

of their determination that no restricted period applies following the pricing of the distribution. The proposed rule change will not impact FINRA's Regulation M surveillance program.<sup>4</sup>

Additionally, a significant number of distributions of "actively traded" securities evolve quickly after the market close and are priced overnight before the next trading session. Thus, members frequently do not have sufficient advance knowledge of their participation in the distribution to provide notice to FINRA at least one business day prior to pricing and in such instances are unable to comply with the express terms of Rule 5190(d)(1). FINRA then must make a determination whether later notification was necessary under the circumstances, in accordance with the rule. The proposed rule change will clarify members' notice obligations in the context of such distributions.

The proposed rule change will be effective on the date of Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>5</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will streamline FINRA's Regulation M-related notice requirements and, combined with FINRA's existing Regulation M compliance program, will protect investors.<sup>6</sup>

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA 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.

### *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 of Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2010-037 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-FINRA-2010-037. 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 FINRA. 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-FINRA-2010-037 and should be submitted on or before September 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-19966 Filed 8-12-10; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62663; File No. SR-NASDAQ-2010-077]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change Relating to Pricing for Direct Circuit Connections

August 9, 2010.

On June 21, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to establish pricing for 10Gb direct circuit connections and codify pricing for 1Gb direct circuit connections for customers who are not co-located in NASDAQ's datacenter. The proposed rule change was published for comment in the **Federal Register** on July 6, 2010.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

In its proposal, NASDAQ proposed to establish fees for direct 10Gb circuit connections, and codify fees for direct circuit connections capable of supporting up to 1Gb, for customers who are not co-located at the Exchange's datacenter. NASDAQ represented that it already makes available to co-located customers a 10Gb circuit connection and charges for each a \$1000 initial installation charge as well as an ongoing

<sup>7</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> See Securities Exchange Act Release No. 62392 (July 6, 2010), 75 FR 38857 ("Notice").

<sup>4</sup> See e-mail from Lisa Horrigan, Associate General Counsel, FINRA, to Elizabeth Sandoe, Branch Chief and Brad Gude, Special Counsel, Division of Trading and Markets, Commission, dated August 6, 2010 ("FINRA Email").

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

<sup>6</sup> See FINRA E-mail, *supra* note 4.

monthly fee of \$5000. The Exchange proposed to establish the same fees for non-co-located customers with a 10Gb circuit connection.<sup>4</sup>

NASDAQ represented that it also already makes available to both co-located and non-co-located customers direct connections capable of supporting up to 1Gb, with per connection monthly fees of \$500 for co-located customers and \$1000 for non co-located customers. According to the Exchange, monthly fees are higher for non-co-located customers because direct connections require NASDAQ to provide cabinet space and middleware for those customers' third-party vendors to connect into the datacenter and, ultimately, to the trading system. Finally, the Exchange represented that for non-co-located customers, it charges an optional installation fee of \$925 if the customer chooses to use an on-site router.

After careful review, 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> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>6</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,<sup>7</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposed fees for 10Gb and 1Gb direct circuit connections are reasonable and equitably allocated insofar as they are applied on the same terms to similarly-situated market participants. In

addition, the Commission believes that the connectivity options described in the proposed rule change are not unfairly discriminatory because NASDAQ makes the 10Gb and 1Gb direct circuit connections uniformly available to all non-co-located customers who voluntarily request them and pay the fees as detailed in the proposal. As represented by NASDAQ, these fees are uniform for all such customers and are either the same as fees charged to co-located customers, or vary due to different costs incurred by NASDAQ associated with providing service to the two different customer types. Finally, the Commission believes that the proposal will further the protection of investors and the public interest because it will provide greater transparency regarding the connectivity options available to market participants.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-NASDAQ-2010-077) be, and 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.*

[FR Doc. 2010-19972 Filed 8-12-10; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62661; File No. SR-Phlx-2010-110]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Billing Policies

August 6, 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 August 4, 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 its Fee Schedule to: (i) Require members and member organizations to identify accounts to properly identify joint back-office ("JBO") participant transactions; (ii) specify certain policies to dispute billing invoices; and (iii) amend the index to rearrange the order of fees on the Fee Schedule.

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 purpose of the proposed rule change is to memorialize current practices for the Exchange to clearly identify orders that are not subject to the Firm Related Equity Option Cap in order to ensure that members and member organizations are being properly billed the Exchange fees and also to modify the time requirements to dispute Exchange dues and fees to reduce the Exchange's operational costs. The Exchange proposes to memorialize an existing process that requires members and member organizations to identify certain trades which are not subject to the Firm Related Equity Option Cap and to set concrete timelines to dispute any assessed Exchange dues and fees.

Currently, the Firms are subject to a maximum fee of \$75,000 also known as the Firm Related Equity Option Cap. Firm equity option transaction charges, in the aggregate, for one billing month cannot exceed the Firm Related Equity

<sup>4</sup> According to the Exchange, NASDAQ provides an additional 1Gb copper connection option for co-located customers. NASDAQ represented that, given the technological constraints of copper connections over longer distances, it does not offer a copper connection option to users outside of its datacenter.

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

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

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

<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.