

option class is procompetitive and may enhance the liquidity offered.

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

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither received nor solicited written comments on the proposal.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act<sup>9</sup> and Rule 19b-4(f)(1) thereunder,<sup>10</sup> because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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.

### **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-2010-85 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2010-85. 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 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 such filing also will be available for inspection and copying at the principal office of the CBOE. 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-2010-85 and should be submitted on or before October 26, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

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

[FR Doc. 2010-24895 Filed 10-4-10; 8:45 am]

**BILLING CODE 8010-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-63007; File No. SR-NASDAQ-2010-121]**

#### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center**

September 29, 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 September 28, 2010, 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 the Substance of the Proposed Rule Change**

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on October 1, 2010. 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 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**

NASDAQ is amending Rule 7018 to make modifications to its pricing schedule for execution and routing of orders in securities priced at \$1 or more through the NASDAQ Market Center.<sup>3</sup> First, NASDAQ is introducing a new rebate tier for members providing liquidity through the NASDAQ Market Center. The new tier is available to members providing a daily average of more than 20 million shares of liquidity during the month, including a daily average of more than 8 million shares provided with respect to securities that are listed on exchanges other than NASDAQ or the New York Stock Exchange ("Tape B Securities"). Members qualifying for this tier will receive a rebate of \$0.0015 per share executed for quotes/orders that are not displayed, and \$0.0029 per share

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>10</sup> 17 CFR 240.19b-4(f)(1).

<sup>11</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.

<sup>3</sup> Fees and credits for execution and routing of orders in securities priced below \$1 remain unchanged.

executed for other quotes/orders. NASDAQ is making this change in order to encourage greater levels of liquidity provision in Tape B Securities.

Second, NASDAQ is modifying the rebate tier for members (i) providing a daily average of more than 25 million shares of liquidity through the NASDAQ Market Center and (ii) accessing more than 200,000 options contracts through the NASDAQ Options Market. Currently, a member that qualified for this tier would receive \$0.0029 per share executed for providing liquidity through the NASDAQ Market Center. The tier is being modified so that the rebate will be \$0.0015 per share executed for quotes/orders that are not displayed, but will remain \$0.0029 per share executed for other quotes/orders. This change will make the tier more consistent with other tiers that provide a lower rebate with respect to non-displayed quotes/orders.

Third, NASDAQ is modifying the conditions under which a member may qualify for the most favorable liquidity provider rebate tier, under which members earn \$0.00295 per share executed for displayed quotes/orders and \$0.0015 per share executed for non-displayed quotes/orders. Currently, a member qualifies for this tier if it provides a daily average of more than 95 million shares of liquidity during the month. Under the proposed change, the required level of liquidity provision will vary depending on overall market volumes during the month. Thus, a member will qualify for the rebate if it has a daily average volume during the month of (i) more than 95 million shares of liquidity provided, if average total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities is more than 10 billion shares per day during the month, (ii) more than 85 million shares of liquidity provided, if average total consolidated volume is between 9,000,000,001 and 10 billion shares per day during the month, (iii) more than 75 million shares of liquidity provided, if average total consolidated volume is between 8,000,000,001 and 9 billion shares per day during the month, or (iv) more than 65 million shares of liquidity provided, if average total consolidated volume is 8 billion or fewer shares per day during the month. The change is expected to increase the number of firms qualifying for the most favorable rebate tier during months when overall trading volumes are lower, by allowing the required level of liquidity provision to vary with overall trading volumes.

Finally, NASDAQ is making minor modifications to its routing fees to

reflect the imminent launch of cash equities trading on NASDAQ OMX PSX ("PSX"), a new facility of NASDAQ OMX PHLX LLC, NASDAQ's sister exchange. The changes will result in routing fees to PSX that are similar to fees already in place for routing to NASDAQ OMX BX. Specifically, the fee for routing directed orders to PSX will be \$0.0015 per share executed.<sup>4</sup> In addition, the fee for routing to PSX using NASDAQ's SAVE and TFTY routing strategies will consist of a pass through of the fee charged by PSX to access liquidity there (currently \$0.0013 per share executed).

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Section 6(b)(4) of the Act,<sup>6</sup> 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 NASDAQ operates or controls. The impact of the price changes upon the net fees paid by a particular market participant will depend upon a number of variables, including the prices of the market participant's quotes and orders relative to the national best bid and offer (*i.e.*, its propensity to add or remove liquidity), the types of securities that it trades, its usage of non-displayed quotes/orders, its trading volumes, and overall market volumes.

NASDAQ notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, if particular market participants object to the proposed fee changes, they can avoid paying the fees by directing orders to other venues. NASDAQ believes that its fees continue to be reasonable and equitably allocated to members on the basis of whether they opt to direct orders to NASDAQ.

<sup>4</sup> PSX will charge a fee of \$0.0013 per share executed to access liquidity, so the routing fee of \$0.0015 reflects a small markup on the fee that PSX charges NASDAQ's routing broker. By contrast, BX pays a rebate to firms accessing liquidity, so NASDAQ's routing fee of \$0.0002 per share executed similarly allows it to receive revenue for routing directed orders. By contrast, when routing using certain specific routing strategies, NASDAQ foregoes revenue and passes through the applicable access fees or rebates.

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

## 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. Because the market for order execution and routing is extremely competitive, members may readily direct orders to NASDAQ's competitors if they object to the proposed rule change.

## 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 rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>7</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.

## 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-NASDAQ-2010-121 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-2010-121. This

<sup>7</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

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 website viewing and printing in the Commission's Public Reference Room 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 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-2010-121, and should be submitted on or before October 26, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

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

[FR Doc. 2010-24897 Filed 10-4-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63010; File No. SR-NASD-2003-140]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 Through 4, Relating to the Prohibition of Certain Abuses in the Allocation and Distribution of Shares in Initial Public Offerings ("IPOs")

September 29, 2010.

#### I. Introduction

On September 15, 2003, the National Association of Securities Dealers, Inc.

("NASD") (n/k/a the Financial Industry Regulatory Authority, Inc. ("FINRA")) filed with the Securities and Exchange Commission ("SEC" or "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 adopt new FINRA Rule 5131 (originally proposed as NASD Rule 2712) to further and more specifically prohibit certain abuses in the allocation and distribution of shares in initial public offerings ("IPOs"). NASD amended the proposed rule change on December 9, 2003 and August 4, 2004. On February 10, 2010, FINRA filed with the Commission Amendment No. 3 to SR-NASD-2003-140.<sup>3</sup> The Commission published the proposed rule change, as modified by Amendment No. 3, for comment in the **Federal Register** on March 18, 2010.<sup>4</sup> The Commission received three comment letters in response to the proposed rule change.<sup>5</sup> On July 30, 2010, FINRA responded to the comment letters and filed Amendment No. 4 to the proposed rule change. The Commission is publishing this notice and order to solicit comments on Amendment No. 4, and to approve the proposed rule change, as modified by Amendment Nos. 1 through 4, on an accelerated basis.

#### II. Description of Proposal

##### a. *Quid Pro Quo Allocations*

Proposed FINRA Rule 5131(a) would prohibit any member or person associated with a member from offering or threatening to withhold shares it allocates of a new issue as consideration or inducement for the receipt of compensation that is excessive in relation to the services provided by the member.

##### b. *Prohibition on Spinning*

Proposed FINRA Rule 5131(b) would prohibit the allocation of new issue shares to the account of an executive officer or director of a company (1) if the

company is currently an investment banking services client of the member or the member has received compensation from the company for investment banking services in the past 12 months; (2) if the member intends to provide, or expects to be retained by the company for, investment banking services within the next 3 months; or (3) on the express or implied condition that such executive officer or director, on behalf of the company, will retain the member for the performance of future investment banking services.

FINRA also proposes that members establish, maintain and enforce policies and procedures reasonably designed to ensure that investment banking personnel have no involvement or influence, directly or indirectly, in the new issue allocation decisions of the member. The spinning provision would apply to any account in which an executive officer or director of a public company or a "covered non-public company," or a person materially supported by such executive officer or director, has a beneficial interest. The term "covered non-public company" would mean any non-public company satisfying the following criteria: (i) Income of at least \$1 million in the last fiscal year or in two of the last three fiscal years and shareholders' equity of at least \$15 million; (ii) shareholders' equity of at least \$30 million and a two-year operating history; or (iii) total assets and total revenue of at least \$75 million in the latest fiscal year or in two of the last three fiscal years.<sup>6</sup> FINRA also proposes to prohibit new issue allocations only where the person responsible for making the allocation decision "knows or has reason to know that the member intends to provide, or expects to be retained by the company for, investment banking services within the next 3 months."

In addition, to facilitate compliance with the spinning provisions as requested by commenters, proposed new Supplementary Material .02 would expressly permit members to rely on written representations obtained within

<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. 50896 (Dec. 20, 2004), 69 FR 77804 (Dec. 28, 2004).

<sup>4</sup> See Securities Exchange Act Release No. 61690 (March 11, 2010), 75 FR 13176 (March 18, 2010) ("Amendment No. 3").

<sup>5</sup> See Letter from Jeffrey W. Rubin, Chair, Committee on Federal Regulation of Securities, Business Law Section, American Bar Association ("ABA"), to Elizabeth M. Murphy, Secretary, SEC, dated April 6, 2010; Letter from Sean Davy, Managing Director, Corporate Credit Markets Division, Securities Industry Financial Markets Association ("SIFMA"), to Elizabeth M. Murphy, Secretary, SEC, dated April 8, 2010; and Letter from Ross M. Langill, Chairman & CEO, Regal Bay Investment Group LLC ("Regal"), to Elizabeth M. Murphy, Secretary, SEC, dated April 8, 2010.

<sup>6</sup> These criteria are based on quantitative initial listing standards for a national securities exchange, which FINRA believes is a suitable proxy for the types of companies that are likely to be targeted by members for investment banking services. In this case, FINRA has determined that the applicable standards should be no less than those required for initial listing on the NASDAQ Global Market. FINRA further believes that, in modifying the scope of companies covered by the spinning provisions, it is unnecessary to create a *de minimis* standard for investment banking services compensation as urged by ABA. Moreover, FINRA also believes that a *de minimis* standard would pose additional compliance burdens and would be susceptible to abuse by those seeking to avoid application of the proposed rule.

<sup>8</sup> 17 CFR 200.30-3(a)(12).