

**Register** on June 17, 2010.<sup>3</sup> The Commission received no comments on the proposal.

The proposed rule change would remove the disclosure requirements that a listed company must fulfill when it relies on certain exceptions to Nasdaq rules concerning the composition and independence of audit, compensation, and nominating committees, and replace them with references to equivalent disclosure requirements of Regulation S-K under the Securities Act of 1933. The proposal also would add a reference to the disclosures that a listed company must make pursuant to Rule 10A-3 under the Act when a listed company relies on certain exceptions to that rule. The proposal further would allow a listed company the option of disclosing on or through its website, instead of in its annual proxy (or similar document), when it has relied on the exception that permits the appointment of a non-independent director to a company's compensation or nominating committee in exceptional and limited circumstances.<sup>4</sup> Finally, the proposal would permit the disclosure of waivers of a company's code of conduct, as required by Nasdaq Rule 5610, to be made on or through a listed company's website or, in certain circumstances, through a press release.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>5</sup> and, in particular, the requirements of Section 6 of the Act<sup>6</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>7</sup> because it would remove disclosure requirements in Nasdaq's rules that duplicate Commission disclosure requirements and replace them with direct references to those Commission requirements. In addition, the proposed rule change would afford Nasdaq-listed companies additional methods to make certain disclosures required by the Exchange's rules,

thereby easing compliance for listed companies and allowing them to rely on technology to provide information to investors in a timelier manner, consistent with the goal of investor protection.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-NASDAQ-2008-014), as modified by Amendments No. 1 and 2 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62564; File No. SR-NASDAQ-2010-089]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees Assessed for Supplemental MPIDs

July 23, 2010.

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 July 20, 2010, 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 assess member firms a monthly fee for each additional market participant identifier or maker participant identifier ("MPID") approved by NASDAQ for use by a member firm on NASDAQ's systems beyond the primary MPID. NASDAQ plans to implement the proposed fee pursuant to Rule 7001 beginning September 1, 2010. The text of the proposed rule change is below. Proposed new language is italicized.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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.

### 7000. Charges for Membership, Services, and Equipment

#### 7001. Membership Fees

(a)-(b) No change.

(c) *The first market participant identifier or maker participant identifier issued to a member, referred to as the "Primary MPID," is provided at no cost. Additional identifiers, referred to as "Supplemental MPIDs," may be approved for use on NASDAQ for a fee of \$1,000 per month, per additional identifier. Supplemental MPIDs that are used exclusively for reporting information to facilities of the Financial Industry Regulatory Authority (e.g., FINRA/NASDAQ Trade Reporting Facility) are excluded from this fee.*

\* \* \* \* \*

#### 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 proposing to assess a fee for each MPID approved by NASDAQ for use by a member firm on NASDAQ's systems in excess of one. MPIDs are special numerical identifiers assigned to certain broker-dealers to identify the firms' transaction and quoting activity. NASDAQ administers the assignment of MPIDs, which may be requested by broker-dealers for use on NASDAQ systems, reporting to FINRA, or a combination of the two. NASDAQ member firms are assigned a unique Primary MPID upon gaining NASDAQ membership. A member firm may, however, request additional MPIDs beyond its Primary MPID, called Supplemental MPIDs. Currently, NASDAQ does not assess a fee for the privilege of using approved Supplemental MPIDs on NASDAQ. In recent years, member firms have increasingly adopted business structures and strategies that require multiple Supplemental MPIDs. Member firms use

<sup>3</sup> See Securities Exchange Act Release No. 62285 (June 11, 2010), 75 FR 34506.

<sup>4</sup> In general, directors serving on the compensation and nominating committees of listed companies must be independent. See Nasdaq Rules 5605(d)(1) and (2) and 5605(e)(1) and (2). Non-independent directors, however, are permitted under exceptional and limited circumstances. See Nasdaq Rules 5605(d)(3) and 5605(e)(3).

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

Supplemental MPIDs to separate orders or quotes entered into the NASDAQ system for affiliates, segregated business units or trading desks, or sponsored access firms. Member firms may also use Supplemental MPIDs for secondary clearing and/or for reporting trades and other information to facilities of the Financial Industry Regulatory Authority ("FINRA") that are operated by NASDAQ (e.g., the FINRA/NASDAQ Trade Reporting Facility). As a result, NASDAQ has seen a large increase in the number of Supplemental MPIDs requested by individual member firms.

NASDAQ proposes to assess a monthly fee for each Supplemental MPID approved by NASDAQ for use by a member firm on NASDAQ's systems. Supplemental MPIDs that are used exclusively for reporting information to facilities of FINRA that are operated by NASDAQ will be excluded from this fee; however, a member firm would be assessed the proposed fee for every month that a Supplemental MPID is not used exclusively for such FINRA reporting purposes. NASDAQ believes that assessing a fee on Supplemental MPIDs will benefit the markets and investors because such a fee will promote efficiency in MPID use. NASDAQ notes that certain member firms possess many MPIDs through which very little activity occurs. These unused or underutilized MPIDs provide negligible benefit to the market, yet represent an administrative and regulatory burden to NASDAQ.

NASDAQ notes that the New York Stock Exchange ("NYSE") assesses fees for firm access to its floor, and NASDAQ believes such fees are analogous to the proposed fees for assignment of multiple MPIDs.<sup>3</sup> Such NYSE fees are based on the number of individuals that a member firm wishes to employ on the floor of the exchange and include, among other things, an annual fee of \$40,000 per trading license per floor broker, a \$5,000 annual fee per handheld device used on the floor, and a \$250 annual badge maintenance fee per badge. By contrast, to have multiple MPIDs on NASDAQ, a member would need to pay the proposed MPID fee in addition to an annual membership fee of \$3,000 and a trading rights fee of \$500 per month, totaling \$9,000 annually.<sup>4</sup> As such, NASDAQ's fees are significantly less than the analogous fees of NYSE. NASDAQ anticipates, however, that the proposed fees may provide NASDAQ with a profit.

Competition for order flow is fierce among the national securities exchanges and other trading venues. As a consequence, member firms may easily re-direct order flow away from a trading venue should they determine that the venue's fees are set too high. As noted above, use of multiple MPIDs is generally a business decision made by member firms, and to the extent that such firms believe the MPID fee is excessive they may eliminate unneeded Supplemental MPIDs or may choose to move their order flow to other markets.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and Section 6(b)(4) of the Act,<sup>6</sup> in particular, because 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 that NASDAQ operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. Member firms will continue to have discretion to request NASDAQ approval to use Supplemental MPIDs on NASDAQ. Use of MPIDs beyond a member firm's Primary MPID is voluntary and solely determined by a member firm's needs. The proposed Supplemental MPID fee will be imposed on all member firms equally based on the number of Supplemental MPIDs approved for use on NASDAQ.

### 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. As the Commission has recognized,<sup>7</sup> the market for transaction execution and routing services is highly competitive. Broker-dealers currently have numerous alternative venues for their order flow, including multiple competing self-

regulatory organization markets, as well as broker-dealers and aggregators such as electronic communications networks. A member firm is able to select any venue of which it is a member or participant to send its order flow. As such, if member firms believe that the proposed fee for Supplemental MPIDs is excessive they may easily choose to move their order flow elsewhere. NASDAQ believes that its proposed fees are comparable to fees assessed by the NYSE for market access, but are set at lower levels than the corresponding NYSE fees. NASDAQ also believes that the proposed fee will encourage efficiency in member firms' use of MPIDs.

### 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>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>9</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, 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-2010-089 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.

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

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> Specifically, the Commission stated: "Exchanges compete not only with one another, but also with broker-dealers that match customer orders within their own systems and also with a proliferation of alternative trading systems ('ATSs') and electronic communications networks ('ECNs') that the Commission has also nurtured and authorized to execute trades in any listed issue. As a result, market share of trading fluctuates among execution facilities based on their ability to service the end customer. The execution business is highly competitive and exhibits none of the characteristics of a monopoly \* \* \*." Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74775 (December 9, 2008) (SR-NYSEArca-2006-21).

<sup>3</sup> See <http://www.nyse.com/pdfs/2010pricelist.pdf>.

<sup>4</sup> See Rule 7001(a).

All submissions should refer to File Number SR–NASDAQ–2010–089. 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 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 such 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 publicly available. All submissions should refer to File Number SR–NASDAQ–2010–089 and should be submitted on or before August 19, 2010.

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

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010–18673 Filed 7–28–10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62562; File No. SR–Phlx–2010–98]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Rebates and Fees for Adding and Removing Liquidity in Select Symbols

July 23, 2010.

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 July 15,

2010, NASDAQ OMX PHLX, Inc. (“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 to amend the Exchange's Fee Schedule to both add and remove certain options from the Exchange's current Rebates and Fees for Adding and Removing Liquidity in Select Symbols in Section I of the Fee Schedule.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after August 2, 2010.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, on the Commission's Web site at <http://www.sec.gov>, 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

The Exchange proposes to increase liquidity and to attract order flow by increasing the number of options to be included in the Exchange's current Rebates and Fees for Adding and Removing Liquidity in Select Symbols as well as removing three options. Currently, the Exchange has 81

symbols <sup>3</sup> (“Select Symbols”) to which this applies.

Specifically, the Exchange proposes to add the following four options to the Select Symbols: (i) BP p.l.c. Common Stock (“BP”), (ii) Baidu, Inc. (“BIDU”), (iii) iShares FTSE/Xinhua China 25 Index (“FXI”), and (iv) Exxon Mobil Corp. (“XOM”), collectively (“the options”). These additional 4 symbols would be subject to the Rebates and Fees for Adding and Removing Liquidity in Select Symbols.

Additionally, the Exchange proposes to remove the following three options from the Select Symbols: (i) ARIAD Pharmaceuticals, Inc. (“ARIA”), (ii) Star Scientific, Inc. (“CIGX”) and (iii) Palm, Inc. (“PALM”).

The Exchange currently assesses a per-contract transaction charge in various Select Symbols on six different categories of market participants that submit orders and/or quotes that “take,” liquidity from the Exchange: (i) Specialists, Registered Options Traders (“ROT”),<sup>4</sup> Streaming Quote Traders (“SQTs”),<sup>5</sup> and Remote Streaming Quote Traders (“RSQTs”);<sup>6</sup> (ii) customers;<sup>7</sup> (iii) specialists, SQTs and RSQTs that receive Directed Orders (“Directed Participants”<sup>8</sup> or “Directed Specialists, RSQTs, or SQTs”<sup>9</sup>); (iv) Firms; (v)

<sup>3</sup> These 81 currently include: AA, AAPL, ABK, ABX, AIG, ALL, AMD, AMR, AMZN, ARIA, AXP, BAC, BRCD, C, CAT, CIEN, CIGX, CSCO, DELL, DIA, DNDN, DRYs, EBAY, EK, F, FAS, FAZ, GDX, GE, GLD, GLW, GS, HAL, IBM, INTC, IWM, IYR, JPM, LVS, MGM, MOT, MSFT, MU, NEM, NOK, NVDA, ONNN, ORCL, PALM, PFE, POT, QCOM, QID, QQQQ, RIG, RIMM, RMBS, SBUX, SDS, SIRI, SKF, SLV, SMH, SNDK, SPY, T, TBT, TZA, UAU, UNG, USO, UYG, V, VALE, VZ, WYNN, X, XHB, XLF, XRX and YHOO (“Select Symbols”).

<sup>4</sup> A ROT includes a SQT, a RSQT and a Non-SQT, which by definition is neither a SQT or a RSQT. See Exchange Rule 1014 (b)(i) and (ii).

<sup>5</sup> An SQT is an Exchange Registered Options Trader (“ROT”) who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

<sup>6</sup> An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

<sup>7</sup> This applies to all customer orders, directed and non-directed.

<sup>8</sup> For purposes of the fees and rebates related to adding and removing liquidity, a Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on PHLX XL II.

<sup>9</sup> See Exchange Rule 1080(l), “\* \* \* The term ‘Directed Specialist, RSQT, or SQT’ means a specialist, RSQT, or SQT that receives a Directed

<sup>10</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.