

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, May 1, 2014 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

- Institution and settlement of injunctive actions;
- institution and settlement of administrative proceedings;
- adjudicatory matters;
- an opinion; and
- other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: April 24, 2014.

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71990; File No. SR-NASDAQ-2014-034]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to Proposed Changes To Remove From the Exchange Rules Fee Provisions Regarding Re-Transmission of "Third-Party Data"

April 22, 2014.

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 7, 2014, 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 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

NASDAQ proposes changes to remove from the Exchange rules fee provisions with respect to re-transmission of "Third-Party Data" that NASDAQ receives from multiple sources and then re-transmits via multiple channels.

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 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 receives Third-Party Data from multiple national securities exchanges at its Co-Location facility located in Carteret, New Jersey. It then re-transmits that data for a fee to clients located in the Co-Location facility. The fee for such Third-Party Data varies by delivery method (with lower prices for data received via fiber-optic transmission and higher prices for wireless transmission) required bandwidth (lower bandwidth data requirements have lower fees) and our costs (redistribution fees charged by originating party, network costs, etc.). NASDAQ has routinely filed proposed rule changes seeking approval to receive

such data and to assess fees for offering it to Co-Location clients; and the Commission has routinely approved or accepted such rule changes since 2008.

NASDAQ believes that Third-Party Data is not a facility of the Exchange within the meaning of the Act, and that previous proposed rule changes with respect to such Third-Party Data were unnecessary under the Act. Congress enacted the Exchange Act to impose federal regulation on stock exchanges, and included in its definition of "exchange" "the market facilities maintained by such exchange."³ The Exchange Act separately defines "facility," providing that "[t]he term 'facility' when used with respect to an exchange includes [1] its premises, [2] tangible or intangible property whether on the premises or not, [3] any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and [4] any right of the exchange to the use of any property or service." *Id.* The Commission has not separately interpreted the definition of "facility."⁴

Third Party Data does not satisfy any of the four prongs set forth in the statutory definition of "facility." First, it is not the "premises" of the Nasdaq Exchange. The term "premises" is generally understood to refer to a building, its land, and appurtenances. Second, the Third Party Data is not tangible or intangible property of the Nasdaq Exchange. Indeed, the Exchange has no ownership interest in the Third Party Data at all. Rather, NASDAQ merely redistributes the Third Party Data as one of many vendors of the Third Party Data. Third, the Third Party Data is not used on the Nasdaq Exchange's premises "for the purpose of effecting or reporting a transaction" on a NASDAQ exchange.⁵ Fourth, NASDAQ, in its capacity as an exchange, does not hold any right to use the Third Party Data other than as a consumer of that data for which it pays all applicable fees.

Market data created by and emanating from NASDAQ's execution systems is currently considered a facility of the

³ 15 U.S.C. 78c(a)(1).

⁴ Securities Exchange Act Release No. 26708, at 4 n. 28 (1989) (recognizing that the definition of the term "facility" has not changed since it was originally adopted and that no hearing testimony referred to it because "the Committee felt that the definition was 'self-explanatory'" (citation omitted)).

⁵ 15 U.S.C. 78c(a)(2).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.