

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Elizabeth M. Murphy,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65252; File No. SR-NASDAQ-2011-119]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding a Clarifying Amendment To Direct Connectivity Services

September 2, 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 August 31, 2011, The NASDAQ Stock Market LLC (the “Exchange” or “NASDAQ”) 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 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 Substance of the Proposed Rule Change

The Exchange proposes a clarifying amendment to Exchange Rule 7051 regarding the Exchange’s direct connectivity services. 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this rule filing is to amend Rule 7051 entitled “Direct Connectivity to Nasdaq” to clarify the Exchange’s direct connectivity services. Currently, the Exchange assesses fees for direct 10Gb circuit connections, and fees for direct circuit connections capable of supporting up to 1Gb, for customers who are not co-located at the Exchange’s datacenter.<sup>3</sup> The Exchange noted in SR-NASDAQ-2010-077 that it 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.<sup>4</sup> Monthly fees are higher for non co-located customers because direct connection requires the Exchange to provide cabinet space and middleware for those customers’ third-party vendors to connect to the datacenter and, ultimately, to the trading system.<sup>5</sup> The Exchange also assesses an optional installation fee of \$925 if the customer chooses to use an on-site router (collectively “Direct Connectivity Fees”).<sup>6</sup> The Exchange provides direct connect services and assesses fees through NASDAQ Technology Services, LLC, as it does with similar co-location services.<sup>7</sup>

Subsequently, the Exchange amended these Direct Connectivity Fees to establish pricing for customers who are not co-located in the Exchange’s data center, but require shared cabinet space and power for optional routers, switches, or modems to support their direct circuit connections. The Exchange assesses customers who are not co-located in the Exchange’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.<sup>8</sup>

The Exchange now seeks to add clarifying text to Exchange Rule 7051 to state that the direct connectivity services are provided by NASDAQ

<sup>3</sup> See Securities Exchange Act Release No. 62663 (August 9, 2010), 75 FR 49543 (August 13, 2010) (SR-NASDAQ-2010-077).

<sup>4</sup> *Id.* at page 5 and page 8.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See Exchange Rule 7034(b), Connectivity to Nasdaq.

<sup>8</sup> See Securities Exchange Act Release No. 64440 (May 9, 2011), 76 FR 28262 (May 16, 2011) (SR-NASDAQ-2011-061).

Technology Services, LLC. The Exchange’s proposal is the result of its desire to prominently place language in the Exchange Rule 7051 to make transparent that the connectivity services are provided by NASDAQ Technology Services, LLC. Such change will assist with easy identification of items not serviced, and billed, by the Exchange. This change merely codifies the practice of the Exchange.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular, in that it is 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. The Exchange believes the proposed amendment to Exchange Rule 7051 makes transparent that the direct connectivity services are provided by NASDAQ Technology Services, LLC. The Exchange believes that this clarifying amendment will benefit all market participants by making transparent the source of the direct connectivity services.

#### 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.

#### 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)(i) of the Act.<sup>11</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

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(a)(i).

<sup>12</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.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2011-119 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-2011-119. 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 website 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-NASDAQ-2011-119 and should be

submitted on or before September 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Elizabeth M. Murphy,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65263; File No. SR-MSRB-2011-09]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Consisting of Proposed Interpretive Notice Concerning the Application of MSRB Rule G-17, on Conduct of Municipal Securities and Municipal Advisory Activities, to Underwriters of Municipal Securities

September 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 22, 2011, the Municipal Securities Rulemaking Board ("Board" or "MSRB") 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 MSRB. 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 MSRB is filing with the SEC a proposed rule change consisting of a proposed interpretive notice (the "Notice") concerning the application of MSRB Rule G-17 (on conduct of municipal securities and municipal advisory activities) to underwriters of municipal securities. The MSRB requests that the proposed rule change be made effective 90 days after approval by the Commission.

The text of the proposed rule change is available on the MSRB's Web site at <http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2011-Filings.aspx>, at the MSRB's principal office, and at the Commission's Public Reference Room.

<sup>12</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.

#### 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 MSRB 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 Board 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

(a) With the passage of the Dodd-Frank Act, the MSRB was expressly directed by Congress to protect municipal entities. Accordingly, the MSRB is proposing to provide additional interpretive guidance that addresses how Rule G-17 applies to dealers in the municipal securities activities described below.

A more-detailed description of the provisions of the Notice follows:

*Representations to Issuers.* The Notice would provide that all representations made by underwriters to issuers of municipal securities in connection with municipal securities underwritings (e.g., issue price certificates and responses to requests for proposals), whether written or oral, must be truthful and accurate and may not misrepresent or omit material facts.

*Required Disclosures to Issuers.* The Notice would provide that an underwriter of a negotiated issue that recommends a complex municipal securities transaction or product (e.g., a variable rate demand obligation with a swap) to an issuer has an obligation under Rule G-17 to disclose all material risks (e.g., in the case of a swap, market, credit, operational, and liquidity risks), characteristics, incentives, and conflicts of interest (e.g., payments received from a swap provider) regarding the transaction or product. Such disclosure would be required to be sufficient to allow the issuer to assess the magnitude of its potential exposure as a result of the complex municipal securities financing. In the case of routine financing structures, underwriters would be required to disclose the material aspects of the structures if the issuers did not otherwise have knowledge or experience with respect to such structures.