

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68617; File No. SR-  
NASDAQ-2013-005]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the Latency Optics Add-on Service to QView

January 10, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 4, 2013, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”) the 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

The Exchange proposes to establish the Latency Optics add-on service to QView offered at no cost to subscribing members beginning February 4, 2013, and for a monthly fee beginning April 1, 2013.

The text of the proposed rule change is below. Proposed new language is *italicized*.

#### 7058. QView

(a) QView is a web-based tool designed to give a subscribing member the ability to track its order flow on Nasdaq, and create both real-time and historical reports of such order flow. Members may subscribe to QView for a fee of \$600 per month, per member firm.

(b) *A QView subscriber may subscribe to the Latency Optics add-on service. Latency Optics is a web-based tool accessed through QView that provides a subscribing member the ability to monitor the latency of its order messages through its OUCH ports on the Nasdaq system in real-time, analyze the latency of messages sent to the Nasdaq system, and compare its latency to the average latency on the Nasdaq system at any given time. In addition users can view latency detail for order to book (i.e., how quickly an order is visible on the ITCH feed).*

*A member may subscribe to the Latency Optics add-on at no cost beginning February 4, 2013, and for a fee of \$2,900 per month/ per member beginning April 1, 2013. A Latency Optics subscription includes*

*subscription to TradeInfo for up to 5 users at no additional cost beginning April 1, 2013.*

\* \* \* \* \*

#### 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 and discussed any comments it received on 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

The Exchange is proposing to adopt a new add on service to QView that provides a subscribing member firm with real-time order latency and analytical tools to measure the historical latency of the member firm’s order messages sent to and from the NASDAQ Market Center (“System”) through the member firm’s OUCH ports<sup>3</sup> and received on ITCH ports. Latency Optics, which is accessed through QView,<sup>4</sup> allows a subscribing member firm to view the latency of its orders, segregated by MPID and/or ports. The tool measures: (1) The roundtrip time that it takes from when an order enters the NASDAQ network to the time the acknowledgement is received back to the client edge; (2) the roundtrip time that it takes from when an order enters the NASDAQ network to the time that the order appears on the TotalView ITCH multicast feed; and (3) the roundtrip time that it takes from when an order cancel request enters the NASDAQ network to when the out message is received back to the client edge. The data provided by Latency Optics is displayed graphically and in table format, showing the latency

<sup>3</sup> A port is a means by which a member firm may connect to the System. Ports are designated by the connection protocol used (e.g., OUCH, FIX, RASH).

<sup>4</sup> QView is a web-based, front-end application that allows a subscribing member firm to track all of its trading activity on the Exchange through detailed order and execution summaries. In addition, QView provides a subscribing member firm with statistics concerning the total number of executions, total volume, dollar value of executions, executions by symbol, add versus remove, buy versus sell, display versus non-display, number of open orders, use of routing strategies and liquidity code designation.

experienced by the subscribing member firm for each of the three categories of latency for the current trading day, segregated by the firm’s MPIDs and/or ports. The subscribing member firm may select an individual port to drill down to more detailed latency information concerning that port for the current trading day, including trade-by-trade latency data. The subscribing member firm may further drill down to more detailed information on one of the three individual latency categories for the individual port.

Latency Optics allows a subscribing member firm to set an alert when a certain latency threshold is reached in any of the three categories of latency measured. The thresholds for the alerts are determined by the subscribing member firm and are individually set by port, and the firm may elect to have the alert notifications provided hourly or at the end of the trading day.

The Exchange is proposing to offer the Latency Optics at no cost, other than subscription to QView and at least one subscription to TradeInfo,<sup>5</sup> on February 4, 2013. As noted, Latency Optics is an add-on service to QView, and as such a member firm must also subscribe to QView to access Latency Optics. In addition, a member firm that subscribes to QView, and by extension Latency Optics, must also have at least one TradeInfo subscription. TradeInfo allows a subscribing member firm to query for their [sic] orders submitted to the System and perform certain actions concerning the queried orders, such as canceling open orders. TradeInfo is the means by which a member firm accesses QView and Latency Optics. TradeInfo is offered complimentary as part of the NASDAQ Workstation or separately for a fee of \$95 per user, per month. Each TradeInfo user account provides an access point to QView and Latency Optics, therefore a member firm that subscribes to multiple TradeInfo accounts may access both QView and Latency Optics through each of its TradeInfo user accounts concurrently. The Exchange is proposing to assess the monthly fee of \$2,900 per member firm for Latency Optics, beginning on April 1, 2013, and which will include up to 5 monthly subscriptions to TradeInfo. Any TradeInfo subscriptions held by a

<sup>5</sup> TradeInfo allows a subscribing member firm to perform actions on their [sic] orders, such as querying all orders in a particular security or all orders of a particular type, regardless of their status (open, canceled, executed, etc.). For example, after querying for open orders the user is then able to select that open order and is allowed to make corrections to the order or cancel the order. See Rule 7015(f); see also Securities Exchange Act Release No. 55135 (January 19, 2007), 72 FR 3893 (January 26, 2007)(SR-NASDAQ-2006-062).

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

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

Latency Optics subscriber in excess of 5 will continue to be assessed the normal monthly subscription fee after April 1, 2013.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and Section 6(b)(4) of the Act,<sup>7</sup> in particular, because 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 that NASDAQ operates or controls. The Latency Optics add-on service is voluntary and the subscription fee will be imposed on all purchasers equally. NASDAQ notes that Latency Optics is only available for a member firm's OUCH ports at this time. NASDAQ believes that it is equitable and not unfairly discriminatory to limit the add-on service to OUCH ports because the measure of latency monitored by the service is of greatest value to users of OUCH ports. OUCH is a NASDAQ proprietary protocol that is used by member firms to access the System as efficiently as possible.<sup>8</sup> For such OUCH port users, latency as measured by the Latency Optics service may be important in making investment decisions. Should a member firm wish to access the information provided by a Latency Optics subscription, it may subscribe to and trade via an OUCH port at any time, thus enabling it to subscribe to Latency Optics. NASDAQ may offer Latency Optics for other types of ports should there be member firm interest in expanding the add-on service to cover these ports. The proposed fee will be allocated to cover the costs associated with establishing the service, responding to customer requests, configuring NASDAQ systems, programming to user specifications, and administering the service, among other things, and may provide NASDAQ with a profit to the extent costs are covered.

The Exchange determined that the proposed fee is reasonable based on member firm interest in the service, costs associated with developing and supporting the service, and the value that the Latency Optics service provides to subscribing member firms. The information provided by the Latency Optics service relates to the subscribing member firm's order message activity

through its OUCH ports, and is a measure of the speed at which such message activity is passing through in any given time. This information is valuable to member firms that rely on high connectivity speed to effectuate their trading strategies.

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes the proposed rule change is consistent with these requirements because the proposed service provides a subscribing member firm with a useful analytical tool with which it may measure latency of order messages sent to, and received from, the System. With this information, a subscribing member firm will know what latency it is experiencing for a given order or execution on NASDAQ, and make more informed decisions based on this knowledge. Accordingly, the Exchange believes that the proposed service will further goals of the Act by providing a subscribing member firm with greater transparency with respect to latency it is experiencing in real-time through its connectivity to the System.

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

The Exchange 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, the Exchange believes that the proposed rule change will promote competition among Exchanges by encouraging them to provide their members with useful metrics concerning the latency experienced by their order messages, similar to Latency Optics. Such services would provide market participants with greater insight into the performance they receive from a particular market thus allowing them to make more informed investment decisions. As such, the Exchange believes that only competitor markets

will be burdened by the proposed new service, as they may be forced to develop and offer a similar service to their members to remain competitive. The Exchange believes that this is appropriate in furtherance of the purposes of the Act because, by offering such services to its members, these competitor markets will allow a greater number of market participants to make more informed investment decisions.

## 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<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</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. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

## 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:

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> The OUCH protocol, unlike the FIX protocol for example, does not provide routing or special order instructions such as directed orders, or order types that check the NASDAQ book first and then route away to other destinations.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

*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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-005 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-2013-005. 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 such filing also will be available for inspection and copying at the principal offices 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-2013-005, and should be submitted on or before February 6, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68616; File No. SR-NYSEArca-2012-37]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of Proposed Rule Change Proposing a Pilot Program To Create a Lead Market Maker Issuer Incentive Program for Issuers of Certain Exchange-Traded Products Listed on NYSE Arca, Inc.**

January 10, 2013.

On April 27, 2012, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to create and implement, on a pilot basis, a Lead Market Maker Issuer Incentive Program for issuers of certain exchange-traded products listed on the Exchange. The proposed rule change was published for comment in the **Federal Register** on May 17, 2012.<sup>3</sup> The Commission initially received two comment letters on the proposal.<sup>4</sup> On June 20, 2012, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to August 15, 2012.<sup>5</sup> The Commission subsequently received one additional comment letter on the proposed rule change.<sup>6</sup>

On July 11, 2012, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> The Commission thereafter received six comment letters and a response letter from the Exchange.<sup>8</sup> On October 2, 2012, the

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

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

<sup>3</sup> See Securities Exchange Act Release No. 66966 (May 11, 2012), 77 FR 29419.

<sup>4</sup> See Letter from Gus Sauter, Managing Director and Chief Investment Officer, Vanguard, dated June 7, 2012; and Letter from Ari Burstein, Senior Counsel, Investment Company Institute, dated June 7, 2012.

<sup>5</sup> See Securities Exchange Act Release No. 67222 (June 20, 2012), 77 FR 38116 (June 26, 2012).

<sup>6</sup> See Letter from John T. Hyland, CFA, Chief Investment Officer, United States Commodity Funds LLC, dated June 27, 2012.

<sup>7</sup> See Securities Exchange Act Release No. 67411, 77 FR 42052 (July 17, 2012).

<sup>8</sup> See Letter from Joseph Cavatoni, Managing Director, and Joanne Medero, Managing Director, BlackRock, Inc., dated July 11, 2012; Letter from Stanislav Dolgoplov, Assistant Adjunct Professor, UCLA School of Law, dated August 15, 2012; Letter from James E. Ross, Global Head, SPDR Exchange Traded Funds, State Street Global Advisors, dated August 16, 2012; Letter from Ari Burstein, Senior Counsel, Investment Company Institute, dated

Commission issued a notice of designation of longer period for Commission action on proceedings to determine whether to disapprove the proposed rule change.<sup>9</sup> On January 9, 2013, the Exchange withdrew the proposed rule change (SR-NYSEArca-2012-37).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-00790 Filed 1-15-13; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68536; File No. SR-SCCP-2012-02]

**Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of Proposed Rule Change With Respect to the Amendment of the By-Laws of Its Parent Corporation, The NASDAQ OMX Group, Inc.**

December 26, 2012.

*Correction*

In notice document 2012-31464, appearing on pages 128-132 in the issue of Wednesday, January 2, 2013, make the following correction:

On page number 132, in the third column, on the thirteenth and fourteenth lines, the date reading "January 23, 2012" should read "January 23, 2013".

[FR Doc. C1-2012-31464 Filed 1-15-13; 8:45 am]

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August 16, 2012; Letter from F. William McNabb, Chairman and Chief Executive Officer, Vanguard, dated August 16, 2012; and Letter from Andrew Stevens, Legal Counsel, IMC Chicago, LLC d/b/a IMC Financial Markets, dated August 16, 2012. See also Letter from Janet McGinness, EVP & Corporate Secretary, General Counsel, NYSE Markets, dated August 14, 2012.

<sup>9</sup> See Securities Exchange Act Release No. 67962, 77 FR 61462 (October 9, 2012).

<sup>10</sup> 17 CFR 200.30-3(a)(12).