

clearing firms by OCC on behalf of the Exchange.

The ORF is designed to recover a portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, do not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2011.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the fee change is reasonable because the Exchange desires to recoup its regulatory expenses while also ensuring that the revenue collected from the ORF does not exceed regulatory costs. The Exchange believes that this fee proposal is equitable because the increase of the ORF to \$0.0035 per contract would uniformly apply to all market participants who are being assessed the ORF.

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

The Exchange 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 Act.

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

No written comments were either solicited or 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> and paragraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder. At any time within 60 days of the filing of such 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-Phlx-2010-166 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-Phlx-2010-166. 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 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-2010-166 and should be submitted on or before January 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63441; File No. SR-NASDAQ-2010-152]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Direct Access to Exchange Data

December 6, 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 November 24, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or the "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 self-regulatory organization. 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

NASDAQ proposes an amendment to the fee schedule to assess "direct access" fees on certain customers receiving NASDAQ data within NASDAQ's co-location facility. The rule filing also deletes outdated dated verbiage in the fee schedule to eliminate confusion regarding application of the fees. NASDAQ will implement the proposed change on December 1, 2010. The text

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

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

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

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

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 the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

NASDAQ is amending its fee schedule to correct an anomaly that effectively exempts certain customers residing within NASDAQ's co-location facility from paying a monthly fee for direct access to NASDAQ data, while customers that receive data from an extranet and reside outside the co-location facility are assessed the fee. The inequity is a result of the definition of "direct access" in the fee schedule, which does not by its terms clearly apply to data feeds provided to customers through distributors located within the co-located facility. This rule filing will expand the definition of "direct access" and thereby operate to assess the same fee on all firms that have access to NASDAQ's raw data feeds, whether co-located or not. It will also delete terms that are obsolete or generally limiting, given the evolution of technologies and systems through which data may be accessed.

NASDAQ, like other data providers, assesses fees for its real time market data. In general, a customer that receives a data feed directly from the Exchange is assessed a "direct access" fee. If the customer then distributes the data, it is a "distributor" as defined under the fee schedule and pays an "internal" or "external" distributor fee, depending upon whether it distributes the data internally or externally. A "distributor" is broadly defined to include any entity that distributes NASDAQ's data, whether it receives the data feed directly from NASDAQ or indirectly through another entity. Distributor fees apply to distributors located within the

Exchange's co-location facility as well as those outside of it.

The definition of what constitutes "direct access," however, is limited to specific types of communications connections, and does not currently include the systems by which data is delivered through distributors located within the co-location facility to their customers also located within the co-location facility. As a result, the distributor's customers in the co-location facility are not charged a direct access fee, even though they receive NASDAQ's data in its raw data format and have the same low latency data access as non-co-located extranet customers that pay the Direct Access fee.

To correct this disparity, this rule filing will include within the definition of "direct access" the receipt of NASDAQ data within the co-location facility. It will also delete terms that, while describing various means by which data is currently accessed, do not clearly or adequately describe all viable technological means of accessing data. For example, reference to "the MCI Financial Extranet" is deleted because MCI has become "Verizon," and Verizon no longer has special status among extranets as it did when the current rule was written. The terms "Nasdaq-operated Web site, system or application" are also deleted, as they are limiting terms that do not clearly encompass potential technological means of accessing NASDAQ data. Their elimination does not impact the fees of any customer currently assessed a Direct Access fee, but should preclude the need for future rule changes to the definition of direct access, as the means by which those same customers access data evolve over time.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>3</sup> in general, and with Sections 6(b)(5) of the Act,<sup>4</sup> in particular. The proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The filing permits

transparent, uniform fees for direct access to Exchange data for all customers, whether co-located or not.

In addition, the Exchange 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 The Exchange operates or controls. In particular, the Exchange notes that the amendment corrects an anomaly that effectively exempts certain co-located customers receiving the data from paying a direct access fee.

### 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.

### 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:

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

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

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

<sup>3</sup> 15 U.S.C. 78f.

<sup>4</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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2010-152 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-2010-152. 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 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-2010-152 and should be submitted on or before January 3, 2011.

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

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63444; File No. SR-NYSE-2010-74]

**Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Create a Bond Trading License for Member Organizations and Establish Bonds Liquidity Providers as a New Market Class on NYSE Under a Pilot Program**

December 6, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 23, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 a twelve-month pilot program to: (1) Create a bond trading license for member organizations that desire to trade only debt securities on the Exchange; and (2) establish a new class of NYSE market participants, "Bonds Liquidity Providers" ("BLPs"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

**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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

NYSE proposes a twelve-month pilot program to: (1) Adopt new Rule 87 to create a bond trading license for member organizations that desire to trade only debt securities on the NYSE; and (2) adopt new Rule 88 to establish BLPs, a new class of debt market participants, and provide them with financial incentives for bringing liquidity to the Exchange's bond market. The purpose of the proposed rule change is to encourage market participants to bring additional liquidity to the Exchange's bond marketplace.

*Background on the Current NYSE Bond Trading Platform*

The Exchange began trading bonds electronically in 1977 with the introduction of the Automated Bond System ("ABS"). In 2007, the Exchange retired the ABS system, moved the platform to its Archipelago technology, and replaced former Rule 86 ("Automated Bond System") with new Rule 86 ("NYSE Bonds").<sup>4</sup> The Exchange also filed Rules 1400 and 1401, expanding the number of debt issues that could be traded on the exchange. Bonds eligible to trade on the NYSE Bonds platform include any debt instrument that is listed on the NYSE and any corporate debt of a listed company of the Exchange.

Despite these changes, the Exchange has failed to attract meaningful trading volume. The NYSE Bonds platform executes between 0 and 20 trades per day, with an average sized trade of 20 bonds. Currently, there are no incentive programs in place to provide liquidity to NYSE Bonds. The Exchange believes that the pilot incentive programs proposed in this filing will attract providers to NYSE Bonds and create more liquidity and transparency in the retail corporate bond market.

*Bond Trading License*

The Exchange proposes to establish a new bonds-only trading license to encourage more member organizations to trade debt securities on the NYSE.<sup>5</sup> Currently, an approved member organization may obtain a trading license pursuant to Rule 300, which permits them to trade all debt and equity securities listed on the Exchange.

<sup>4</sup> See Securities Exchange Act Release No. 55496 (March 20, 2007), 72 FR 14631 (March 28, 2007) (SR-NYSE-2006-37).

<sup>5</sup> The NYSE intends to submit a separate fee filing to address the proposed bond trading license.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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