

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60069; File No. SR-NASDAQ-2009-051]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Pricing for NASDAQ "Flash" Functionality for Routable Orders

June 8, 2009.

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 June 4, 2009, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") 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 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

NASDAQ proposes a rule change to modify pricing for NASDAQ members that trade equities in the NASDAQ Market Center using the "Flash" functionality set forth in NASDAQ Rule 4758(a)(1)(A). This proposed rule change, which is effective upon filing, will become operative when the Flash functionality becomes available, currently scheduled for June 8, 2009. The text of the proposed rule change is available at <http://nasdaqomx.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

NASDAQ is establishing the price for members trading equities in the NASDAQ Market Center using NASDAQ's new pre-routing display or "Flash" functionality described in NASDAQ Rule 4758(a)(1)(A). The Flash functionality provides an optional pre-routing display period for orders using NASDAQ's DOT, SCAN or STGY routing strategies. When voluntarily employed by a member, the Flash-enabled routing strategies will first execute to the maximum extent possible in NASDAQ's book, before displaying the remaining share amounts and prices to NASDAQ market participants and market data vendors for a period of time not to exceed one-half of one second. If at the end of the Flash period the order is not executed or is partially executed, NASDAQ will route the order automatically to the appropriate venue selected by the chosen routing strategy.<sup>3</sup>

When Flash routing functionality becomes available for use it will be assessed the following fees: \$0.0015 per share executed during the Flash period for firms that add more than 35 million shares of liquidity daily on average for the month, and \$0.0010 per share executed during the Flash period for all other firms.

An order that is designated as Flash for routing can execute in a variety of ways. The following example will illustrate how an execution occurs and how NASDAQ will assess fees. An order that is designated as Flash for routing and that takes liquidity from the NASDAQ book prior to the Flash period will be assessed the standard fee of \$0.0030 per share executed prior to the Flash period. If the unexecuted portion of that order provides liquidity on NASDAQ during the Flash period, it will be provided a liquidity rebate of either \$0.0010 or \$0.0015 per share executed during the Flash period based upon the member's average daily volume of liquidity provided. If the still

unexecuted portion of the order is then routed to an away market, NASDAQ will assess the standard rate for routing (generally \$0.0026). The remaining unexecuted shares are posted on the NASDAQ book and provided the standard rebate based on the firms' average daily liquidity provided based on the existing pricing tiers.

##### 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. The proposed fee is consistent with that standard in that it applies equally to all members using the Flash functionality. It also recognizes the benefits of additional liquidity delivered to the NASDAQ market place when NASDAQ members utilize the Flash functionality.

#### 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.

#### 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 may summarily abrogate 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>12</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> For further details on the processing of Flash routing strategies, refer to Securities Exchange Act Release 59875 (May 6, 2009); 74 FR 22874 (May 14, 2009) (SR-NASDAQ-2009-043).

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

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

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

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

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-2009-051 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-2009-051. 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 inspection and copying in the Commission's Public Reference Room, 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-NASDAQ-2009-051 and should be submitted on or before July 6, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60068; File No. SR-NSX-2009-04]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee and Rebate Schedule To (i) Increase From 50,000 to 5 Million the Liquidity Adding Average Daily Volume Thresholds in the Automatic Execution Mode of Order Interaction ("AutoEx"); (ii) Include Securities Less Than One Dollar in the Calculation of Liquidity Adding and Total Average Volume Thresholds in AutoEx; and (iii) Eliminate the Two Lower Tiers With Respect to the AutoEx Liquidity Adding Zero Display Order Rebate

June 8, 2009.

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 May 29, 2009, National Stock Exchange, Inc. 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 the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. ("NSX" or "Exchange") is proposing to amend the Fee and Rebate Schedule (the "Fee Schedule") issued pursuant to Exchange Rule 16.1(c) in order to (i) increase from 50,000 to 5 million the liquidity adding average daily volume thresholds in the Automatic Execution Mode of order interaction ("AutoEx"); (ii) include securities less than one dollar in the calculation of liquidity adding and total average volume thresholds in AutoEx; and (iii) eliminate the two lower tiers with respect to the AutoEx liquidity adding zero display order rebate.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nsx.com>, 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 parts of such statements.

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

###### Purpose

With this rule change, the Exchange is proposing to make three changes to the Fee Schedule, in each case only with respect to AutoEx.<sup>3</sup>

First, the liquidity adding average daily volume ("Liquidity Adding ADV") thresholds in AutoEx that are currently set at 50,000 are proposed to be increased to 5 million. This threshold is used to determine both the amount of the liquidity taking fee in AutoEx and eligibility for receipt of the liquidity adding zero display order rebate in AutoEx. Under the Fee Schedule in effect prior to effectiveness of the instant proposed rule change, an ETP Holder needs to achieve a Liquidity Adding ADV<sup>4</sup> of 50,000 in order to obtain a reduced liquidity taking fee from \$0.0030 to \$0.0028 per share. The instant rule filing proposes to increase the Liquidity Adding ADV used with respect to AutoEx liquidity taking fees from 50,000 to 5 million. In addition, under the Fee Schedule in effect prior to effectiveness of the instant proposed rule change, an ETP Holder needs to achieve a Liquidity Adding ADV of 50,000 in order to become eligible to receive rebates for submitting liquidity adding Zero Display Orders<sup>5</sup> in AutoEx. If an ETP Holder fails to achieve a Liquidity Adding ADV of 50,000, such ETP Holder is not eligible to receive a liquidity adding Zero Display Order rebate. The instant rule filing proposes to increase the Liquidity Adding ADV used with respect to eligibility to receive a liquidity adding Zero Display

<sup>3</sup> The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

<sup>4</sup> Explanatory Endnote 3 of the Fee Schedule contains the definition of "Liquidity Adding ADV."

<sup>5</sup> "Zero Display Orders" means "Zero Display Reserve Orders" as specified in NSX Rule 11.11(c)(2)(A).

<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.