For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70467; File No. SR–NASDAQ–2013–119]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Existing Fees To Receive CME Group Multi-Cast Market Data Feeds via Wireless Connectivity

September 20, 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 September 12, 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 in NASDAQ's Carteret data center to receive CME Group multi-cast market data feeds via wireless connectivity. The text of the proposed rule change is available on the Exchange's Web site at *http://www.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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. In July of 2013, NASDAQ began utilize wireless technology to make available to its co-located clients third-party data from the CME Group, and to assess fees for the delivery of that third party market data to market center clients via a wireless network.[3] Clients who choose this optional service use their existing NASDAQ cross connect handoffs (1G, 10G, or 40G) to receive the multicast market data for CME Group, and NASDAQ 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. CME Group data is also available via fiber optic network, and therefore the wireless connectivity is simply another of many alternative methods of acquiring the CME data.

In July, NASDAQ began assessing clients a $5,000 installation fee (a non-recurring charge) and a monthly recurring charge (MRC) of $23,500 for connectivity. Clients place orders for the wireless connectivity to CME data via NASDAQ's CoLo Console.[4] Subscribers to CME Group's data via a wireless network are currently required to subscribe for a minimum of one year, which is standard practice for co-location offerings. As an incentive to clients, NASDAQ agreed to waive the first month's MRC.

Since July, the wireless network delivering CME data has performed well. NASDAQ OMX performed substantial network testing prior to offering the service for a fee to members. The wireless network will continue to be closely monitored and the client informed of any issues. As wireless networks may be affected by severe weather events, clients must have redundant methods to receive this market data and must attest to having alternate methods or establishing an alternate method in the near future when they order this service from the Exchange.

Current Proposal. NASDAQ is proposing three minor modifications to the CME data fees. First, in addition to offering a single MRC fee of $23,000 for receiving all available CME data, NASDAQ will offer three subsets of data for subscribers seeking only a portion of the total available. Specifically, NASDAQ will offer Equities Futures Only data for an MRC of $10,000, Fixed Income Futures Only for an MRC of $10,000, and Metals Futures Only for an MRC of $3,500. Clients choosing to receive all CME data will continue to pay an MRC of $23,500 as they do today; clients choosing to receive less data will pay lower fees. The single $5,000 installation fee will continue to apply regardless of the amount of data clients elect to receive.

Second, NASDAQ will eliminate the requirement that subscribers commit to a minimum 12-month subscription. Since July, NASDAQ has determined that clients prefer longer-term arrangements and, therefore, that a regulatory requirement is unnecessary. Just as NASDAQ and its vendor invest heavily to offer CME data, NASDAQ's clients make substantial investments to obtain the CME data and they require long-term usage to help recover that investment. NASDAQ will also release from the 12-month minimum all current clients that adopted the product beginning in July subject to that requirement. This will allow all users to receive the CME data on the same terms.

Third, NASDAQ will eliminate the 30-day waiver period for MRC fees for CME data. The waiver period is unnecessary because the 12-month minimum subscription no longer applies. Clients are now able to connect for a short period of time, test the product, and then disconnect without penalty at any time if the product does not prove valuable to them.

Representations. The CME data feed delivery option will continue to 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

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69844; 78 F.R. 39383 (July 1, 2013) (SR–NASDAQ–2013–084).

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

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 [5] in general, and with Sections 6(b)(4), (b)(5) and (b)(8) of the Act,[6] 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.[7]

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

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4), (5) and (8).

[7] 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 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.

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.[8]

NASDAQ performed substantial network testing prior to making the service available to members, the wireless network is closely monitored and maintained by the vendor, and the client will be 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.

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 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.

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

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act,[10] and paragraph (f)[11] of Rule 19b–4, thereunder. 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

[8] NASDAQ also believes that it is reasonable and non-discriminatory to waive the 12-month minimum subscription requirement for both new and current subscribers. As stated above, this will permit all users to obtain the data on equal terms regardless of when they first purchased it.

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

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

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–2013–119 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–2013–119. 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–2013–119 and should be submitted on or before October 17, 2013.

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

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70459; File No. SR–NASDAQ–2013–121]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the First Trust Low Beta Income Fund of First Trust Exchange-Traded Fund VI

September 20, 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 September 12, 2013, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in in Items I, II, and III below, which Items have been prepared by 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 the Substance of the Proposed Rule Change

Nasdaq proposes to list and trade the shares of the First Trust Low Beta Income ETF (the ''Fund'') of First Trust Exchange-Traded Fund VI (the ''Trust'') under Nasdaq Rule 5735 (''Managed Fund Shares'').[3] The shares of the Fund are collectively referred to herein as the ''Shares.''

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at Nasdaq's principal office, 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. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares[4] on the Exchange. The Fund will be an actively-managed exchange-traded fund (''ETF''). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on June 4, 2012.[5] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.[6] The Fund is a series of the Trust.

First Trust Advisors L.P. will be the investment adviser (''Adviser'') to the

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[12] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008) 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). There are already multiple actively-managed funds listed on the Exchange; *see* Securities Exchange Act Release No. 66175 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR–NASDAQ–2012–004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). Additionally, the Commission has previously approved the listing and trading of a number of actively-managed WisdomTree funds on NYSE Arca, Inc. pursuant to Rule 8.600 of that exchange. *See, e.g.,* Securities Exchange Act Release No. 64643 (June 10, 2011), 76 FR 35062 (June 15, 2011) (SR–NYSEArca–2011–21) (order approving listing and trading of WisdomTree Global Real Return Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (the ''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 28468 (October 27, 2008) (File No. 812–13477).

[6] *See* Post-Effective Amendment No. 4 to Registration Statement on Form N–1A for the Trust, dated January 16, 2013 (File Nos. 333–182308 and 811–22717). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.