

believes that the proposed changes will provide clarity on the short sale order handling procedures employed by the Exchange and certain obligations of Members when sending short sale orders to the Exchange consistent with Regulation SHO, as amended. The Exchange also believes that the proposed short sale price sliding functionality will assist Users in executing or displaying their orders consistent with Regulation SHO, especially under fast moving conditions where the national best bid/offer is quickly updating. In addition, as is currently the case, the short sale price sliding process is optional to Users. Specifically, Users can choose to opt-out of the short sale price sliding process, and if they choose to do so, the Exchange will cancel back their orders when such orders contradict the provisions of Regulation SHO.

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

The proposed rule change does not impose 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*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>22</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>23</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>24</sup> normally does not become operative prior to 30 days after the date of the filing.<sup>25</sup> However,

pursuant to Rule 19b-4(f)(6)(iii),<sup>26</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that it may implement the change no later than February 28, 2011 to coincide with the compliance date for the amendments to Rules 200(g) and 201 of Regulation SHO. The Commission believes that waiving the 30-day operative delay is consistent with the protection of the investors and the public interest because such waiver would ensure compliance with the Commission's amendments to Rules 200(g) and 201 of Regulation SHO. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.<sup>27</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.

### **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 No. SR-EDGA-2011-05 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-EDGA-2011-05. This file number should be included on the

along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>26</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>27</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 20549-1090, 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 and on its Internet Web site at <http://www.directedge.com>. 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-EDGA-2011-05 and should be submitted by March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-4904 Filed 3-3-11; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-63983; File No. SR-NASDAQ-2011-032]**

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Offer Market Data to the Public at No Charge**

February 25, 2011.

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 February 24, 2011, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange

<sup>28</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>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>24</sup> 17 CFR 240.19b-4(f)(6).

<sup>25</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change,

Commission (the "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**

NASDAQ is filing this proposed rule change to identify in NASDAQ Options Market ("NOM") rules the proprietary data feeds of NOM market information that NASDAQ makes available at no charge. 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, 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 the Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

Chapter VI, Section 1(a)(3) of the NOM Rules currently states that the NOM trading system includes "a data feed(s) that can be used to display without attribution to Participants' MPIDs Displayed Orders on both the bid and offer side of the market for price levels then within the Nasdaq Options Market using the minimum price variation applicable to that security." NASDAQ is proposing to modify Section 1(a)(3) to specify the names and content of the four data feeds that NASDAQ makes available without charge containing market information related to trading on NOM.

First, NASDAQ ITCH to Trade Options or "ITTO" is a data feed that provides quotation information for individual orders on the NOM book, last sale information for trades executed on NOM, and Order Imbalance Information as set forth in NOM Rules Chapter VI, Section 8. ITTO is the options

equivalent of the NASDAQ TotalView/ITCH data feed that NASDAQ offers under NASDAQ Rule 7023 with respect to equities traded on NASDAQ. As with TotalView, members use ITTO to "build" their view of the NOM book by adding individual orders that appear on the feed, and subtracting individual orders that are executed. The Order Imbalance Information disseminated via ITTO is described in more detail below.

Best of NASDAQ Options or "BONO" is a data feed that provides the NOM Best Bid and Offer and last sale information for trades executed on NOM. The NOM Best Bid and Offer and last sale information are identical to the information that NOM sends the Options Price Regulatory [sic] Authority ("OPRA") and which OPRA disseminates via the consolidated data feed for options. BONO is the options equivalent of the NASDAQ Basic data feed offered for equities under NASDAQ Rule 7047.

NASDAQ Options Depth at Price or "DAP" is a data feed that provides aggregate quotation information for each price level of trading interest on the NOM book, last sale data for trades executed on NOM, and Order Imbalance Information as set forth in NOM Rules Chapter VI, Section 8. The summary of interest at each price level is useful to members that seek to add or remove liquidity at various depths of the NOM book but that do not build a book in the manner described above with respect to ITTO.

Finally, NASDAQ Options Net Order Imbalance or "NOIView" is a data feed that provides Order Imbalance Information as set forth in NOM Rules Chapter VI, Section 8. Members use NOIView to participate effectively in the NOM Opening Cross. It includes the following information: (1) A Current Reference Price" [sic] which describes the trading interest on the NOM book at a given moment; (2) the number of contracts of eligible trading interest that are paired at the Current Reference Price; (3) the size of any order imbalance; (4) the buy/sell direction of any Imbalance; and (5) indicative prices at which the Nasdaq Opening Cross would occur if the Nasdaq Opening Cross were to occur at that time. NOIView is available in conjunction with the ITTO and DAP feeds described above.

##### **2. Statutory Basis**

Nasdaq 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 in that it 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.

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. Nasdaq believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of more useful proprietary data and also by clarifying its availability to market participants.

Additionally, NASDAQ is making a voluntary decision to make this data available. NASDAQ is not required by the Exchange Act in the first instance to make the data available, unlike the best bid and offer which must be made available under the Act. NASDAQ chooses to make the data available as proposed in order to improve market quality, to attract order flow, and to increase transparency. Once this filing becomes effective, NASDAQ will be required to continue making the data available until such time as NASDAQ changes its rule.

#### *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, offering voluntary and free data feeds promotes competition among trading platforms by advertising available trading interest and enabling NOM to attract additional liquidity.

#### *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.

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

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

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>6</sup> in that the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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 change 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-2011-032 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-2011-032. 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 the 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-2011-032 and should be submitted on or before March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63981; File No. SR-Phlx-2011-13]

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Amendments to NASDAQ OMX PHLX LLC's Limited Liability Company Agreement, By-Laws, Rules, Advices and Regulations**

February 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is

hereby given that on February 16, 2011, NASDAQ OMX PHLX LLC ("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, pursuant to Section 19(b)(1) of the Act<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> proposes to: (1) Amend the Limited Liability Company Agreement and By-Laws to substantially conform to NASDAQ Stock Market's [sic] Second Amended Limited Liability Company Agreement and By-Laws; (2) eliminate the Series A Preferred Shareholder and adopt NASDAQ Stock Market LLC's board structure and committees; (3) eliminate foreign currency option participations; (4) eliminate former definitions, rules and references to XLE; and (5) amend other terms, names, cross-references and make technical and grammatical changes to clarify and simplify the By-Laws, Rules, Option Floor Procedure Advices, Equity Floor Procedure Advices (collectively "Advices") and Regulations of the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, 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, 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.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

<sup>7</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> 15 U.S.C. 78s(b)(1).

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