

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64916; File No. SR-NASDAQ-2011-010]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Link Market Data Fees and Transaction Execution Fees

July 19, 2011.

On January 10, 2011, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to discount certain market data fees and increase certain liquidity provider rebates for members that both (1) Execute specified levels of transaction volume on NASDAQ as a liquidity provider, and (2) purchase specified levels of market data from NASDAQ. The proposed rule change was published for comment in the **Federal Register** on January 27, 2011.<sup>3</sup> The Commission suspended the proposed rule change and instituted proceedings to determine whether to approve or disapprove the proposed rule change in an order published in the **Federal Register** on February 3, 2011.<sup>4</sup> The Commission has received three comment letters on the proposed rule change.<sup>5</sup> The Exchange responded to these comments on April 4, 2011.<sup>6</sup>

Section 19(b)(2) of the Act<sup>7</sup> provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180

days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on January 27, 2011. July 26, 2011 is 180 days from that date, and September 23, 2011 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change, the issues raised in the comment letters that have been submitted in connection with this proposed rule change, and the Exchange’s response to such issues in its response letter. Specifically, as the Commission noted in the Order Instituting Proceedings, the proposal raises issues such as whether a tying arrangement may not be consistent with the statutory requirements applicable to a national securities exchange and, in particular, whether the proposal may fail to satisfy the standards under the Exchange Act and the rules thereunder that require market data fees to be equitable, fair, and not unreasonably discriminatory.<sup>8</sup>

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> designates September 23, 2011, as the date by which the Commission should either approve or disapprove the proposed rule change.

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

**Elizabeth M. Murphy,**  
Secretary.

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<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. 63745 (January 20, 2011) 76 FR 4970 (“Notice”).

<sup>4</sup> See Securities Exchange Act Release No. 63796 (January 28, 2011) 76 FR 6165 (“Order Instituting Proceedings”).

<sup>5</sup> See Letter dated January 13, 2011 from William O’Brien, Chief Executive Officer, Direct Edge to Florence E. Harmon, Deputy Secretary, Commission; Letter dated January 31, 2011 from Christopher Nagy, Managing Director Order Strategy, and Richard P. Urian, Global Head of Market Data, TD Ameritrade Inc. to Elizabeth M. Murphy, Secretary, Commission; and Letter dated March 21, 2011 from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA, and Markham Erickson, Executive Director and General Counsel, NetCoalition to Elizabeth M. Murphy, Secretary, Commission.

<sup>6</sup> See Letter dated April 4, 2011 from Joan Conley, Senior Vice President, NASDAQ OMX Group, Inc. to Elizabeth M. Murphy, Secretary, Commission.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> See Order Instituting Proceedings, *supra* note 4 at 6165.

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

<sup>10</sup> 17 CFR 200.30-3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64914; File No. SR-BATS-2011-022]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by BATS Exchange, Inc. To Expand the Short Term Option Program

July 19, 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 July 13, 2011, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by BATS. 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 is proposing to amend Rules 19.6 and 29.11 to expand the Short Term Option Series Program (“STO Program” or “Program”)<sup>3</sup> so that the Exchange may select fifteen option classes on which Short Term Option Series<sup>4</sup> may be opened.

The text of the proposed rule change is available from the Exchange’s Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

<sup>3</sup> The STO Program was established about a year ago on BATS Options. See Securities Exchange Act Release No. 62597 (July 29, 2010), 75 FR 47335 (August 5, 2010) (SR-BATS-2010-020) (notice of filing and immediate effectiveness establishing Short Term Option Series Program on BATS). Other exchanges have also established permanent short term option programs, including The NASDAQ Stock Market LLC (“NOM”), NASDAQ OMX PHLX LLC (“Phlx”), Chicago Board Options Exchange (“CBOE”), International Securities Exchange (“ISE”), NYSE Arca Options (“Arca”), NYSE Amex, LLC (“Amex”), and NASDAQ OMX BX (“BX”).

<sup>4</sup> Short Term Option Series are series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Thursday or Friday that is a business day and that expires on the Friday of the next business week. If a Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Thursday or Friday, respectively. BATS Rules 16.1(a)(56) and 29.2(n).

## 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 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

The purpose of this proposed rule change is to modify Rule 19.6 and Rule 29.11 to expand the STO Program so that the Exchange may select fifteen option classes on which Short Term Option Series may be opened. This proposal is based directly on the recent expansion of the STO Program by Phlx.<sup>5</sup>

The STO Program is codified in Interpretation and Policy .05 to Rule 19.6 and Rule 29.11(h). These sections state that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on no more than five option classes that expire on the Friday of the following business week that is a business day. In addition to the five-option class limitation, there is also a limitation that no more than twenty series for each expiration date in those classes that may be opened for trading.<sup>6</sup> Furthermore, the strike price of

<sup>5</sup> See Securities Exchange Act Release No. 63875 (February 9, 2011), 76 FR 8793 (February 15, 2011) (SR-Phlx-2010-183) (order granting approval of expansion of short term option program). Other exchanges have similarly expanded their short term option programs. See Securities Exchange Act Release Nos. 64009 (March 2, 2011), 76 FR 12771 (March 8, 2011) (SR-BX-2011-014) (notice of filing and immediate effectiveness); 63877 (February 9, 2011), 76 FR 8794 (February 15, 2011) (SR-CBOE-2011-012) (notice of filing and immediate effectiveness); and 63878 (February 9, 2011), 76 FR 8796 (February 15, 2011) (SR-ISE-2011-08) (notice of filing and immediate effectiveness).

<sup>6</sup> If the Exchange opens less than twenty (20) Short Term Option Series for a Short Term Option Expiration Date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current price of the underlying security. The Exchange may also open additional

each short term option has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the short term options are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. The Exchange does not propose any changes to these additional Program limitations. The Exchange proposes only to increase from five to fifteen the number of option classes that may be opened pursuant to the Program.

The principal reason for the proposed expansion is customer demand for adding, or not removing, short term option classes from the Program. In order that the Exchange not exceed the five-option class restriction, the Exchange has had to discontinue trading short term option classes before it could begin trading other option classes within the Program. Moreover, since there is reciprocity in matching other exchange STO choices, the Exchange discontinues trading STO classes that other exchanges change from week-to-week. This has negatively impacted investors and traders, particularly retail public customers, who have on several occasions requested the Exchange not to remove short term option classes or add short term option classes.

The Exchange understands that a retail investor has recently requested another exchange (Phlx) to reinstate a short term option class that the exchange had to remove from trading because of the five-class option limit within the Program. The investor advised that the removed class was a powerful tool for hedging a market sector, and that various strategies that the investor put into play were disrupted and eliminated when the class was removed. The Exchange feels that it is essential that such negative, potentially very costly impacts on retail investors are eliminated by modestly expanding the Program to enable additional classes to be traded.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price

strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision. The opening of the new Short Term Option Series shall not affect the series of options of the same class previously opened. See Interpretation and Policy .05 to BATS Rule 19.6 and BATS Rule 29.11.

Reporting Authority ("OPRA") have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of classes in the Program.

The Exchange believes that the STO Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions. Furthermore, the Exchange has had to eliminate option classes on numerous occasions because of the limitation imposed by the Program. For these reasons, the Exchange requests an expansion of the current Program and the opportunity to provide investors with additional short term option classes for investment, trading, and risk management purposes.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade, 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 Exchange believes that expanding the current STO Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions in greater number of securities. While the expansion of the STO Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is limited to a fixed number of classes. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of classes and the Exchange does not believe that the additional price points will result in fractured liquidity.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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

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

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.<sup>11</sup> Therefore, the Commission designates the proposed rule change to be operative upon filing with the Commission.<sup>12</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,

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6). 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, 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>11</sup> See Securities Exchange Act Release No. 63875 (February 9, 2011), 76 FR 8793 (February 15, 2011) (SR-Phlx-2010-183) (order approving expansion of Short Term Option Program).

<sup>12</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. See 15 U.S.C. 78c(f).

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-BATS-2011-022 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-BATS-2011-022. 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-BATS-2011-022 and should be submitted on or before August 15, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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<sup>13</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-64918; File No. SR-NYSE-2011-35]

**Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 103 To Reduce the Net Liquid Asset Requirements for DMM Units**

July 19, 2011.

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 July 14, 2011, 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 and II 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 amend NYSE Rule 103 ("Registration and Capital Requirements of DMMs and DMM Units") to reduce the net liquid asset requirements for DMM units. The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in [brackets].

\* \* \* \* \*

**Rule 103. Registration and Capital Requirements of DMMs and DMM Units**

(a)—(f) No change

*Supplementary Material*

.10-.11 No change

DMM Capital Requirements

.20

(a) Minimum Capital Requirements—No change

(b) DMM Units—Additional Capital Requirements.

(i) Each DMM unit subject to Rule 104 must maintain or have allocated to it minimum net liquid assets equal to:

(A) [\$250,000] \$125,000 for each one tenth of one percent (.1%) of Exchange transaction dollar volume in its registered securities, exclusive of Exchange Traded Funds, plus \$500,000 for each Exchange Traded Fund; and

(B) A market risk add-on of *l*, which shall be calculated as follows:

<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.