All submissions should refer to File Number SR–Phlx–2008–87. 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such 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–Phlx–2008–87 and should be submitted on or before February 12, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,
Deputy Secretary.
[FR Doc. E9–1232 Filed 1–21–09; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59244; File No. SR– NASDAQ–2008–102]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 2 Thereto To Establish a Pilot Program for NASDAQ Basic Data Feeds

January 13, 2009.

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 December

23, 2008, The NASDAQ Stock Market LLC ("NASDAQ") 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 NASDAQ. On January 8, 2009, NASDAQ filed Amendment No. 1 to the proposed rule change. On January 12, 2009, NASDAQ replaced the original filing and Amendment No. 1 by filing Amendment No. 2 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NASDAQ is proposing a rule change to establish a five-month pilot to offer "NASDAQ Basic" which is a real time data feed combining both NASDAQ's Best Bid and Offer ("QBBO") and the NASDAQ Last Sale. NASDAQ will offer information separately for NASDAQ-, NYSE- and Amex-listed stocks. NASDAQ Basic will be available free of charge for the first month of the five-month pilot.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[4]

*   *   *   *   *

7047. NASDAQ Basic

(a) For a five-month pilot period commencing on February 1, 2009, NASDAQ shall offer proprietary data feeds containing real-time market information from the NASDAQ Market Center. There shall be no fee for NASDAQ Basic for the first month of the pilot.
(1) "NASDAQ Basic for NASDAQ" shall contain NASDAQ's best bid and offer and last sale for NASDAQ-listed stocks; and
(2) "NASDAQ Basic for NYSE" shall contain NASDAQ's best bid and offer and last sale for NYSE-listed stocks.
(3) "NASDAQ Basic for Alternext" shall contain NASDAQ's best bid and offer and last sale for Alternext-listed stocks.

(b) User Fees

(1) Except as provided in (b)(2) and (b)(3), for the NASDAQ Basic product there shall be a per subscriber monthly charge of $10 for NASDAQ-listed stocks, $5 for NYSE-listed stocks, and $5 for Alternext-listed stocks; or

(2) For each non-professional subscriber, as defined in Rule 7011(b), there shall be a per subscriber monthly charge of $0.50 for NASDAQ-listed stocks, $0.25 for NYSE-listed stocks, and $0.25 for Alternext-listed stocks; or

(3) There shall be a per query fee for NASDAQ Basic of $0.0025 for NASDAQ-listed stocks, $0.0015 for NYSE-listed stocks, and $0.0015 for Alternext-listed stocks.

(c) Distributor Fees

(1) Each Distributor of NASDAQ Basic for NASDAQ-listed stocks shall pay a fee of $1,500 per month for either internal or external distribution or both.

(2) Each Distributor of NASDAQ Basic for NYSE-listed stocks shall pay a fee of $250 per month for internal distribution or $625 per month external distribution. Distributors that pay the external distribution fee may distribute NASDAQ Basic for NYSE-listed stocks internally with no additional distribution fee.

(3) Each Distributor of NASDAQ Basic for Alternext-listed stocks shall pay a fee of 250 per month for internal distribution or $625 per month external distribution. Distributors that pay the external distribution fee may distribute NASDAQ Basic for Alternext-listed stocks internally with no additional distribution fee.

(4) Each Distributor that receives Direct Access to the NASDAQ Basic shall also pay a monthly fee of $2,000 for NASDAQ-listed stocks, $1,000 for NYSE-listed stocks, and $1,000 for Alternext-listed stocks.

(5) The terms "Distributor" and "Direct Access" shall have the same meanings as set forth in Rule 7019.

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, and is set forth in Sections A, B, and C below.

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

1. Purpose

In July of 2008, NASDAQ successfully launched a market data product that for the first time made available to investors real-time execution prices based solely on proprietary data from the NASDAQ Market Center and FINRA/NASDAQ Trade Reporting Facility. Building on the success of that pilot, NASDAQ now proposes a five-month pilot to offer real-time quotation data in combination with last sale data solely from the NASDAQ Market Center as set forth below. There will be no fees for NASDAQ Basic for the first month of the pilot.

NASDAQ Basic is a "Level 1" product containing two data elements: (1) Quotation information from the NASDAQ Market Center and (2) last sale data from the NASDAQ Market Center. NASDAQ Basic will be available in three forms, NASDAQ Basic for NASDAQ, NASDAQ Basic for NYSE, and NASDAQ Basic for *Alternext.*

As with the recently-approved NASDAQ Last Sale product, NASDAQ Basic is designed to meet the needs of current and prospective subscribers that do not need or are unwilling to pay for the consolidated data provided by the consolidated Level 1 products. Providing investors with new options for receiving market data, as NASDAQ proposes, was a primary goal of the market data amendments adopted in Regulation NMS. NASDAQ developed these product proposals in consultation with industry members and also market data vendors and purchasers that expressed an interest in exchange-only data for instances where consolidated data is no longer required to be purchased and displayed.

Consistent with the sale of consolidated data and of NASDAQ proprietary data, NASDAQ proposes to charge a fee for professional use of NASDAQ Basic, and a reduced fee for non-professional use. Specifically, for each professional user of the NASDAQ Basic product, there will be a per subscriber monthly charge of $10 for NASDAQ-listed stocks, $5 for NYSE-listed stocks, and $5 for *Alternext*-listed stocks. For each non-professional subscriber, there will be a per subscriber monthly charge of $0.50 for NASDAQ-listed stocks, $0.25 for NYSE-listed stocks, and $0.25 for *Alternext*-listed stocks. "Non-professional" is a term that is well-understood within the vendor and user communities, and it will have the same meaning in this proposed rule as it currently has in Rule 7011(b), For

users that do not require a monthly subscription, there will be a per query option available for NASDAQ Basic, with a fee of $0.0025 for NASDAQ-listed stocks, $0.0015 for NYSE-listed stocks, and $0.0015 for *Alternext*-listed stocks. Vendors that report per query usage to NASDAQ are permitted to convert to monthly subscriptions when the cost of individual users' queries exceeds the cost of the monthly subscription.

As with the distribution of other NASDAQ proprietary products, all distributors of NASDAQ Basic will be assessed a Distributor Fee in addition to any applicable usage fees. Each Distributor of NASDAQ Basic for NASDAQ-listed stocks shall pay a fee of $1,500 per month for either internal or external distribution. Each Distributor of NASDAQ Basic for NYSE-listed stocks shall pay a fee of $250 per month for internal distribution or $625 per month external distribution. Each Distributor of NASDAQ Basic for Alternext-listed stocks shall pay a fee of $250 per month for internal distribution or $625 per month external distribution. Distributors that pay the fee for external distribution of NASDAQ Basic for NYSE and Alternext may distribute the same data internally for no additional fee. In addition, each Distributor that receives Direct Access to the NASDAQ Basic shall also pay a monthly fee of $2,000 for NASDAQ-listed stocks, $1,000 for NYSE-listed stocks, and $1,000 for AMEX-listed stocks. The terms "Distributor" and "Direct Access" are well-understood by market data distributors and will have the same meanings in this proposed rule as currently set forth in NASDAQ Rule 7019.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general and with Section 6(b)(4) of the Act,[6] as stated above, in that it provides an equitable allocation of reasonable fees among users and recipients of NASDAQ data. 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.

The NASDAQ Basic market data products proposed here appear to be precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by deregulating 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 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.[7]

By removing "unnecessary regulatory restrictions" on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

NASDAQ's ability to price NASDAQ Basic is constrained by (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and free delayed consolidated data, and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including eleven self-regulatory organization ("SRO") markets, as well as broker-dealers ("BDs") and aggregators such as the Direct Edge and NexTrade electronic communications network ("ECN"). Each SRO market competes to produce transaction reports via trade executions,

[5] 15 U.S.C. 78f.
[6] 15 U.S.C. 78f–3(b)(4) [*sic*].
[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

and an ever-increasing number of FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, and ECNs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ECN and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, Amex, NYSEArca, and BATS.

Any ECN or BD can combine with any other ECN, broker-dealer, or multiple ECNs or BDs to produce jointly proprietary data products. Additionally, non-broker-dealers such as order routers like LAVA, as well as market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ECNs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and distribution of proprietary data products, as Archipelago and BATS Trading did prior to registering as SROs. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace writ large.

Consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available *at no cost* with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful

form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only that data which will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to successfully market proprietary data products.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, and BATS Trading. Today, BATS publishes its data at no charge on its Web site in order to attract order flow, and it uses market data revenue rebates from the resulting executions to maintain low execution charges for its users.

Several ECNs have existed profitably for many years with a minimal share of trading, including Bloomberg Tradebook and NexTrade.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability

to aggregate data and disseminate it on a profitable scale, including Bloomberg, Reuters and Thomson. New entrants are already on the horizon, including ''Project BOAT,'' a consortium of financial institutions that is assembling a cooperative trade collection facility in Europe. These institutions are active in the United States and could rapidly and profitably export the Project Boat technology to exploit the opportunities offered by Regulation NMS.

In establishing the price for NASDAQ Basic, NASDAQ considered the competitiveness of the market for BBO and last sale data and all of the implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish a fair, reasonable, and not unreasonably discriminatory fee and an equitable allocation of fees among all users.

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, as set forth in detail above, the market for the data elements contained in NASDAQ Basic is already competitive, with both real-time and delayed consolidated data as well as the ability for innumerable entities begin rapidly and inexpensively to offer competitive last sale data products. Moreover, NASDAQ expects that the New York, NYSEArca, BATS, and American Stock Exchanges will each respond to this proposal with a similar proposal to distribute competing data products. Under the regulatory regime of Regulation NMS, there is no limit to the number of competing products that can be developed quickly and at low cost. The Commission should not stand in the way of enhanced competition.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or

(ii) as to which NASDAQ consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be 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.* Please include File Number SR–NASDAQ–2008–102 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–2008–102. 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 inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NASDAQ. 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–2008–102 and should be

submitted on or before February 12, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1231 Filed 1–21–09; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11632 and #11633]

Maine Disaster #ME–00017

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Maine (FEMA–1815–DR), dated 01/09/2009.

Incident: Severe Winter Storm and Flooding.

Incident Period: 12/11/2008 through 12/29/2008.

Effective Date: 01/09/2009.

Physical Loan Application Deadline Date: 03/10/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 10/09/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/09/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Androscoggin. Cumberland, Knox, Lincoln, Sagadahoc, Waldo, York.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500

[8] 17 CFR 200.30–3(a)(12).

	Percent
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11632B and for economic injury is 11633B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E9–1209 Filed 1–21–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11430 and #11431]

Texas Disaster Number TX–00308

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA– 1791–DR), dated 09/13/2008.

Incident: Hurricane Ike.

Incident Period: 09/07/2008 through 10/02/2008.

Effective Date: 01/06/2009.

Physical Loan Application Deadline Date: 02/06/2009.

EIDL Loan Application Deadline Date: 06/15/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of TEXAS, dated 09/13/2008 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 02/06/2009.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E9–1210 Filed 1–21–09; 8:45 am]

BILLING CODE 8025–01–P