

100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2012-12. 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-Phlx-2012-12, and should be submitted on or before March 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66322; File No. SR-NASDAQ-2012-020]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ's Transaction Execution Fee and Credit Schedule in Rules 7014 and 7018

February 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,²

notice is hereby given that on January 27, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or "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 is proposing to modify NASDAQ's transaction execution fee and credit schedule in Rules 7014 and 7018. NASDAQ will implement the proposed change on February 1, 2012. 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, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is amending its fee and credit schedule for transaction executions in Rules 7014 and 7018. First, NASDAQ is amending the rebate associated with its recently introduced "Pre-Market Investor Program" (the "PMI Program"). The goal of the PMI Program is to encourage the development of a deeper, more liquid trading book during pre-market hours, while also recognizing the correlation observed by NASDAQ between levels of liquidity provided during pre-market hours and levels provided during regular trading hours. Under the program, a member is required to designate one or more market participant identifiers ("MPIDs") for use under the program. The member will

then qualify for an extra rebate with respect to all displayed liquidity provided through a designated MPID that executes at a price of \$1 or more during the month if the following conditions are met:

(1) The MPID's "PMI Execution Ratio" for the month is less than 10. The PMI Execution Ratio is defined as the ratio of (A) the total number of liquidity-providing orders entered by a member through a PMI-designated MPID during the specified time period to (B) the number of liquidity-providing orders entered by such member through such PMI-designated MPID and executed (in full or partially) in the Nasdaq Market Center during such time period; provided that: (i) No order shall be counted as executed more than once; and (ii) no Pegged Orders, odd-lot orders, or MIOC or SIOC³ orders shall be included in the tabulation. Thus, the requirement stipulates that a high proportion of potentially liquidity-providing orders entered through the MPID actually execute and provide liquidity. This requirement is designed to focus the availability of the program on members representing retail and institutional customers.

(2) The member provides an average daily volume of 2 million or more shares of liquidity during the month using orders that are executed prior to NASDAQ's Opening Cross. NASDAQ has observed that members that provide higher volumes of liquidity-providing orders during the pre-market hours generally do so throughout the rest of the trading day. Accordingly, the PMI pays a credit with respect to all liquidity-providing orders, but only in the event that comparatively large volumes of such orders execute in pre-market hours.

(3) The ratio between shares of liquidity provided through the MPID and total shares accessed, provided, or routed through the MPID during the month is at least 0.80. This requirement reflects the PMI's goal of encouraging members that provide high levels of liquidity in pre-market hours to also do so during the rest of the trading day.

Under the proposed change, NASDAQ is raising the extra rebate under the program from \$0.0001 per share executed to \$0.0002 per share executed. As is currently the case, the rebate is paid with respect to all displayed liquidity provided through a designated MPID that executes at a price of \$1 or more during the month. NASDAQ is making the change to encourage more market participants to join the program.

³ "Market Hours Immediate-or-Cancel" or "System Hours Immediate-or-Cancel" orders.

¹⁸ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Second, NASDAQ is amending Rule 7018(a)(3)⁴ to introduce volume tiers with respect to its fees for the execution of orders that access liquidity in securities listed on exchanges other than NASDAQ and the New York Stock Exchange ("Tape B Securities"). Currently, NASDAQ charges \$0.0030 per share executed for execution of all orders that access liquidity in Tape B Securities, with the exception of orders that are designated to use the SAVE or SOLV routing strategies but that execute at NASDAQ (either before or after routing), which are charged \$0.0027 per share executed. Under the proposed change, if a member enters an order through a Nasdaq Market Center market participant identifier ("MPID") through which the member (i) accesses shares of liquidity in Tape B Securities that represent more than 0.5% of Consolidated Volume⁵ in Tape B Securities during the month, and (ii) provides shares of liquidity in Tape B Securities that represent more than 0.25% of Consolidated Volume in Tape B Securities during the month, the charge will be \$0.0028 per share executed with respect to such an order. Similarly, if a member enters an order through a NASDAQ Market Center MPID through which the member (i) accesses shares of liquidity in Tape B Securities that represent more than 1.5% of Consolidated Volume in Tape B Securities during the month, and (ii) provides shares of liquidity in Tape B Securities that represent more than 0.5% of Consolidated Volume in Tape B Securities during the month, the charge will be \$0.0027 per share executed with respect to such an order.⁶ The change is designed to encourage greater use of NASDAQ's facilities for the purpose of trading Tape B Securities. In this regard, NASDAQ notes that NYSEArca currently charges a fee to access liquidity in Tape B Securities of \$0.0028 per share executed, but a fee to access liquidity in other securities of \$0.0030 per share executed.⁷ Accordingly, the change will enhance NASDAQ's ability to compete for orders in Tape B

Securities. NASDAQ further notes that, as is the case with other portions of its fee schedule, the change is designed to ensure that NASDAQ's fee schedule does not provide excessive encouragement to members to aggregate the activity of several member firms under a single MPID for the sole purpose of receiving more favorable pricing. Accordingly, the proposed volume tiers are available only to the extent that a member achieves them through a single MPID. NASDAQ believes that this requirement promotes market quality by providing more favorable pricing to members that engage in unified management of high volumes of quotes/orders through a single MPID, while discouraging sponsored relationships that are established solely for pricing benefits.⁸

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general, and with Sections 6(b)(4) and (5) of the Act,¹⁰ 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, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. All similarly situated members are subject to the same fee structure, and access to NASDAQ is offered on fair and non-discriminatory terms.

The proposed new tiers for members that use NASDAQ to trade significant amounts of Tape B Securities are reasonable because they will result in a fee reduction for members that qualify for the tiers, but will not increase the costs borne by other members or limit the availability of other, pre-existing pricing incentives. Moreover, the proposed change is consistent with an equitable allocation of fees because it charges lower fees for executing Tape B Securities to members that make significant contributions to NASDAQ market quality and price discovery by accessing and providing high volumes of liquidity in Tape B Securities. NASDAQ believes that the change is not unfairly discriminatory because the price reduction offered to qualifying members is linked to the volume of trading in the securities to which the

discount applies. NASDAQ further believes that the program may encourage members to become more active in trading Tape B Securities through NASDAQ, thereby benefitting other market participants that may be able to trade larger volumes of stocks without affecting the price of those stocks. Finally, NASDAQ believes that it is reasonable, equitable, and not unfairly discriminatory to stipulate that members qualifying for the pricing tiers must achieve the requisite volume thresholds through a single MPID, thereby enhancing market quality through unified management of the member's quotes/orders and discouraging aggregation arrangements that exist solely for pricing reasons. NASDAQ believes that firms that engage in more unified management of their quotes and orders are most likely to promote price discovery and market stability.¹¹

As described in the filing that instituted it,¹² the PMI program is not unfairly discriminatory because it is intended to promote submission of liquidity-providing orders to NASDAQ, which benefits all NASDAQ members and all investors. Likewise, the PMI is consistent with the Act's requirement for the equitable allocation of reasonable dues, fees, and other charges. Members who choose to significantly increase the volume of PMI-eligible liquidity-providing orders that they submit to NASDAQ would be benefitting all investors, and therefore providing credits to them, as contemplated in the PMI program, is equitable. Moreover, NASDAQ believes that the level of the credit to be offered under the proposed change—\$0.0002 per share, in addition to credits ranging from \$0.0020 to \$0.00295 per share under NASDAQ's regular transaction execution fee and rebate schedule for execution of displayed quotes/orders—is reasonable, in that it provides a reduction of fees to members qualifying for the program.

Finally, NASDAQ 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. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ

⁴ Rule 7018(a) applies to executions of transactions at a price of \$1 or more. Fees for transactions at a price below \$1 remain unchanged.

⁵ For purposes of Rule 7018, Rule 7018(a)(1) defines "Consolidated Volume" as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities.

⁶ The change would not alter pricing with respect to SAVE and SOLV orders. Thus, a member qualifying for the \$0.0028 tier with respect to orders entered through a qualifying MPID would nevertheless pay \$0.0027 per share executed with respect to all SAVE and SOLV orders.

⁷ See <http://usequities.nyx.com/markets/nyse-arca-equities/trading-fees>.

⁸ See Securities Exchange Act Release No. 64003 (March 2, 2011), 76 FR 12784 (March 8, 2011) (SR-NASDAQ-2011-028) (proposed rule change that first established single-MPID pricing requirements on NASDAQ).

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

¹¹ See also Securities Exchange Act Release No. 64003 (March 8, 2011), 76 FR 12784 (March 8, 2011) (SR-NASDAQ-2011-028).

¹² Securities Exchange Act Release No. 65717 (November 9, 2011), 76 FR 70784 (November 15, 2011) (SR-NASDAQ-2011-150).

believes that the proposed rule change reflects this competitive environment because it will reduce fees paid by active market participants, without removing any of the market's existing pricing incentives.

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. Because the market for order execution is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. The proposed changes will enhance competition by reducing certain of NASDAQ's fees. Notably, the proposed pricing tiers for Tape B Securities will enhance NASDAQ's ability to compete with NYSEArca, which currently offers reduced fees to access liquidity in Tape B Securities.¹³ Similarly, the change to the PMI Program will enhance competition with the EDGX Exchange, which encourages participation in its pre-market and post-market trading sessions by means of favorable pricing offered to members that are active during pre-market and/or post-market hours.¹⁴

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 Act¹⁵ and subparagraph (f)(2) of Rule 19b-4 thereunder.¹⁶ 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. Please include File Number SR-NASDAQ-2012-020 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-2012-020. 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 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-2012-020 and should be submitted on or before March 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66320; File No. SR-NASDAQ-2012-013]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Adoption of Listing Standards for Certain Securities

February 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 20, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II 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 to adopt rules applicable to the qualification, listing, trading, and delisting of certain securities on NASDAQ ("Listing Rules"). Specifically, NASDAQ proposes to adopt Listing Rules applicable to the following securities: Equity Index-Linked Securities, Commodity-Linked Securities,³ Fixed Income Index-Linked Securities, Futures-Linked Securities, Multifactor Index-Linked Securities; Index-Linked Exchangeable Notes; Equity Gold Shares; Trust Certificates; Commodity-Based Trust Shares; Currency Trust Shares; Commodity Index Trust Shares; Commodity Futures Trust Shares; Partnership Units; Trust Units; Managed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NASDAQ Rules 5710(g) and (h) currently include initial listing standards applicable to Equity Index-Linked Securities and Commodity-Linked Securities. NASDAQ proposes to re-number the existing rule text in Rules 5710(g) and (h), and to adopt continuing listing standards applicable to Equity Index-Linked Securities and Commodity-Linked Securities, in proposed Rules 5710(k)(i) and (ii).

¹³ <http://usequities.nyx.com/markets/nyse-arca-equities/trading-fees>.

¹⁴ <http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx>.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁷ 17 CFR 200.30-3(a)(12).