

than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund of Funds may invest.

#### Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company ("acquiring company") may acquire securities of another investment company ("acquired company") if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (a) The acquiring company and acquired company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (d) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1-2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section

12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1-1 under the Act. For the purposes of rule 12d1-2, "securities" means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1-2 under the Act, but for the fact that the Fund of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1-2(a) to allow the Fund of Funds to invest in Other Investments. Applicants assert that permitting the Fund of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

#### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1-2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

**Elizabeth M. Murphy,**  
*Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 60203; File No. SR-NASDAQ-2009-053]

#### Securities Exchange Act of 1934; In the Matter of The NASDAQ Stock Market LLC

June 30, 2009.

#### Order of Summary Abrogation

Notice is hereby given that the Securities and Exchange Commission

("Commission"), pursuant to Section 19(b)(3)(C) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> is summarily abrogating a certain proposed rule change of The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange").

On June 24, 2009, NASDAQ filed SR-NASDAQ-2009-053. The proposed rule change establishes a four-month pilot program that would reduce transaction fees for members that trade equities on NASDAQ provided that they also make markets in options on the NASDAQ OMX PHLX, Inc. ("Phlx") options exchange. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>2</sup>

Pursuant to Section 19(b)(3)(C) of the Act,<sup>3</sup> at any time within 60 days of the date of filing a proposed rule change pursuant to Section 19(b)(1) of the Act,<sup>4</sup> the Commission may summarily abrogate the change in the rules of the self-regulatory organization and require that the proposed rule change be re-filed in accordance with the provisions of Section 19(b)(1) of the Act<sup>5</sup> and reviewed in accordance with Section 19(b)(2) of the Act,<sup>6</sup> 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.

NASDAQ proposes to offer a reduced transaction fee for securities listed on NASDAQ and the New York Stock Exchange LLC ("NYSE") only to member firms that: (1) Make markets in 400 or more options classes as a Specialist, Streaming Quote Trader, or Remote Streaming Quote Trader on Phlx; and (2) add average daily volume of 35 million shares of liquidity on NASDAQ. Member firms meeting these criteria would pay a reduced transaction fee of \$0.0027 per share executed on NASDAQ for securities listed on NASDAQ or NYSE. The Commission is concerned about whether the proposal is consistent with the statutory requirements applicable to a national securities exchange under the Act, including, among other provisions, Section 6(b)(4) of the Act,<sup>7</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties

<sup>1</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> *Id.*

<sup>6</sup> 15 U.S.C. 78s(b)(2).

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

using its facilities; Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of a national securities exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and Section 6(b)(8) of the Act,<sup>9</sup> which requires that the rules of a national securities exchange do not impose any burden on competition not necessary or appropriate in furtherance of the Act.

Accordingly, the Commission believes that the procedures provided by Section 19(b)(2) of the Act<sup>10</sup> will provide a more appropriate mechanism for determining whether the proposed rule change is consistent with the Act. Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to abrogate the proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,<sup>11</sup> that File No. SR-NASDAQ-2009-053, be and hereby is, summarily abrogated. If NASDAQ chooses to re-file the proposed rule change, it must do so pursuant to Sections 19(b)(1)<sup>12</sup> and 19(b)(2) of the Act.<sup>13</sup>

By the Commission.

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. E9-15998 Filed 7-7-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### In the Matter of GenX Corporation; Order of Suspension of Trading

July 2, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of GenX Corporation because of questions about the accuracy and adequacy of publicly disseminated information appearing in stock promotional materials, and elsewhere, concerning among other things the company's purported partnerships and other relationships with certain individuals and entities.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the company listed above.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above listed company is suspended for the period from 9:30 a.m. EDT on July 2, 2009, through 11:59 p.m. EDT, on July 16, 2009.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E9-16040 Filed 7-2-09; 4:15 pm]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60186; File No. SR-NASDAQ-2009-056]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of a Proposed Rule Change To Adopt Rules To Implement the Options Order Protection and Locked/Crossed Market Plan

June 29, 2009.

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 June 23, 2009, The NASDAQ Stock Market LLC ("NASDAQ") 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 NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to adopt rules to implement the Options Order Protection and Locked/Crossed Market Plan (the "Plan"), and to delete provisions which will no longer be applicable following adoption of the Plan. The text of the proposed rule change is available at <http://nasdaqomx.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 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. 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

On May 7, 2008, NASDAQ filed an executed copy of the Options Order Protection and Locked/Crossed Market Plan ("Plan"), joining all other approved options markets in proposing the Plan. The Plan requires each options exchange to adopt rules implementing various requirements specified in the Plan. This proposal is designed to fulfill that obligation.

##### Background

The Plan will replace the current Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan"). That plan requires its participant exchanges to operate a stand-alone system or "Linkage" for sending order-flow between exchanges to limit trade-throughs. The Options Clearing Corporation ("OCC [sic]) operates the Linkage system (the "System"). The Linkage rules provide for unique types of Linkage orders, with a complicated set of requirements as to who may send such orders and under what conditions. Before a market maker can trade through another exchange's quote, it first must send a Linkage order and then wait three seconds for a response.

While the Linkage largely has operated satisfactorily, it is under significant strain. When the Commission approved the Linkage Plan in 2000, average daily volume ("ADV") in the options market was approximately 2.6 million contracts across all exchanges. Now the ADV has increased four-fold to more than 10.8 million contracts, putting added strain on the ability of market makers to comply with the complex Linkage rules. At the same time, the options markets have been moving towards quoting in pennies. This greatly increases the number of price changes in an option, giving rise to greater chances of trade-throughs and missing markets as market makers send Linkage orders and have to wait three seconds for a response.

Based upon experience in the equities markets following the adoption of Regulation NMS in 2005, the options exchanges have determined to replace

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(8).

<sup>10</sup> *Id.*

<sup>11</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>12</sup> 15 U.S.C. 78s(b)(1).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

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

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