

change does not raise any issues that were not previously considered by the Commission in its approval of the NYSE's Assets and Equities Test and does not otherwise raise any new regulatory issues. The Commission also notes that the NYSE's proposal to adopt the Assets and Equity Test listing standard, with the applicable adjustments noted above, was subject to full notice and comment, and the Commission received no comments on the NYSE's rule proposal. For these reasons, the Commission designates, consistent with the protection of investors and the public interest, that the proposed rule change become operative immediately upon filing.<sup>18</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the 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-NASDAQ-2011-050 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 No. SR-NASDAQ-2011-050. 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 NASDAQ. 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-NASDAQ-2011-050 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Cathy H. Ahn,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64262; File No. SR-NASDAQ-2011-047]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Conform Rules 2360, 2361, 2370, 6951 to FINRA Rule Changes

April 8, 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 April 1, 2011, The NASDAQ Stock Market LLC ("NASDAQ") 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 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 is filing with the Securities Commission [sic] a proposal for NASDAQ to amend NASDAQ Rules 2360 (Approval Procedures for Day-Trading Accounts); 2361 (Day-Trading Risk Disclosure Statement); 2370 (Borrowing From or Lending to Customers); and 6951 (Definitions) to make non-substantive changes that reflect recent changes to corresponding rules of the Financial Industry Regulatory Authority ("FINRA").

The text of the proposed rule change is available from NASDAQ's Web site at <http://nasdaq.cchwallstreet.com/Filings/>, 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

The Exchange is not making any substantive changes to the content of its rules. The purpose of this proposal is to update NASDAQ Rules 2360, 2361, 2370, and 6951 to reflect proper cross-references to corresponding FINRA rules.

Many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ also proposes to initiate a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule

<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>19</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.

numbers of NASDAQ rules to mirror corresponding FINRA rules, because existing or planned NASDAQ rules make use of those numbers. However, wherever possible, NASDAQ plans to update its rules to reflect changes to corresponding FINRA rules.

In SR-FINRA-2009-059,<sup>3</sup> FINRA adopted, with minor changes, NASD Rules 2360 and 2361 regarding day trading into the FINRA consolidated rulebook as FINRA Rules 2130 and 2270, respectively. FINRA Rules 2130 and 2270, like former NASD Rules 2360 and 2361, define day-trading strategy and focus on members' obligations to disclose to non-institutional customers the basic risks of engaging in a day-trading strategy and to assess the appropriateness of day-trading strategies for such customers. FINRA Rule 2130 creates an obligation on members that promote a day-trading strategy regarding account-opening approval procedures for non-institutional customers. FINRA Rule 2270 creates an obligation on such members to disclose to non-institutional customers the unique risks of engaging in a day-trading strategy. NASDAQ is, by this filing, updating the references in its Rules 2360 and 2361 from NASD Rules 2360 and 2361 to FINRA Rules 2130 and 2270.

NASDAQ is similarly updating the reference in its Rule 2370 from NASD Rule 2370 to FINRA Rule 3240. In SR-FINRA-2009-095,<sup>4</sup> FINRA adopted, with minor changes, NASD Rule 2370 regarding borrowing from or lending to customers into the FINRA consolidated rulebook as FINRA Rule 3240, and added record retention requirements. FINRA Rule 3240, like former NASD Rules 2370, focuses in general on the appropriateness of particular lending arrangements between FINRA member broker-dealers and their registered persons and customers (to the extent permitted by the member) and the potential for conflicts of interests between both the registered person and his or her customer and the registered person and the member with which he or she is associated.

<sup>3</sup> See Securities Exchange Release No. 61059 (November 24, 2009), 74 FR 62847 (December 1, 2009) (SR-FINRA-2009-059) (notice of filing and immediate effectiveness). See also Securities Exchange Release No. 59432 (February 23, 2009), 74 FR 9121 (March 2, 2009) (SR-FINRA-2009-005) (notice of filing and immediate effectiveness regarding, among other things, updated rule cross-references and other non-substantive technical changes to FINRA Rules 2360 and 2370).

<sup>4</sup> See Securities Exchange Release No. 61537 (February 18, 2010), 75 FR 8772 (February 25, 2010) (SR-FINRA-2009-095) (order approving, among other things, adoption of NASD Rule 2370 as FINRA Rule 3240).

Additionally, in SR-FINRA-2009-005,<sup>5</sup> FINRA renumbered cross-references in its rules from NYSE Rule 80A to NYSE Rule 132B on the basis of a New York Stock Exchange ("NYSE" or NYSE Euronext) rule proposal.<sup>6</sup> In that proposal, NYSE rescinded its Rule 80A regarding index arbitration [sic] restrictions and repositioned the definitions of "index arbitrage" and "program trading" into NYSE Rule 132B. Because NASDAQ Rule 6951 refers in its definitions of index arbitrage and program trading to Rule 80A, NASDAQ is, by this filing, updating the references in its Rule 6951 from NYSE Rule 80A to 132B.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Sections 6(b)(5) of the Act,<sup>8</sup> in particular, in that 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 proposed changes will conform NASDAQ Rules 2360, 2361, 2370, and 6951 to recent changes made to several corresponding FINRA rules, to promote application of consistent regulatory standards.

### 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.

<sup>5</sup> See Securities Exchange Release No. 59432 (February 23, 2009), 74 FR 9121 (March 2, 2009) (SR-FINRA-2009-005) (notice of filing and immediate effectiveness).

<sup>6</sup> See Securities Exchange Release No. 56726 (October 31, 2007), 72 FR 62719 (November 6, 2007) (SR-NYSE-2007-96) (notice of filing and immediate effectiveness).

<sup>7</sup> 15 U.S.C. 78f.

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

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

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)<sup>9</sup> of the Act and Rule 19b-4(f)(6)(iii) thereunder<sup>10</sup> 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.

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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-2011-047 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-2011-047. This file number should be included on the subject line if e-mail is used.

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

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 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-2011-047, and should be submitted on or before May 4, 2011.

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

**Cathy H. Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64261; File No. SR-BX-2011-021]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 2360, 2361, 2370, and 6951 To Reflect Changes to Corresponding FINRA Rules

April 8, 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 April 1, 2011, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") filed with the Securities and Exchange Commission ("Commission") the proposed rule

change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4 (f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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

The Exchange is filing this proposed rule change to amend BX Rules 2360 (Approval Procedures for Day-Trading Accounts); 2361 (Day-Trading Risk Disclosure Statement); 2370 (Borrowing From or Lending to Customers); and 6951 (Definitions) to make non-substantive changes that reflect recent changes to corresponding rules of the Financial Industry Regulatory Authority ("FINRA").

The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com>, the Exchange'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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange is not making any substantive changes to the content of its rules. The purpose of this proposal is to update BX Rules 2360, 2361, 2370, and 6951 to reflect proper cross-references to corresponding FINRA rules.

BX based many of its rules on those of The NASDAQ Stock Market LLC ("NASDAQ"). Similarly, many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers

("NASD")). As a consequence, many of BX's rules closely mirror those of FINRA. During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, BX also proposes to initiate a process of modifying its rulebook to ensure that BX rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule numbers of BX rules to mirror corresponding FINRA rules, because existing or planned BX rules make use of those numbers. However, wherever possible, BX plans to update its rules to reflect changes to corresponding FINRA rules.

In SR-FINRA-2009-059,<sup>4</sup> FINRA adopted, with minor changes, NASD Rules 2360 and 2361 regarding day trading into the FINRA consolidated rulebook as FINRA Rules 2130 and 2270, respectively. FINRA Rules 2130 and 2270, like former NASD Rules 2360 and 2361, define day-trading strategy and focus on members' obligations to disclose to non-institutional customers the basic risks of engaging in a day-trading strategy and to assess the appropriateness of day-trading strategies for such customers. FINRA Rule 2130 creates an obligation on members that promote a day-trading strategy regarding account-opening approval procedures for non-institutional customers. FINRA Rule 2270 creates an obligation on such members to disclose to non-institutional customers the unique risks of engaging in a day-trading strategy. BX is, by this filing, updating the references in its Rules 2360 and 2361 from NASD Rules 2360 and 2361 to FINRA Rules 2130 and 2270.

BX is similarly updating the reference in its Rule 2370 from NASD Rule 2370 to FINRA Rule 3240.<sup>5</sup> In SR-FINRA-2009-095,<sup>6</sup> FINRA adopted, with minor

<sup>4</sup> See Securities Exchange Release No. 61059 (November 24, 2009), 74 FR 62847 (December 1, 2009)(SR-FINRA-2009-059)(notice of filing and immediate effectiveness). See also Securities Exchange Release No. 59432 (February 23, 2009), 74 FR 9121 (March 2, 2009)(SR-FINRA-2009-005)(notice of filing and immediate effectiveness regarding, among other things, updated rule cross-references and other non-substantive technical changes to FINRA Rules 2360 and 2370).

<sup>5</sup> BX is also deleting obsolete references in Rules 2360, 2361, and 2370 regarding FINRA being in the in the process of consolidating certain NASD rules into a new FINRA rulebook.

<sup>6</sup> See Securities Exchange Release No. 61537 (February 18, 2010), 75 FR 8772 (February 25, 2010)(SR-FINRA-2009-095)(order approving,

Continued

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