from multiple providers, and may be adopted by other exchanges that decide to offer microwave connectivity for delivery of market data. As discussed above, the Exchange believes that fees for co-location services, including those proposed for microwave connectivity, are constrained by the robust competition for order flow among exchanges and non-exchange markets, because co-location exists to advance that competition. Further, excessive fees for co-location services, including for wireless technology, would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

Furthermore, there are multiple effective competitive alternatives to NASDAQ's wireless offering. NASDAQ has no arrangement with CME that limits the ability of CME to transmit CME data via alternative wireless providers. Additionally, NASDAQ does not limit the ability of alternative wireless providers to re-transmit data received from CME either outside of or within NASDAQ's co-location facility. A competitive network provides the same or similar data, at the same or similar speed, at the same or similar cost, and NASDAQ's proposal does nothing to inhibit or constrain this. Currently, 17 market data vendors have fiber optic cables connected to NASDAQ's telco room in Carteret, and NASDAQ believes at least ten wireless networks exist or are under construction within very close proximity to the Carteret facility.[9] That number can, and

connectivity by establishing a low-latency minimum standard and negotiating with multiple telecommunication providers to obtain discounted rates. It then passes these wholesale rates along to participating customers, with a markup to compensate for the Exchange's role in negotiating and establishing the arrangement, and integrating and maintaining each new connection. Co-located customers are free to choose the provider they wish to use from those participating in the program; or they may choose not to avail themselves of the service and obtain comparable services directly from the provider. The Exchange does not discriminate among telecommunications providers in its program, so long as they meet the required latency, destination, and fee standards. Wireless technology, in contrast, does not require separate avenues of connectivity for each customer, and thus the Exchange is not obtaining a wholesale price by negotiating with service providers. Rather, it is selecting, on a competitive basis, the service provider(s) to install and maintain the system, and charging customers for access to that particular system, offering lower prices because it is spreading the substantial cost among multiple clients. The program, far from burdening competition among connectivity service providers, promotes it. A wireless provider that can offer to the Exchange—or to a competitor exchange—a lower price for installation and maintenance will no doubt get the exchanges' business, with the end result that prices for the end users will go down.

[9] This belief is based on a review conducted for NASDAQ of publicly-available registration and

Continued

likely will, grow, and nothing in the proposal inhibits additional wireless vendors accessing or providing CME data. Any or all of those vendors and networks is an effective competitor to the NASDAQ wireless offering. A market data vendor could also induce purchasers away from NASDAQ with an ever-so-slightly slower but still valuable product at a lower price. This variety of price and speed attributes is an effective constraint on NASDAQ's pricing power.

Moreover, fiber optic networks are themselves effective competitors for wireless data. As stated above, 17 vendors currently offer connectivity to the NASDAQ data center at various, competing prices. Fiber optic networks are more resilient than wireless networks, which can be more susceptible to severe weather affects; this mature market for fiber optic networks will remain attractive to many clients who are more risk averse. While some NASDAQ firms will opt for faster, costlier wireless data, many others will conclude that the price and speed attributes of fiber optic data provide a reasonable competitive alternative to wireless data.

Competition between the Exchange and competing trading venues will be enhanced by allowing the Exchange to offer its market participants a lower latency connectivity option. Competition among market participants will also be supported by allowing small and large participants the same price for this lower latency connectivity.

The proposed rule change will likewise enhance competition among service providers offering connections between market participants and the data centers. The offering will expand the multiple means of connectivity available, allowing customers to compare the benefits and costs of lower latency transmission and related costs with reference to numerous variables. The Exchange, and presumably its competitors, selects service providers on a competitive basis in order to pass along price advantages to its customers to win and maintain their business. The offering is consistent with the Exchange's own economic incentives to facilitate as many market participants as possible in connecting to its market.

spectrum reservation databases at the Federal Communications Commission. While it is difficult to state a definitive number of active vendors, NASDAQ can state categorically that multiple vendors currently provide wireless services such as NASDAQ is proposing to provide via this proposed rule change.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii)[sic] of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] 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.

## 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 email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–084 on the subject line.

*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–2013–084. This file number should be included on the subject line if email 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 Web site 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–2013–084 and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15624 Filed 6–28–13; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 15 U.S.C. 78s(b)(3)(a)(ii)[sic].

[11] 17 CFR 240.19b–4(f)(6).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69855; File No. SR–EDGX–2013–21]**

## Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Offer and Establish Fees for a New Exchange Service, EdgeRisk Gateways

June 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2013, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Exchange has designated the proposed rule change as it pertains to the fees for EdgeRisk Gateway℠ (the ''Service'') as ''establishing or charging a due, fee or

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.