

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. Please include File Number SR-Phlx-2011-59 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-Phlx-2011-59. 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 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-2011-59 and should be submitted on or before June 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Cathy H. Ahn,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64440; File No. SR-NASDAQ-2011-061]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Non Co-Location Services

May 9, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 28, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") 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 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 proposes to modify fees for non co-location services. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 1, 2011. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at the Exchange'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 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 is amending Rule 7051 entitled "Direct Connectivity to Nasdaq" to establish pricing for customers who are not co-located in NASDAQ's data center, but require shared cabinet space and power for optional routers, switches, or modems to support their direct circuit connections. The Exchange proposes to assess customers who are not co-located in NASDAQ's data center monthly fees for space based on a height unit of approximately two inches high, commonly call a "U" space and a maximum power of 125 Watts per U space.

Currently, non co-located customers are assessed fees for direct circuit connection to NASDAQ, as well as installation of an optional on-site cable router.³ However, there is no charge to non co-located customers for the space and utility cost to maintain the optional router. As more and more non co-located customers seek to utilize the optional router, the Exchange must utilize more space and utilities to accommodate the influx. It has become a necessity for NASDAQ to offset the space and utility cost to maintain the optional router in the same manner as has been established for co-located customers. Additionally, the optional router may include other networks devices (e.g., switches or modems) to operate the customer's business.

While co-located customers are assessed the same per U fee, the co-located customers are assessed in increments of a 4U Block at \$600 per month. The Exchange seeks to establish and make transparent the fees imposed for space and utility costs to non co-located customers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Section 6(b)(4) of the Act,⁵ 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 Exchange operates or controls. The Exchange believes the

³ See NASDAQ Rule 7051, Direct Connectivity to Nasdaq, Release No. 62663 (August 9, 2010), 75 FR 49543 (August 13, 2010) (SR-NASDAQ-2010-77) [sic].

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁶ 17 CFR 200.30-3(a)(12).

proposed fees are reasonable and equitable for the reasons below.

The Exchange operates in a highly competitive market in which exchanges offer non co-location services as a means to facilitate the trading activities of those customers who believe that the non co-location services enhance the efficiency of their trading. Accordingly, fees charged for non co-location services are constrained by the fees charged to co-located customers, as well as fees charged by other exchanges, taking into consideration the different costs associated with the two service types. It should be noted, however, that the costs associated with a co-located customer are primarily fixed costs that include the costs of renting or owning data center space and retaining a staff of technical personnel. Accordingly, the Exchange establishes a range of non co-location fees with the goal of covering these same fixed costs and covering less significant marginal costs, such as the cost of electricity.

The Exchange proposes the same fee for non co-located customers and co-located customers because the space and utility cost are comparable. If a particular exchange charges excessive fees for non co-location services that are comparable to co-location services, affected members will opt to terminate their non co-location arrangements with that exchange, and pursue range of alternative trading strategies not dependent upon the Exchange's non co-location service. Accordingly, the exchange charging excessive fees would stand to lose not only non co-location revenues and any other revenues associated with the non co-located customer's operations. Moreover, all of the Exchange's fees for space and utility costs services are equitably allocated and non-discriminatory in that all non co-location customers are offered the same space and utility service as the co-located customers, and, there is no differentiation among customers with regard to the fees charged for such costs.

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

The Exchange 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 discussed above, the Exchange believes that proposed fees for non co-location services are comparable to the same service provided to co-locations customers. Additionally, such costs are constrained by the robust competition for order flow among exchanges and non-exchange markets, because non co-location exists to advance that

competition, and excessive fees for non co-location services would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

Other exchanges charge the customer for fixed costs to house routers and other equipment to conduct its business on the premises; however, they are in a co-location relationship. For instance, the International Stock Exchange ("ISE") charges 4.75% of ISE's equipment costs for equipment lease maintenance.⁶ The Chicago Board Options Exchange (CBOE) charges \$100 per month for each Shelf for Equipment.⁷ The Chicago Stock Exchange, Inc. ("CHX") charges \$45 per month plus a one-time set up of \$150 for 1 U of space. An additional Rack Mount will cost an extra \$45 per month and a one-time fee of \$150.⁸ Since the Exchange seeks to charge a comparable price for its non co-located customers for the similar service, the Exchange believes, based on the charges of NASDAQ and the other exchanges mentioned above, that \$150 per month is a comparable price.

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.⁹ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2011-061 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-2011-061. 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 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-2011-061, and should be submitted on or before June 6, 2011.

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

Cathy H. Ahn,
Deputy Secretary.

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⁶ See ISE Schedule of Fees, page 10, at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf.

⁷ See CBOE Fee Schedule, page 8, at <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>.

⁸ See CHX Fee Schedule, page 9, at http://www.chx.com/content/participant_information/Downloadable_Docs/Rules/CHX_Fee_Schedule_04252011.pdf.

⁹ 15 U.S.C. 78s(b)(3)(a)(ii).

¹⁰ 17 CFR 200.30-3(a)(12).