

necessary or appropriate in furtherance of the purposes of the Act.

*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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and paragraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder. 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-Phlx-2008-80 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-Phlx-2008-80. 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, 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-Phlx-2008-80 and should be submitted on or before December 29, 2008.

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

**Florence E. Harmon,**  
*Acting Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-59023; File No. SR-NASDAQ-2008-090]**

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Enhancements to the Nasdaq Regulation Reconnaissance Service**

November 26, 2008.

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 November 24, 2008, 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 establish fees for an enhancement to the Regulation

Reconnaissance Service, which would provide firms with the ability to recreate the Nasdaq/CQS order books and trade data by way of a visual display. The text of the proposed rule change is available on Nasdaq's Web site, 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 proposes to establish a fee for a new enhancement to the Nasdaq Regulation Reconnaissance Service ("Reg Recon"). Reg Recon is currently available as an add-on to the Nasdaq Workstation and Weblink ACT 2.0. Nasdaq is proposing to provide access to the Market Replay function to Reg Recon subscribers for an additional fee. Market Replay is a software program developed by Nasdaq, which uses publicly-available information to recreate and display the Nasdaq/CQS order books and trade data for any point in time.<sup>3</sup>

Nasdaq currently provides Market Replay for free on a publicly-accessible Web site as a demonstration of the product. Nasdaq hopes that vendors will ultimately purchase Market Replay to provide access to the functionality to their customers, either using the software "as is" or integrating the software into their proprietary displays. Nasdaq is proposing to provide Reg Recon subscribers an option to enhance their service with an integrated version of Market Replay.

Market Replay allows users to reconstruct the market for any Nasdaq/CQS security, and view trades and quotes at the millisecond level. In particular, Market Replay allows users to access the historical market for a particular security by entering a symbol, date, and timeframe. Subscribers may

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<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> Market Replay data is delayed 15 minutes.

view quotes and/or trades in a security for the day and timeframe requested.

By way of a scrolling chart, Market Replay displays the National Best Bid and Offer together with the consolidated trades for the chosen security in simulated real time. Users are able to zoom in on the chart and manipulate the chart speed and direction. Users may also filter the data presented on the chart by market center.<sup>4</sup> Market Replay can also provide users with a list of trades that occurred during a user-defined timeframe, and can calculate price and volume statistics for that timeframe (*i.e.*, minimum/maximum price, total shares, and Volume Weighted Average Price).

Similarly, Market Replay can provide a minimum and maximum National Best Bid and Offer for a selected timeframe, as well as the minimum and maximum bid and offer for each exchange trading stock during the timeframe.

In addition to providing a useful analytical tool, Nasdaq believes that firms would find Market Replay helpful in responding to customer inquiries regarding the price received in a particular trade. In particular, firms can send to customers a Nasdaq-validated screen shot of the moment their particular trade occurred, confirming the quality of the execution.

Nasdaq proposes to offer Reg Recon subscribers access to the Market Replay function to [*sic*] for a fee of \$500 per MPID, per month, plus a fee of \$50 per user, per month. The proposed fees will cover the expense of purchasing the publicly-available data, as well as cover the costs associated with purchasing the Market Replay software from Nasdaq Data Products as any vendor must do. The proposed fees will also cover the costs associated with establishing the service, responding to customer requests, configuring Nasdaq's systems, programming to user specifications, and administering the service, among other things.

Nasdaq notes that the Reg Recon service generally, and the Market Replay upgrade are entirely optional services. Firms may choose to purchase Reg Recon or not, and those that choose to purchase it may then choose to purchase the Market Replay upgrade or not. If a firm does not perceive that the

Reg Recon and Market Replay services are sufficiently valuable, it will choose not to purchase those services.

## 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 with Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that the proposal 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 amendments proposed herein will provide Reg Recon subscribers with a useful analytical tool with which to analyze and understand the historical market for Nasdaq/CQS securities and assist with researching RegNMS trade-throughs.

Nasdaq also believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(4) of the Act,<sup>8</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 the Nasdaq operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. Use of the Market Replay enhancement to Reg Recon is voluntary and the subscription fees will be imposed on all purchasers equally based on the level of service selected.

The proposed fees will cover the costs associated with establishing the service, responding to customer requests, configuring Nasdaq's systems, programming to user specifications, and administering the service, among other things.

## 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.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

## 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>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</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-2008-090 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2008-090. 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

<sup>4</sup> Currently, Market Replay supports the following market centers: American Stock Exchange; CBOE Stock Exchange; Chicago Stock Exchange; Financial Industry Regulatory Authority; International Securities Exchange; National Stock Exchange; New York Stock Exchange; NYSE Arca; Philadelphia Stock Exchange; and The NASDAQ Stock Market. Nasdaq plans to add data for the BATS Exchange and Boston Stock Exchange in the future.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

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 such filing also will be available for inspection and copying at the principal office 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-2008-090 and should be submitted on or before December 29, 2008.

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

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59019; File No. SR-NYSEALTR-2008-04]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NYSE Alternext US LLC To Implement a Previously Adopted Revenue Sharing Program for ETF Quoting Participants on the Exchange

November 26, 2008.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 14, 2008, NYSE Alternext US LLC (the "Exchange" or "NYSE Alternext") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 restore a previously adopted revenue sharing program for ETF quoting participants on the Exchange. The text of the proposed rule change is available at NYSE Alternext, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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. 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 restore a revenue sharing program (RSP) for ETF quoting participants on the Exchange. The RSP was first put in place by the Exchange for ETF specialists and registered traders effective July 1, 2007, and was to last through December 31, 2007, unless otherwise extended.<sup>4</sup> The RSP was subsequently extended through the end of September 2008.<sup>5</sup> The RSP was inadvertently allowed to lapse on September 30, 2008, without the Exchange filing to extend it, so the purpose of the instant filing is to restore the RSP on the terms described below on a prospective basis, effective immediately, through November 30, 2008, by which point the trading of ETFs currently listed on the Exchange is

expected to terminate in favor of having willing issuers list and trade such products on NYSE Alternext's sister exchange NYSE Arca, Inc. (the "ETF Transfer").<sup>6</sup> The Exchange is making a separate filing to request retroactive application of the RSP for the period October 1, 2008, through November 13, 2008.

RSP payments will be made from the Exchange's general revenues and will not be limited to a particular revenue source. In order to continue to provide ETF quoting participants (ETF specialists, registered traders, and DARTs) with a source of payments to provide incentives to quote aggressively in Exchange-traded shares up until the ETF Transfer, the Exchange proposes to distribute revenue to quoting participants as outlined below:

- ETF specialists may receive an aggregate RSP payment (calculated monthly) of as much as \$0.0024 per share (or 24 cents per 100 shares) whenever the specialist either buys or sells his specialty ETF on the Exchange *and* is a provider of liquidity in that transaction (e.g., whose quote is traded against or who offsets an order imbalance as part of an opening or closing transaction). The RSP payment is comprised of \$0.0004 per share (or 4 cents per 100 shares) for all shares executed on the Exchange in their specialty ETF (irrespective of whether the specialist is the provider of liquidity), plus another \$0.0020 (or 20 cents per 100 shares) if the specialist is the provider of liquidity in the transaction. If the specialist is not the liquidity provider, then the RSP payment is limited to \$0.0004 per share executed on the Exchange in their specialty ETF.

- Registered traders in ETFs will receive an RSP payment of \$0.0010 per share (or 10 cents per 100 shares) whenever the registered trader either buys or sells an ETF on the Exchange and is a provider of liquidity in that transaction.

- DARTs will receive an RSP payment of \$0.0015 per share (or 15 cents per 100 shares) whenever the DART either buys or sells an ETF on the Exchange and is a provider of liquidity in that transaction.

No ETF quoting participant will receive an RSP payment when they are contra-parties to the same transaction. Further, RSP payments will only be made on transactions in securities trading at less than \$1.00 in amounts proportionate to the amount on which the Exchange collects revenue. Finally, as customer transaction charges are capped at \$100 per transaction, meaning that transaction charges are assessed on only the first 43,478 shares executed, ETF quoting participants will only

<sup>4</sup> Securities Exchange Act Release No. 55983 (June 29, 2007), 72 FR 37059 (July 6, 2007) (SR-Amex-2007-68). The RSP was subsequently extended to Designated Amex Remote Traders, now known as Designated NYSE Alternext Remote Traders (DARTs). Securities Exchange Act Release No. 57540 (March 20, 2008), 73 FR 16399 (March 27, 2008) (SR-Amex-2008-23).

<sup>5</sup> Securities Exchange Act Release No. 57541 (March 20, 2008), 73 FR 16400 (March 27, 2008) (SR-Amex-2008-25) (prospectively extending RSP from March 18, 2008, through end of September 2008). See also Securities Exchange Act Release No. 57794 (May 7, 2008), 73 FR 27582 (May 13, 2008) (SR-Amex-2008-34) (retroactively extending RSP from January 1, 2008, through March 17, 2008).

<sup>6</sup> Securities Exchange Act Release No. 58364 (August 14, 2008), 73 FR 49508 (August 21, 2008) (SR-Amex-2008-65) (describing process by which issuers of ETFs and structured products on the Exchange would voluntarily delist and transfer such listings to NYSE Arca).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.