

investors and the public interest. The original 4 a.m. Filing promoted this goal by offering additional trading opportunities to NASDAQ members that desire them, without imposing burdens on NASDAQ members that do not. This proposal merely corrects a rule to make it consistent with the previous filing.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As in the original filing, NASDAQ believes that offering a competing early trading session is pro-competitive in that it will increase competition for order flow, for execution services and for listings.

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

No written comments were either solicited or received.

### **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, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>7</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>8</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>9</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 the proposal may become operative

upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change will provide greater clarity and consistency to NASDAQ's rules applicable to trading hours and does not negatively impact the rights of any of the Exchange's members. For this reason, the Commission designates the proposed rule change to be operative upon filing.<sup>10</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-2013-076 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-2013-076. 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, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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 Number SR-NASDAQ-2013-076, and should be submitted on or before July 5, 2013.

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

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69718; File No. SR-NASDAQ-2012-117]

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Withdrawal of Proposed Rule Change With Respect to INAV Pegged Orders for ETFs**

June 7, 2013.

On October 2, 2012, The NASDAQ Stock Market LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend NASDAQ Rule 4751(f)(4) to include a new Intraday Net Asset Value ("INAV") Pegged Order for Exchange-Traded Funds ("ETFs") where the component stocks underlying the ETFs are U.S. Component Stocks as defined by Rule 5705(a)(1)(C) and 5705(b)(1)(D). The proposed rule change was published for comment in the

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

<sup>7</sup> 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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 Commission has determined to waive the requirement that NASDAQ provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> Rule 19b-4(f)(6)(iii).

<sup>10</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<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.

**Federal Register** on October 18, 2012.<sup>3</sup> The Commission received one comment letter on the proposal.<sup>4</sup> On November 21, 2012, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> the Commission extended the time period for Commission action on the proposed rule change to January 16, 2013.<sup>6</sup> The Commission thereafter received one response letter from the Exchange.<sup>7</sup> On January 16, 2013, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.<sup>8</sup> The Commission thereafter received one comment letter and one response letter from the Exchange.<sup>9</sup> On April 11, 2013, the Commission issued a notice of designation of a longer period for Commission action on proceedings to determine whether to disapprove the proposed rule change.<sup>10</sup> On June 6, 2013, the Exchange withdrew the proposed rule change (SR–NASDAQ–2012–117).

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69717; File No. SR–Phlx–2013–60]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Schedule of Fees and Rebates for Execution of Quotes and Orders on NASDAQ OMX PSX

June 7, 2013.

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 May 31, 2013, 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 proposes changes to its schedule of fees and rebates for execution of quotes and orders on NASDAQ OMX PSX (“PSX”). Phlx proposes to implement the proposed rule change on June 3, 2013. The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx>, 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.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Phlx is proposing two modifications to its schedule of fees and rebates for transactions occurring on PSX.<sup>3</sup> First, the Exchange currently charges a fee of \$0.00275 per share executed for orders in securities listed on The NASDAQ Stock Market (“NASDAQ”) or the New York Stock Exchange (“NYSE”) entered through a PSX market participant identifier (“MPID”) through which a member organization provides an average daily volume of 10,000 or more shares of liquidity during the month. On

May 1, 2013, Phlx submitted a proposed rule change that would have, among other things, set the applicable fee for this volume tier at \$0.0028 per share executed.<sup>4</sup> When that proposed rule change was rejected for unrelated reasons, Phlx submitted another proposed rule change to modify fees on May 3, 2013.<sup>5</sup> Because, however, the change filed on May 3 did not apply retroactively to May 1, Phlx determined that it would be advisable to set the applicable fee at \$0.00275 per share executed for the month of May, to reflect the fact that member organizations qualifying for the tier would be paying the pre-existing higher rate of \$0.0030 per share executed for transactions occurring on May 1 and 2. Phlx is now proposing to set the applicable fee at the originally intended rate of \$0.0028 per share executed.

Second, the Exchange proposes to modify its rebate tier of \$0.0028 per share executed for displayed quotes/orders entered by a member organization that provides an average daily volume of 2 million or more shares of liquidity during the month by also requiring that (i) the quote/order is entered through an MPID through which the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours<sup>6</sup> in the security that is the subject of the quote/order, or (ii) the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in 500 or more securities. A member organization is not required to register as a PSX Market Maker in order to qualify for the pricing tier. Rather, the trading data compiled by the Exchange’s systems on an ongoing basis allow it to determine which member organizations and MPIDs satisfy the requirements for the tier, and Phlx will use this information to determine the applicable rebate rate to reflect in each member organization’s monthly bill. To the extent that a member organization satisfies the requirements for the tier

<sup>3</sup> See Securities Exchange Act Release No. 68042 (Oct. 12, 2012), 77 FR 64167.

<sup>4</sup> See Letter from Dorothy Donohue, Deputy General Counsel, Investment Company Institute, dated Nov. 8, 2012.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Securities Exchange Act Release No. 68279, 77 FR 70857 (Nov. 27, 2012).

<sup>7</sup> See Letter from Stephen Matthews, Senior Associate General Counsel, NASDAQ OMX, dated Jan. 15, 2013.

<sup>8</sup> See Securities Exchange Act Release No. 68672, 78 FR 4949 (Jan. 23, 2013).

<sup>9</sup> See Letter from Dorothy Donohue, Deputy General Counsel, Investment Company Institute, dated Feb. 13, 2013. See Letter from Jeffrey S. Davis, Vice President and Deputy General Counsel, NASDAQ OMX, dated Feb. 27, 2013.

<sup>10</sup> See Securities Exchange Act Release No. 69363, 78 FR 22925 (Apr. 17, 2013).

<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> The changes apply to securities priced at \$1 or more per share.

<sup>4</sup> SR–Phlx–2013–47 (May 1, 2013).

<sup>5</sup> Securities Exchange Act Release No. 69588 (May 15, 2013), 78 FR 29801 (May 21, 2013) (SR–Phlx–2013–51).

<sup>6</sup> Phlx is adding a footnote to the fee schedule defining regular market hours to mean “9:30 a.m. through 4:00 p.m. Eastern Time, or such shorter period as may be designated by the Exchange on a day when PSX closes early” (e.g., the day after Thanksgiving).