## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange asked the Commission to waive the 30-day operative delay period for non-controversial proposed rule changes to allow the proposed rule change to be operative upon filing.[11]

The Commission believes it is consistent with the public interest to waive the 30-day operative delay. Waiver of the operative delay will allow for the implementation of the amended rules prior to the next early scheduled close, November 23, 2012, which is the day after Thanksgiving, thereby providing additional clarity in the rules and reduce any potential confusion regarding how the times specified in Rule 123C are handled when there is an early scheduled close. The Commission, therefore, grants such waiver and designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of such 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.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

## 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*. Please include File Number SR–NYSEMKT–2012–63 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–NYSEMKT–2012–63. 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, 100 F Street NE., Washington, DC 20549 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 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–NYSEMKT–2012–63 and should be submitted on or before December 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–28353 Filed 11–21–12; 8:45 am]

**BILLING CODE 8011–01–P**

[13] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68254; File No. SR–NASDAQ–2012–130]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Offer the Equity Trade Journal for Clearing Firms Service and Assess a Related Fee

November 16, 2012.

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 November 15, 2012, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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 establish the Equity Trade Journal for Clearing [sic] service, and assess a related fee. Nasdaq is proposing to implement the proposed service on November 15, 2012 and implement the proposed fee on January 2, 2013. 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, Nasdaq 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 proposing to offer The Equity Trade Journal for Clearing Firms (''ETJ Clearing'') service, a new service offered to clearing member firms that provides daily and ad hoc reports of correspondent trading activity associated with the subscribing member firm's clearing number.[3] Specifically, the ETJ Clearing service provides a subscribing member firm a report of all trade activity done on Nasdaq, FINRA ORF, and FINRA/NASDAQ TRF on a given day, segregated by correspondent MPID.[4] Daily reports are provided for trading activity occurring the prior trading day and ad hoc reports cover trading activity that occurred for a selected full day's trading. ETJ Clearing reports are stored and accessible for thirty days on NasdaqTrader.com's FTP site, and can also be downloaded and stored by the subscribing member firm so that it has a historical repository of trade information for compliance and other purposes.

The ETJ Clearing service can only be accessed via NasdaqTrader.com. Nasdaq plans on offering the service at no cost beginning November 15, 2012, and to assess a monthly tiered fee, beginning January 2, 2013. The proposed ETJ Clearing service fee is divided into five tiers based on the total number of correspondent MPIDs subscribed for coverage by the service. The first tier provides daily reports for up to ten correspondent MPIDs for a monthly fee of $750, the second tier provides daily reports for eleven to twenty correspondent MPIDs for a monthly fee of $1,000, the third tier provides daily reports for twenty-one to thirty correspondent MPIDs for a monthly fee of $1,250, the fourth tier provides daily reports for thirty-one to forty correspondent MPIDs for a monthly fee of $1,500, and the fifth tier provides daily reports for forty-one or more correspondent MPIDs for a monthly fee of $1,750. As noted, the tiers are based on the total number of correspondent MPID [sic] subscribed, so for example, if a member clearing firm subscribes thirty correspondent MPIDs to the service it would be assessed a monthly fee of $1,250 per month. A member clearing firm that subscribes thirty-one correspondent MPIDs to the service, however, would be assessed a monthly fee of $1,500.

The ETJ Clearing service is similar to the equity trade journal report provided under the NasdaqTrader.com Trading and Compliance Data Package service (''Data Package'').[5] The Data Package service provides member firms access to multiple types of historical reports concerning a member firm's trading, including an equity trade journal report, for a fee of $175 per month (monthly maximum of 25 reports) or $225 per month (monthly maximum of 100 reports).[6] Subscribers may receive any mix of the different reports provided by the Data Package. The equity trade journal report of the Data Package provides trade details for all of a market participant's trades executed on Nasdaq or reported to the FINRA/NASDAQ TRF or FINRA ORF for the date requested. The data provided by the ETJ Clearing service is similar to that of the Data Package report, but requires further segregation and arrangement of the data so that it is useful for clearing member firms. Specifically, the ETJ Clearing service includes clearing numbers, and filters the data provided by clearing number to deliver only details of trades reported using the clearing firm's dedicated clearing number. In addition, ETJ Clearing will provide potentially a higher volume of reports in relation to the data provided in the Data Package equity trade journal report because using the regular Data Package, data is only produced for one MPID per user log in. In the ETJ Clearing subscription, the clearing member firm can elect to produce several reports based on its correspondent MPIDs.

The Exchange notes that it has a low number of clearing member firms with more than forty correspondent MPIDs registered with the Exchange at this time. Should this change, Nasdaq may file a rule change to modify the fees assessed under the tiers. The proposed fee will be applied to offset the costs associated with establishing the service, responding to customer requests, configuring Nasdaq's systems, programming to user specifications, and administering the service, among other things. To the extent that costs are covered by the proposed fee, the proposed fee may also provide Nasdaq with a profit.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and Section 6(b)(4) of the Act,[8] in particular, because 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 that Nasdaq operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers.[9] The Exchange believes that the proposed fee does not discriminate unfairly because only member firms that voluntarily elect to subscribe to this service will be charged the fee. The Exchange also believes that the proposed fee is equitably allocated as it decreases on a per report basis with each successive tier, representing the lower incremental cost associated with providing additional reports.[10] The Exchange adopted a tiered fee structure to reduce the expense that would be incurred by the Exchange if it were to bill on a per report basis, which ultimately would be borne by subscribers. The proposed fee is assessed uniformly among subscribing member firms based on the number of MPIDs subscribed and the tier under which they fall.

Nasdaq determined that the proposed fee is reasonable based on member firm interest in the functionality provided by the ETJ Clearing service, costs associated with developing and supporting the service, and the value that ETJ Clearing service provides to subscribing member firms. Moreover, ETJ Clearing provides data similar to that as the equity trade journal report of the Data Package, and Nasdaq has set the proposed fee similarly on a per-report basis. The information provided by ETJ Clearing service relates to the trade activity done on Nasdaq, FINRA ORF, and FINRA/NASDAQ TRF by a correspondent of the subscribing clearing member firm on a given day,

[3] Clearing member firms have unique clearing numbers that their correspondents use to identify the clearing firm associated with each trade.

[4] Member firms have at least one MPID, also known as a market participant identifier, and often multiple MPIDs. MPIDs are special identifiers used by NASDAQ to identify member firms' transaction and quoting activity. Trades assigned to an MPID may be associated with one or more clearing member firms.

[5] *See* Rule 7021.

[6] *Id.*

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] The Commission notes that this last requirement is set forth in Section 6(b)(5), 15 U.S.C. 78f(b)(5).

[10] For example, assuming 20 trading days in a month, a clearing member firm that subscribes 5 correspondent MPIDs to the proposed service (the mid-point of the first tier) would pay $750 per month, or $7.50 per report ($750 divided by 100 reports). If the member were to subscribe 15 MPIDs to the proposed service (the mid-point of the second tier), it would pay $1,000 per month, or $3.33 per report ($1,000 divided by 300 reports). The per-report price declines similarly when comparing both the fewest MPIDs of each tier, as well as the top number of MPIDs of each tier.

segregated by correspondent MPID. A clearing member firm may elect to develop its own system to capture the information provided by the proposed service. As such, the Exchange believes that if a clearing member firm determines that the fee is not cost-efficient for its needs, it may decline to subscribe to ETJ Clearing service and access such information from other sources.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes the proposed rule change is consistent with these requirements because the proposed service provides subscribing clearing members firms with a useful compliance tool with which they may access information concerning the trading activity of their correspondent firms. As such, the Exchange believes that the proposed service will further goals of the Act by providing subscribing clearing members firms with greater transparency with respect to clearing activity and facilitating compliance with member firm books and records obligations.

*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.

*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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[12] of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that Nasdaq may offer the ETJ for Clearing service beginning on November 15, 2012. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will provide clearing member firms with the option to obtain greater transparency with respect to their correspondent's trading activity.[16] In addition, the Commission notes that the service is being offered at no charge beginning on November 15, 2012, that the service is optional, and that a service fee will not be assessed until January 2, 2013. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.

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.

## 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 email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–130 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–2012–130. 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–2012–130, and should be submitted on or before December 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).