

submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-ISE-2011-42 and should be submitted on or before August 29, 2011.

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

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65014; File No. SR-NASDAQ-2011-101]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Fees Assessed Under Rule 7015(h)

August 2, 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 26, 2011, 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 is proposing to amend the fees assessed under Rule 7015(h). NASDAQ will implement the amended fees effective August 1, 2011.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### 7015. Access Services

The following charges are assessed by Nasdaq for connectivity to systems operated by NASDAQ, including the Nasdaq Market Center, the FINRA/NASDAQ Trade Reporting Facility, and FINRA's OTCBB Service. The following fees are not applicable to the NASDAQ Options Market LLC. For related options

fees for Access Services refer to Rule 7053.

- (a)-(g) No change.
- (h) VTE Terminal Fees

- Each ID is subject to a minimum commission fee of \$125[100] per month unless it executes a minimum of 100,000 shares.

- Each ID receiving market data is subject to pass-through fees for use of these services. Pricing for these services is determined by the exchanges and/or market center.

- Each ID that is given web access is subject to a \$125[100] monthly fee.

\* \* \* \* \*

#### 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 proposing to increase the fees assessed members under Rule 7015(h) for use of VTE terminals. A VTE terminal is a basic front-end user interface used by NASDAQ members to connect to, and enter orders in, The Nasdaq Market Center. Members using VTE terminals pay the exchanges directly for data feeds and services provided by NASDAQ and other exchanges or market centers through VTE at the SEC-approved rate that they would pay to receive the data feeds through other means. These data feeds provide information that is necessary for users to enter orders through VTE. The two fees assessed under Rule 7015(h) relate to optional web access and commissions.

Rule 7015(h) currently assesses monthly a minimum commission fee of \$100 fee per ID, and a web access fee of \$100 per ID. NASDAQ last raised fees assessed under Rule 7015(h) in 2007 when it raised the fee for access to the terminal via the web from \$50 monthly to \$100 monthly, and raised the minimum commission fee for users executing orders totaling less than

100,000 shares per month from \$50 monthly to \$100 monthly.<sup>3</sup> In light of increasing costs, NASDAQ is proposing to increase the fee for access to the terminal via the web from \$100 monthly to \$125 monthly, and increase the minimum commission fee for users executing orders totaling less than 100,000 shares per month from \$100 monthly to \$125 monthly.

NASDAQ notes that web connectivity is one option available to NASDAQ users for accessing the VTE terminal. Another option is access through extranet connectivity, where a user contracts directly with a third-party extranet provider and pays fees to that provider. With respect to minimum commission fees, members that execute total orders above the 100,000 share threshold will continue to not be assessed a commission fee.

Based on NASDAQ's operation of the VTE since it was acquired from INET, NASDAQ believes that the pricing changes are warranted in order to appropriately balance the demand for the product with increasing platform, overhead and technology infrastructure costs.

###### 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Section 6(b)(4) of the Act,<sup>5</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. All similarly situated members are subject to the same fee structure, and access to this NASDAQ service is offered on fair and non-discriminatory terms. As noted, NASDAQ has not increased the fees assessed under Rule 7015(h) since 2007 despite incurring increased costs. Use of VTE terminals is voluntary and members can avail themselves of numerous other means of accessing The Nasdaq Market Center. NASDAQ further notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive.

##### 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

<sup>3</sup> Securities Exchange Act Release No. 56390 (September 12, 2007), 72 FR 53614 (September 19, 2007) (SR-NASDAQ-2007-075).

<sup>4</sup> 15 U.S.C. 78f.

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

<sup>8</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.

necessary or appropriate in furtherance of the purposes of the Act, as amended.

*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>6</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<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-2011-101 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-2011-101. 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 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-2011-101, and should be submitted on or before August 29, 2011.

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

Elizabeth M. Murphy,  
Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65007; File No. SR-CBOE-2011-071]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule Concerning Facilitation Orders in Multiply-Listed FLEX Options**

August 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 1, 2011, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") 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 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 hereby proposes to waive the Clearing Trading Permit Holder Proprietary Transaction Fee for Clearing Trading Permit Holders executing facilitation orders in multiply-listed FLEX Options classes. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary, and at the Commission.

**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 Statutory Basis for, the Proposed Rule Change*

*1. Purpose*

Over-the-counter ("OTC") trading and Flexible Exchange Options ("FLEX") trading are similar in that both are highly customized, and largely involve customer-to-firm trades. Due to regulatory changes and other market forces, the Exchange believes that market participants interested in executing these types of customized, customer-to-firm trades will begin to transition from executing such trades in the OTC markets to executing them as FLEX trades. Currently, a number of other exchanges which also host FLEX trading, including the NASDAQ OMX PHLX LLC ("PHLX"), do not charge transaction fees on firm facilitation orders in multiply-listed FLEX Options classes<sup>3</sup> (the nature of a facilitation order is such that it provides a market for a trade, and only Clearing Trading Permit Holders (or firms, on other exchanges) can enter such orders). Because CBOE anticipates an increase in FLEX trading, and because CBOE would like to be able to compete with other exchanges for FLEX trades on an even

<sup>6</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</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> See PHLX Fee Schedule, page 9.