

#### 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-CBOE-2008-57 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2008-57. 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 inspection and copying 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 the CBOE. 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-CBOE-2008-57 and should be submitted on or before July 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57924; File No. SR-NASDAQ-2008-048]

#### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying Pricing for Nasdaq Members Using the Nasdaq Market Center**

June 5, 2008.

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 30, 2008, 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, II, and III below, which Items have been prepared substantially by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a member due, fee, or other charge imposed by Nasdaq under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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**

Nasdaq proposes to modify pricing for Nasdaq members using the Nasdaq Market Center. Nasdaq will implement this rule change on June 2, 2008. The text of the proposed rule change is available at <http://www.nasdaq.com>, the principal offices of the Exchange, and 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 these statements may be examined at the places specified in Item IV below. Nasdaq 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**

Nasdaq is proposing to increase the liquidity provider credit paid to high volume liquidity providers with respect to their transactions in securities listed on exchanges other than Nasdaq and the New York Stock Exchange ("Tape B Securities"). At the same time, Nasdaq is proposing to eliminate its market data revenue sharing program for executions of Tape B Securities occurring on Nasdaq. Finally, Nasdaq is proposing to delete Nasdaq Rule 7024, which formerly established a revenue sharing program for market participants trading on Nasdaq's discontinued SuperMontage trading system.

Currently, members that provide an average daily volume through the Nasdaq Market Center in all securities during the month of more than 35 million shares of liquidity provided receive a credit of \$0.0028 per share for executions against displayed liquidity and \$0.0015 per share for executions against non-displayed liquidity. For executions in Tape B Securities only, Nasdaq is increasing the credit for executions against displayed liquidity to \$0.0031.

As is currently the case, members with an average daily volume through the Nasdaq Market Center in all securities during the month of more than 20 million shares of liquidity provided (but that do not qualify for the higher credit described in the preceding sentence) will receive a credit of \$0.0025 per share for executions against displayed liquidity and \$0.001 per share for executions against non-displayed liquidity; and other members will receive a credit of \$0.002 per share for executions against displayed liquidity and \$0.001 per share for executions against non-displayed liquidity.

At the same time, Nasdaq is eliminating its program for market data revenue sharing in Tape B securities. Currently, Nasdaq pays to liquidity providers in Tape B Securities 50% of the market data revenue associated with transactions in Tape B Securities executed through the Nasdaq Market

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

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

Center. Nasdaq believes that by focusing incentives for liquidity provision solely on direct transaction credits and away from market data revenue sharing, Nasdaq will enhance the transparency of its pricing. Nasdaq believes that market participants will prefer this approach because revenue sharing is paid on an estimated monthly basis with a quarterly "true-up", and therefore the value of revenue sharing is difficult for market participants to predict in advance. As a result of the change, Nasdaq will no longer share market data revenue with its market participants. Revenue sharing with firms reporting over-the-counter trades to the FINRA/NASDAQ Trade Reporting Facility will continue, however, as provided by NASD Rule 7001B.

These changes reflect the continued extent of competition among transaction execution venues for all securities, including Tape B Securities. Notably, NYSE Arca has recently submitted a proposed rule change to reduce Tape B Securities execution and routing fees for market participants with high volumes of order execution, routing and liquidity provision.<sup>5</sup> Nasdaq believes that by increasing the liquidity provider credit for market participants with high volumes of liquidity provision while simplifying pricing through the elimination of market data revenue sharing, Nasdaq will attract higher levels of liquidity and transparency to its market, notwithstanding pricing changes by competing venues.

Finally, Nasdaq is deleting Rule 7024, which is now obsolete and may be removed from the Nasdaq rulebook. The rule provided for sharing a percentage of operating revenue, as determined by the Nasdaq Board of Directors, with "Nasdaq Quoting Market Participants," as defined in former Rule 4701. Rule 4701 defined categories of participants in Nasdaq's former SuperMontage execution system, which ended operations in 2006.<sup>6</sup> Accordingly, the rule became obsolete at that time, and revenue sharing under the rule was discontinued.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(4) of the Act,<sup>8</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.

The impact of the changes upon the net fees paid by a particular market participant will depend upon a number of variables, including its monthly volume, the order types it uses, and the prices of its quotes and orders (*i.e.*, its propensity to add or remove liquidity). Nasdaq notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Although the proposed rule change may increase net charges for market participants that trade Tape B Securities through Nasdaq but that do not provide high levels of liquidity, Nasdaq believes that its fees remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to Nasdaq rather than competing venues.

### *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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed on members by Nasdaq. Accordingly, the proposal is effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 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-2008-048 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2008-048. 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 inspection and copying 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 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2008-048 and should be submitted on or before July 3, 2008.

<sup>5</sup> SR-NYSEArca-2008-53.

<sup>6</sup> Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR-NASDAQ-2006-001).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-13158 Filed 6-11-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57923; File No. SR-Phlx-2008-12]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to an Exemption From Examination Requirements for Off-Floor Traders

June 4, 2008.

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 April 14, 2008, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 substantially by the Exchange. On May 30, 2008, Phlx filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend Phlx Rule 604(e)(iii) to modify the category of persons subject to an exemption from the requirement that Off-Floor Traders<sup>4</sup> complete the Series 7 General Securities Registered Representative Examination ("Series 7").

The text of the proposed rule change is available on Phlx's Web site at <http://www.phlx.com>, at Phlx'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, Phlx 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. Phlx 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

Phlx Rule 604(e)(i) states that Off-Floor Traders must successfully complete the Series 7. Currently, Phlx Rule 604(e)(iii) provides exceptions to the Series 7 requirement for Off-Floor Traders. The purpose of the proposed rule change is to modify the category of persons allowed an exemption from the requirement that Off-Floor Traders complete the Series 7. Phlx believes this proposed change would better capture the floor-based activities of Former Floor Participants, as defined below, in the exception from the Series 7 requirement, make the administration of the Series 7 requirements for Off-Floor Traders more efficient, and improve Phlx's examination and enforcement efforts.

**Background.** Phlx adopted Rule 604(e) in 1999. At that time, Phlx stated that it believed the Series 7 requirement would primarily apply to persons "associated with limited liability companies ("LLC") for the purpose of trading securities off the floor of the Exchange for the firm's account."<sup>5</sup> These persons are also known as "Day Traders." Phlx stated that these Day Traders "generally become members of an LLC to avail themselves of good faith margin provided through the LLC's Joint Back Office agreement with its clearing agent."<sup>6</sup> In 1999, equity trading on Phlx took place on a physical trading floor. Persons who traded on Phlx's equity trading floor were associated with either a specialist organization, or a floor brokerage organization that executed orders on an agency basis and were not,

by definition, Off-Floor Traders.

Therefore, they were not subject to the requirement in Phlx Rule 604(e)(i) to successfully complete the Series 7.

Phlx eliminated the physical equity trading floor in 2006 and replaced it with XLE, an electronic equity trading system.<sup>7</sup> At the time of the transition to XLE, persons trading on Phlx's equity trading floor were associated with either a specialist organization or a floor brokerage organization that executed orders on an agency basis. Those persons ("Former Floor Participants") then became participants in XLE; however, because there was no longer any physical trading floor, these Former Floor Participants became Off-Floor Traders for purposes of Phlx Rule 604(e)(i) and were, therefore, subject to the Series 7 requirement.

Phlx did not intend for the transition to XLE to require Former Floor Participants to become subject to the Series 7 requirement, so Phlx adopted an exception to the Series 7 requirement ("XLE Participant Exemption").<sup>8</sup> The XLE Participant Exemption is available to those persons who are "primarily engaged" in either submitting orders to XLE, or making trading decisions with respect to trading on XLE. Phlx intended that the XLE Participant Exemption would cover Former Floor Participants and maintain the status quo ante; Former Floor Participants would not be subject to the Series 7 requirement. Phlx proposes to modify this XLE Participant Exemption as discussed below.

**Current Situation.** Currently, there are approximately 27 persons in four member organizations that are Former Floor Participants. In order to determine if a Former Floor Participant qualifies for the XLE Participant Exemption, first, the Former Floor Participant and then, Phlx examination staff consider all of the activity performed by a Former Floor Participant and compare that to trading activity on XLE. If Phlx determines to bring an enforcement action for non-compliance with Phlx Rule 604(e), Phlx enforcement staff must successfully allege that the Former Floor Participant was not "primarily engaged" in the activity stated in the XLE Participant Exemption. Phlx wants to continue to exempt Former Floor

<sup>11</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>3</sup> Amendment No. 1 supersedes and replaces the original rule filing in its entirety.

<sup>4</sup> Phlx Rule 604(e)(i) defines an off-floor trader as a "person who is compensated directly or indirectly by a member or participant organization for which the Exchange is the DEA [Designated Examining Authority], or any other associated person of such member or participant organization, and who executes, makes trading decisions with respect to, or otherwise engages in proprietary or agency trading of securities, including, but not limited to, equities, preferred securities, convertible debt securities or options off the floor of the Exchange."

<sup>5</sup> See Securities Exchange Act Release No. 41776 (August 20, 1999), 64 FR 47214 (August 30, 1999) (SR-Phlx-99-07).

<sup>6</sup> *Id.*, at 47215.

<sup>7</sup> See Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (SR-Phlx-2006-43).

<sup>8</sup> The XLE Participant Exemption is in the second half of Phlx Rule 604(e)(iii) and refers to an Off-Floor Trader "who is primarily engaged in (A) submitting proprietary or agency orders for execution on XLE, or (B) making trading decisions with respect to trading on XLE." Phlx proposes to modify this provision.