

information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–174 and should be submitted on or before January 31, 2012.

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

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66092; File No. SR–NASDAQ–2011–175]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

January 4, 2012.

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 December 28, 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 proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change immediately. 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, 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

On December 27, 2011, NASDAQ experienced a technical issue with some order entry ports using the Financial Information Exchange (“FIX”) protocol. The issue, which was caused by a software release that had an unintended effect on FIX order entry ports, resulted in numerous “cancel reject” messages being sent to market participants that sent cancel requests to NASDAQ. Upon the issue being discovered, the FIX ports of approximately fifty members were disconnected for approximately ninety minutes to allow the software release to be removed and the prior version to be made operational.

Because NASDAQ’s fee and rebate schedule in Rule 7018 provides that members may achieve better pricing if they achieve certain specified volumes of activity during a given month, the FIX port issue may have impacted the ability of affected members to reach the required volumes. For example, a member with shares of liquidity provided in all securities through one of its Nasdaq Market Center market participant identifiers (“MPIDs”) that represent more than 0.90% of the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities (“Consolidated Volume”) during a month receives a rebate of \$0.00295 per share executed with respect to liquidity that it provides during the month through displayed quotes/orders. By contrast, members providing lower volumes of liquidity receive lower rebates with respect to displayed quotes/order ranging from \$0.0020 to \$0.0029 per share executed. If a member had provided liquidity that represented slightly in excess of 0.90% of Consolidated Volume on each day of December 2011 other than December 27, but was prevented from reaching comparable levels on that date due to the FIX port issue, it is possible that the rebate it would ultimately earn for the entire month would be lower than would otherwise have been the case. Similarly, under Rule 7014, a member may be entitled to receive an enhanced rebate under NASDAQ’s Investor Support Program or Pre-Market Investor

Program, based on its achievement of certain volume criteria specified in the rule. The ability of a member to achieve these criteria may have also been affected by the FIX port issue.

Accordingly, in order to ensure that fees and rebates are not adversely impacted by the FIX port issue, NASDAQ proposes to exclude December 27 from calculations made under Rules 7014 and 7018 if doing so would allow a member to achieve more favorable pricing than would be the case if the day were included. Thus, members that are unaffected by the FIX port issue would not have the day arbitrarily excluded from their calculations. NASDAQ will perform all calculations needed to implement the change. If a member believes that it incurred other costs as a result of the FIX port issue, claims for such costs would be governed by NASDAQ Rule 4626, which establishes procedures for claims against NASDAQ for costs associated with NASDAQ system issues.

##### 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 Section 6(b)(4) of the Act,<sup>4</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. NASDAQ believes that the proposed change is reasonable because it will allow members to receive December 2011 pricing that is based on either the exclusion, or the inclusion, of December 27, whichever is more favorable to the member. The proposed change is equitable, because it will ensure that the fees and rebates applicable to members that were subject to the FIX port issue are not adversely affected by the issue.

#### 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. The change will help to ensure that members that were affected by the FIX port issue are not required to pay higher fees, or receive lower rebates, during December 2011 than would otherwise be the case. Accordingly, NASDAQ believes that the proposed changes will protect members from incurring unanticipated charges.

<sup>13</sup> 17 CFR 200.30–3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

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

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

*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>5</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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2011-175 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-2011-175. This file number should be included on the subject line if email 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-2011-175, and should be submitted on or before January 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-66093; File No. SR-BX-2011-086]**

**Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of a Proposal To Amend the Definition of Theoretical Price**

January 4, 2012.

Pursuant to Section 19(b)(1) under 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 December 22, 2011, NASDAQ OMX BX (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 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 Substance of the Proposed Rule Change**

The Exchange proposes to amend Chapter V, Section 20 (Obvious and Catastrophic Errors) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to amend the definition of theoretical price.

**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 proposing a change to Chapter V, Section 20 (Obvious and Catastrophic Errors). Under the current rule, an obvious error occurs when the execution price of a transaction is above or below the Theoretical Price for the series by a specified amount. Currently, the "Theoretical Price" of an option series is defined in the rule, if the series is traded on at least one other options exchange, as the "National Best Bid with respect to an erroneous sell transaction, and National Best Offer with respect to an erroneous buy transaction, just prior to the trade in question." If there are no quotes for comparison, the Theoretical Price is determined by the Market Regulation Center ("MRC").<sup>4</sup>

The Exchange is now proposing to amend the definition of Theoretical Price so that when the series is traded on at least one other options exchange, the Theoretical Price will be the midpoint of the National Best Bid or Offer ("NBBO"), just prior to the trade in question. Alternatively, if there are no quotes for comparison, the Theoretical

<sup>6</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).

<sup>4</sup> MRC is defined in the BOX Rules to mean the Exchange's facilities for surveilling and regulating the conduct of business for options on BOX. MRC personnel are employees of BOXR and are not affiliated with BOX Options Participants.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(a)(ii). [sic]