

practicing as an accountant before the Commission for one year.

Issues likely to be considered at oral argument include whether McNeeley engaged in improper professional conduct as defined in the Commission’s Rule of Practice 102(e) and, if so, the extent to which, under the circumstances, sanctions are warranted.

For further information, please contact the Office of the Secretary at (202) 551-5400.

Dated: October 26, 2011.

Elizabeth M. Murphy, Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65617; File No. SR-NASDAQ-2011-145]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Description of the Nasdaq Daily Share Volume Service

October 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 13, 2011, The NASDAQ Stock Market LLC (the “Exchange” or “Nasdaq”) 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 the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to modify the description of the Nasdaq Daily Volume Share Service in Nasdaq Rule 7040, as well as to remove the word “Daily” from the name of the service.

The text of the proposed rule change is below. Proposed deletions are in [brackets]. Proposed new language is in italics.<sup>3</sup>

\* \* \* \* \*

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Changes are marked to the rules of The NASDAQ Stock Market LLC found at <http://nasdaq.cchwallstreet.com>.

7040. Nasdaq [Daily] Share Volume Service

(a) The Nasdaq [Daily] Share Volume Service [shall allow participating subscribers to view volume reports on a T + 1 basis] *is a historical data product that provides aggregated share volume information at the market participant and issue level for all Nasdaq- and non-Nasdaq-listed securities in the Nasdaq Market Center. The Nasdaq Share Volume Service is comprised of two different reports:*

(1) Daily Share Volume Report—providing aggregated share volume information on a daily basis. The daily report is available to subscribers the following calendar day for the prior trading day’s data.

(2) Monthly Share Volume Report—providing aggregated share volume information on a monthly basis. The monthly report is available to subscribers on the fifth calendar day of every month for the prior month’s data.

[1] (b) Access to the underlying data for redistribution shall be available for a fee of \$2,500/month.

\* \* \* \* \*

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

This proposal pertains to the Nasdaq Daily Share Volume Service (the “Service”), which makes information available via a Web-based data product and provides daily traded share volume by issue for participating market participants (the “Daily Share Volume Report”). Specifically, the Service is a historical data product that summarizes the aggregated share volume in the Nasdaq Market Center at the market participant and issue level for all Nasdaq- and non-Nasdaq-listed securities. Thus, the product allows subscribers to determine the share volumes of a particular market participant in a particular stock.

Prior to the establishment of the Service and the Daily Share Volume Report in a 2007 filing (the “Initial

Filing”),<sup>4</sup> the monthly share volume report (the “Monthly Share Volume Report”) was provided free of charge to anyone with internet access via NASDAQtrader.com.<sup>5</sup> In the Initial Filing, the free-of-charge monthly product was discussed as a part of the basis for the Service. The Initial Filing specifically noted that Nasdaq had received numerous requests for a daily product comparable to the existing monthly product. As a result, the Service included both the Daily Share Volume Report and the Monthly Share Volume Report. Subsequently, Nasdaq began providing the monthly product solely to subscribers of the Service. The fee for the Service, comprised of both the Daily Share Volume Report and the Monthly Share Volume Report, is \$2,500 per month. The monthly and daily reports have since become widely used in the data product customer community.

Nasdaq proposes to modify the description of the Service in Nasdaq Rule 7040(a) to reflect the fact that subscribers of the daily version of the Service also receive the Monthly Share Volume Report in consideration for the \$2,500 per month fee that they pay. The proposal would also remove the word “Daily” from the name of the Service to lessen confusion concerning the share volume information provided. Thus, the rule change will make it clear that the Service is comprised of the Daily Share Volume Report and the Monthly Share Volume Report.

The Daily Share Volume Report summarizes the aggregated share volume in the Nasdaq Market Center at the market participant and issue level for all Nasdaq- and non-Nasdaq-listed securities. All Nasdaq market participants are given the option to determine whether they wish to have their trading volumes included in the data provided to subscribers to the Service. In the case of the daily product, market participants are excluded unless they specifically opt to have their data included. This provides flexibility to market participants as to what information they would like to include in the report. Thus, while some market participants wish to include their data in the product in order to advertise their level of market activity, others decide

<sup>4</sup> See Securities Exchange Act Release No. 55444 (March 12, 2007), 72 FR 12648 (March 16, 2007) (SR-NASDAQ-2007-006).

<sup>5</sup> At that time, Nasdaq, as well as other exchanges, had concluded that the Act did not require exchanges to submit proposed rule changes when making data available free of charge. Commission staff has since advised Nasdaq to submit proposed rule changes in circumstances where information about quotations or transactions is provided free of charge.

not to opt in, in order to maintain full anonymity with respect to their trading activity. The daily share volume information is available the next calendar day for the prior trading day's activity.

The Monthly Share Volume Report volume information is similar to the Daily Share Volume Report in that it summarizes the aggregated share volume in the Nasdaq Market Center at the market participant and issue level for all Nasdaq- and non-Nasdaq-listed securities. In contrast to the Daily Share Volume Report, the Monthly Share Volume Report aggregates the information on a monthly, rather than on a daily basis. Because the information is provided on an aggregated monthly basis, and thus reveals less granular, and less timely, information about market participants, most market participants do not object to inclusion of their data in the product. For those market participants that do object, they are able to opt out of inclusion. The monthly share volume information for a given month is available on the fifth calendar day of every month for the prior month's data. This provides adequate time for month-end processing.

Because the pre-existing Monthly Share Volume Report has never been specifically stated in Nasdaq Rule 7040 to be part of the information provided by the Service, Nasdaq now proposes to submit a rule change to clarify its inclusion in the product. Accordingly, Nasdaq proposes to modify Nasdaq Rule 7040(a) to clarify that the Monthly Share Volume Report will be included as part of the information provided to subscribers of the Service, as well as to remove the word "Daily" from the name of the Service to lessen confusion. The fee for the product is not changing. As such, this should be considered as a non-controversial rule change.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general and with Sections 6(b)(5) of the Act,<sup>7</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market

system, and, in general, to protect investors and the public interest. The proposed rule change is designed to clarify what is included in the Service, as well as the modify [sic] name of the Service, thereby eliminating any confusion surrounding Nasdaq's rules.

### 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

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) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</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.

## 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-2011-145 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-2011-145. 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-2011-145, and should be submitted on or before November 21, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 200.30-3(a)(12).