

change effective and operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow CBOE to immediately delete an obsolete rule and update its rule book, which in turn will avoid potential confusion. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2010-061 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-CBOE-2010-061. 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

<sup>13</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. 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-CBOE-2010-061 and should be submitted on or before July 22, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62380; File No. SR-NASDAQ-2010-052]

#### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change To Establish the Nasdaq Short Sale Volume and Monthly Short Sale Transaction Service and Related Fees

June 25, 2010.

#### I. Introduction

On April 26, 2010, The NASDAQ Stock Market LLC ("Nasdaq") 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 establish the Nasdaq Short Sale Volume and Monthly Short Sale Transaction files (the "Service"). The Service is comprised of aggregate reported share volume of executed short sale trades during regular market hours on a daily basis, as well as every short sale executed on the Nasdaq execution system and reported to a consolidated tape for Nasdaq, the New York Stock Exchange ("NYSE") and regional

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

exchange-listed securities, including the price of the trade and the number of shares for every short sale transaction, on a monthly basis, separated into daily files. On May 13, 2010, Nasdaq filed Amendment No. 1. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on May 25, 2010.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

Nasdaq is proposing to establish a new service and related fees. The Service is comprised of aggregate reported share volume of executed short sale trades during regular market hours on a daily basis, as well as every short sale executed on the Nasdaq execution system and reported to a consolidated tape for Nasdaq, the NYSE and regional exchange-listed securities, including the price of the trade and the number of shares for every short sale transaction, on a monthly basis, separated into daily files. Nasdaq proposes to offer the Service at \$500 per subscriber, per month, which would allow a distributor access to the downloadable FTP files and to distribute the product internally and externally.

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>4</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>5</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 using its facilities, and Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,<sup>7</sup> in that it does not impose any burden on

<sup>3</sup> See Securities Exchange Act Release No. 62112 (May 14, 2010), 75 FR 29371.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f(b)(8).

competition that is not necessary or appropriate in furtherance of the purposes of the Act.<sup>8</sup>

The Commission has reviewed the proposal using the approach set forth by the Commission for non-core market data fees, and finds that the proposal meets the criteria for approval. Because Nasdaq was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that the terms of the proposal fail to meet the applicable requirements of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis.

Nasdaq has represented that the Service is a voluntary one, and that the information provided is not comprised of data that Nasdaq receives because of Nasdaq's status as a self-regulatory organization. Because the Service is voluntary, Nasdaq has met the statutory standard by pricing the Service according to free market principles; indeed, if Nasdaq priced the Service too high, those in the marketplace could simply opt not to purchase the Service. The Commission believes that Nasdaq's fees for the Service are reasonable and equitably allocated.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>9</sup>, that the proposed rule change (SR-NASDAQ-2010-052), as modified by Amendment No. 1, be, and it hereby is, approved.

<sup>8</sup> The proposal meets the criteria, formulated by the Commission in connection with the petition filed by NetCoalition, for approval of proposed rule changes concerning the distribution of non-core market data. See Securities Exchange Act Release Nos. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) and 55011 (December 27, 2006) (order granting petition for review of SR-NYSEArca-2006-021). In its order issued in connection with the NetCoalition petition, the Commission stated that "reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory." 73 FR at 74781-82. As such, the "existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory." *Id.* at 74782. If an exchange "was subject to significant competitive forces in setting the terms of a proposal," a proposal will be approved unless the Commission determines that "there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder." *Id.* at 74781.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

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

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62379; File No. SR-Phlx-2010-87]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for FLEX Equity Options

June 25, 2010.

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 21, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 assess a transaction charge for members trading Flexible Exchange® Options ("FLEX Options").<sup>3</sup>

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after July 1, 2010.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

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

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

<sup>3</sup> A FLEX option is a customized option that provides parties to the transaction with the ability to fix terms including the exercise style, expiration date, and certain exercise prices. See Exchange Rule 1079. FLEX Options are a trademark of the Chicago Board Options Exchange.

#### 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 purpose of the proposed rule change is to establish a new fee for equity options transactions executed pursuant to Exchange Rule 1079 ("FLEX equity options"). The Exchange believes that the proposed fee reduction for trading FLEX equity options will encourage members to trade additional FLEX equity options contracts on the Exchange, resulting in additional order flow to the Exchange. Currently, the fees which members are assessed when trading FLEX equity options are the standard equity option fees.

Currently, members who trade FLEX equity options are assessed the standard equity options fees delineated in Section II of the Fee Schedule. The Exchange is proposing to reduce transaction fees to \$0.10 per contract side for FLEX equity options for all participants, except Customers.<sup>4</sup> Specifically, the Exchange proposes to assess a \$.10 transaction charge on Professionals<sup>5</sup>, Specialists<sup>6</sup>, Registered Options Traders<sup>7</sup>, Streaming Quote

<sup>4</sup> At this time the Exchange is not proposing to otherwise amend its equity option fees.

<sup>5</sup> Rule 1000(b)(14) provides in relevant part: "The term 'professional' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

<sup>6</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<sup>7</sup> A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. A ROT includes a SQT, a RSQT and a Non-SQT, which by definition is neither a SQT or a RSQT. See Exchange Rule 1014 (b)(i) and (ii).