

financial results, since the auditors will have reviewed several quarters, at least, of the public company's operating results, as will the company's audit committee. To the extent the company had adopted new internal controls at the time of the merger, those too will have been in place and able to exert a corrective influence over any previous flaws in the company's financial reporting process.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>12</sup> in general and with Section 6(b)(5) of the Act,<sup>13</sup> in particular in that it 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 proposed rule change is designed to enhance investor protection by imposing additional requirements on a category of companies that have raised regulatory concerns.

### 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.

### 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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date 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 such 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, as amended, 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-2011-073 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-2011-073. 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 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-2011-073, and should be submitted on or before July 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011-14648 Filed 6-13-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64630; File No. SR-NASDAQ-2011-074]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7034 Regarding Certain Co-Location Installation Fees

June 8, 2011.

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 May 26, 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 amend Rule 7034 regarding fees assessed for the installation of certain co-location services. The Exchange will implement the proposed change on June 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

<sup>14</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>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

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 amend Rule 7034 regarding fees assessed for the installation of certain co-location services to further incentivize the use of the co-location services. The installation fees for the following co-location services will be waived commencing June 1, 2011 and ending June 30, 2011 (the "designated period"). Beginning July 1, 2011, the above-referenced waived fees will resume in full at the amount prior to [sic] designated period. The Exchange proposes to waive the following installation fees during the designated period:

1. Rule 7034(a): Installation fees for new cabinets with power.
2. Rule 7034(b): Installation fees for external telecommunication, inter-cabinet connectivity, connectivity to NASDAQ and market data connectivity related to an order for a new cabinet. However, the one-time telecommunication connectivity expedite fee<sup>3</sup> will not be waived during the designated period.
3. Rule 7034(c): Installation fees for cabinet power related to an order for a new cabinet.
4. Rule 7034(d): Installation fees for cooling fans, perforated floor tiles and fiber downspouts, which are necessary items to support a higher density cabinet and fiber cross connects, relating to an order for a new cabinet placed during the designated period. Installation fees for other items that are customized or options are not waived during the time period.

The following requirements must be met to receive the waiver of the installation fee:

1. the new cabinet order must be placed in the CoLo Console<sup>4</sup> during the designated period; and
2. the new cabinet must be live within 90 days of the date of the order<sup>5</sup>.

<sup>3</sup> The one-time telecommunication connectivity expedite fee is a fee for an optional request to complete the installation in a shorter time period than the install timeframes.

<sup>4</sup> The "CoLo Console" is Web-based ordering tool that is utilized by NASDAQ to place co-location orders.

<sup>5</sup> Exchange staff generally installs and makes operational a new cabinet within 90 days of the date of the order (the "live date"). The estimated live date is communicated to the customer. However, there may be instances where the

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(4) of the Act,<sup>7</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 Exchange operates or controls. The proposed installation fees in [sic] which the Exchange seeks a temporary waiver will be assessed equally to customers that place an order for a new cabinet during the designated period. The proposed amendments will provide an incentive for customers to avail themselves of the designated co-location services. The proposal is similar to the waiver of fees during an introductory period for a product, and is equitable because all persons may avail themselves of the waiver during the period of its availability.

*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. The Exchange believes that the waiver of fees for certain co-location services is equitable because all persons may avail themselves of the waiver during the period of its availability.

*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> 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

customer desires the live date to be later than the estimated live date provided by Exchange staff. In such instances, the live date cannot extend beyond 90 days of the date of the order.

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2011-074 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-2011-074. 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 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-2011-074, and should be submitted on or before July 5, 2011.

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

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-14591 Filed 6-13-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64631; File No. SR-BX-2011-032]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7034 Regarding Certain Co-Location Installation Fees

June 8, 2011.

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 May 26, 2011, NASDAQ OMX BX, Inc. (“BX” 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 June 1, 2011. The text of the proposed rule change is available at <http://nasdaqomxbx.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 proposes to amend Rule 7034 regarding fees assessed for the installation of certain co-location services to further incentivize the use of the co-location services. The installation fees for the following co-location services will be waived commencing June 1, 2011 and ending June 30, 2011 (the “designated period”). Beginning July 1, 2011, the above-referenced waived fees will resume in full at the amount prior to [sic] designated period. The Exchange proposes to waive the following installation fees during the designated period:

1. Rule 7034(a): installation fees for new cabinets with power.
2. Rule 7034(b): installation fees for external telecommunication, inter-cabinet connectivity, connectivity to The Nasdaq Stock Market LLC and market data connectivity related to an order for a new cabinet. However, the one-time telecommunication connectivity expedite fee<sup>3</sup> will not be waived during the designated period.
3. Rule 7034(c): installation fees for cabinet power related to an order for a new cabinet.
4. Rule 7034(d): installation fees for cooling fans, perforated floor tiles and fiber downspouts, which are necessary items to support a higher density cabinet and fiber cross connects, relating to an order for a new cabinet placed during the designated period. Installation fees for other items that are customized or options are not waived during the time period.

The following requirements must be met to receive the waiver of the installation fee:

1. The new cabinet order must be placed in the CoLo Console<sup>4</sup> during the designated period; and
2. The new cabinet must be live within 90 days of the date of the order.<sup>5</sup>

<sup>3</sup> The one-time telecommunication connectivity expedite fee is a fee for an optional request to complete the installation in a shorter time period than the install timeframes.

<sup>4</sup> The “CoLo Console” is a Web-based ordering tool that is utilized by BX to place co-location orders.

<sup>5</sup> Exchange staff generally installs and makes operational a new cabinet within 90 days of the date of the order (the “live date”). The estimated live date is communicated to the customer. However, there may be instances where the customer desires the live date to be later than the estimated live date provided by Exchange staff. In such instances, the live date cannot extend beyond 90 days of the date of the order.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(4) of the Act,<sup>7</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 Exchange operates or controls. The proposed installation fees in [sic] which the Exchange seeks a temporary waiver will be assessed equally to customers that place an order for a new cabinet during the designated period. The proposed amendments will provide an incentive for customers to avail themselves of the designated co-location services. The proposal is similar to the waiver of fees during an introductory period for a product, and is equitable because all persons may avail themselves of the waiver during the period of its availability.

#### 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. The Exchange believes that the waiver of fees for certain co-location services is equitable because all persons may avail themselves of the waiver during the period of its availability.

#### 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> 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

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(a)(iii) [sic].

<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.