

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68045; File No. SR-NASDAQ-2012-115]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASDAQ's Schedule of Execution Fees for Order Routing Under Rule 7018

October 12, 2012.

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 October 1, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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

NASDAQ proposes to amend NASDAQ's fee schedule governing order routing under Rule 7018. NASDAQ will implement the proposed change on October 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 self-regulatory organization 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 those 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 parts 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 amending its fee schedule governing order routing to modify fees for routing orders to the New York Stock Exchange ("NYSE") and NASDAQ OMX PSX ("PSX") to reflect announced price changes by those venues.<sup>3</sup> All of the changes pertain to securities priced at \$1 or more per share.

With respect to orders that route to PSX using the TFTY, SOLV, or SAVE routing strategies, the fee will be fixed at \$0.0028 per share executed. The change reflects the fact that PSX has replaced provisions under which the fee charged to access liquidity vary [sic] considerably based on the listing venue of the security being traded, with a simpler fee schedule under which NASDAQ would be charged either \$0.0028 or \$0.0030 per share executed with respect to the orders it routes to PSX. Accordingly, NASDAQ is opting to replace the current pass-through fee for orders routed to PSX using the TFTY, SOLV, or SAVE routing strategies with a flat rate of \$0.0028 that will either recoup the applicable routing charge or provide routing at a slight discount.

Second, with respect to orders routed to NYSE, NASDAQ is making the following changes:

- The fee for DOTI, STGY, SCAN, SKNY or SKIP orders that execute at NYSE will increase from \$0.0023 per share executed to \$0.0025 per share executed.
- The fee for directed intermarket sweep orders that execute at NYSE will increase from \$0.0025 per share executed to \$0.0027 per share executed.
- The fee for other directed orders that execute at NYSE will increase from \$0.0024 per share executed to \$0.0026 per share executed for members with an average daily volume through the Nasdaq Market Center in all securities during the month of more than 35 million shares of liquidity provided through one or more MPIDs; and will increase from \$0.0025 per share executed to \$0.0027 per share executed for other members.
- The fee for MOPP orders that execute at NYSE will increase from \$0.0025 per share executed to \$0.0027 per share executed.
- The fee for TFTY orders that execute at NYSE will increase from

\$0.0023 per share executed to \$0.0024 per share executed.

- The fee for SAVE and SOLV orders that execute at NYSE will increase from \$0.0023 per share executed to \$0.0025 per share executed.

##### 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>5</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 NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The changes to routing fees are reasonable because the proposed fees for routing orders to NYSE and PSX reflect changes in the fees that will be charged by NYSE or PSX to NASDAQ with respect to such orders. The changes are consistent with an equitable allocation of fees because they will bring the economic attributes of routing orders to NYSE and PSX in line with the cost of executing orders there. Finally, the changes are not unfairly discriminatory because they solely apply to members that opt to route orders to NYSE or PSX.

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 believes that the proposed rule change reflects this competitive environment because it is designed to ensure that the charges for use of the NASDAQ routing facility to route to NYSE or PSX reflect changes in the cost of such routing.

#### 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 routing is extremely competitive, members may readily opt to disfavor NASDAQ's routing services if they believe that alternatives offer them better value. For

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

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

<sup>3</sup> See SR-NYSE-2012-50 (September 26, 2012); SR-Phlx-2012-119 (October 1, 2012).

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(4) and (5).

this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

*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>6</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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2012-115 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-2012-115. 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 10:00 a.m. and 3:00 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-2012-115, and should be submitted on or before November 8, 2012.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-68049; File No. SR-BYX-2012-019]**

**Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Adopt a Retail Price Improvement Program**

October 12, 2012.

On August 14, 2012, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to establish a Retail Price Improvement ("RPI") Program ("proposed rule change") to attract additional retail order flow to the

Exchange while also providing the potential for price improvement to such order flow. The proposed rule change was published for comment in the **Federal Register** on August 31, 2012.<sup>3</sup> The Commission received one comment on the proposal.<sup>4</sup>

Section 19(b)(2) of the Act<sup>5</sup> provides that within 45 days of the publication of notice of filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is October 15, 2012.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period to take action on the proposed rule change so that it has sufficient time to consider the Exchange's proposal, which would allow the Exchange to utilize non-displayed orders that offer price improvement to retail order flow potentially in sub-penny increments, and the comment letter that has been submitted in connection with it.

Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> the Commission designates November 29, 2012 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>3</sup> See Securities Exchange Act Release No. 67734 (August 27, 2012), 77 FR 53242 (SR-BYX-2012-019).

<sup>4</sup> See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, Commission, dated September 26, 2012 ("SIFMA Letter").

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<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>6</sup> 15 U.S.C. 78s(b)(3)(a)(iii).