

Company Guide. Accordingly, the Commission believes that the proposed change should avoid potential confusion associated with having duplicative rules and is therefore, consistent with Section 6 of the Act.

Finally, the Commission notes that the change to reflect that NYSE Amex rules prohibit not only the giving of a proxy, but also the authorization of the proxy, should help to clarify the intent of NYSE Amex proxy rules and is consistent with the requirements of Section 6 of the Act.

Based on the above, the Commission believes that the NYSE Amex's proposal will further the purposes of Sections 6(b)(5) and 6(b)(10) of the Act by ensuring that brokers, holding shares on behalf of beneficial owners, are not voting uninstructed shares on matters relating to executive compensation, which should enhance corporate accountability to shareholders. The rule filing should also serve to fulfill the Congressional intent in adopting Section 6(b)(10) of the Act.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁵ for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. Section 6(b)(10) of the Act, enacted under Section 957 of the Dodd-Frank Act, does not provide for a transition phase, and requires rules of national securities exchanges to prohibit, among other things, broker voting on executive compensation. The Commission believes that good cause exists to grant accelerated approval to the Exchange's proposal, because it will conform NYSE Amex rules to the requirements of Section 6(b)(10) of the Act. Moreover, the Commission notes that the proposed changes are based on NYSE Rule 452.¹⁶

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-NYSEAmex-2011-97) be, and it hereby is, approved on an accelerated basis. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66013; File No. SR-NASDAQ-2011-146]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change to Modify Rule 7034 Regarding Low Latency Network Connections

December 20, 2011.

I. Introduction

On October 31, 2011, the NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to modify Exchange Rule 7034 entitled "Co-Location Services" to establish a program for offering low latency network connections and to establish the initial fees for such connections. The Exchange also proposed administrative modifications to Exchange Rule 7034. The proposed rule change was published for comment in the **Federal Register** on November 10, 2011.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposed to modify Exchange Rule 7034, which governs the Exchange's program for co-location services, to offer new options for low latency network telecommunication connections and to establish the fees for such connections. As its initial offering, the Exchange proposed to offer point-to-point telecommunication connectivity from the co-location facility to select major financial trading and co-location venues in the New York and New Jersey metropolitan areas, Toronto, and Chicago.⁴

According to the Exchange, the enhanced point-to-point connectivity would provide the Exchange's co-

location customers with the opportunity to obtain low latency network connectivity with greater ease than is currently the case, and at a competitive price.⁵ The Exchange represented that co-location customers currently obtain similar services by negotiating fees, obtaining service level agreements, and executing service agreements directly with approved telecommunication carriers, and that such co-location customers are currently charged a monthly negotiated fee by the telecommunications carrier in addition to a cross connection fee by the Exchange.⁶ The Exchange represented that for its low latency network connection services, it would obtain wholesale rates from the carriers and then charge a markup to compensate the Exchange for its efforts to negotiate and establish the arrangement, for integrating the connectivity into the Exchange co-location connectivity offering, and for administrative costs associated with establishing and maintaining each new connection.⁷

According to the Exchange, co-location customers would have the opportunity to request these new low latency network telecommunication connections through the same process used to request a new co-located cabinet and other co-location services.⁸ Co-location customers would retain the option of contracting directly with telecommunication providers, including either the providers that participate in the program, the current providers in the data center who have not yet agreed to participate, or any new carrier that is approved to install equipment in the Exchange's data center.⁹

The Exchange proposed one-time fees for the installation of telecommunication connectivity to select major financial trading and co-location venues in the New York and New Jersey metropolitan areas, Toronto, and Chicago, as well as per-month connectivity fees, at connectivity levels of 100MB, 1G, and 10G, respectively.¹⁰ The Exchange represented that the fees were based on anticipated bandwidth necessary for the connections and distances to these select venues. The Exchange indicated its belief that the fees are reasonable, because they are similar and competitive with fees charged for similar services by other entities.¹¹

⁵ *Id.* at 70200.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ See NYSE Rule 452, Securities Exchange Act Release No. 34-62874 (September 9, 2010), 75 FR 56152 (September 15, 2010) (SR-NYSE-2010-59).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 65688 (November 4, 2011), 76 FR 70199 ("Notice").

⁴ *Id.* at 70199. The Exchange represented that it currently provides a cross connect from a client's cabinet to its requested telecommunication carrier's cabinet (known as a "telco cross connect"). According to the Exchange, clients would have the option to use the enhanced point-to-point connectivity service to receive low latency network connectivity from the Exchange's data center to the client's chosen venue(s), in addition to the telco cross connect. These connections could be utilized to send market data to and receive orders from the chosen venues.

The Exchange also proposed to eliminate references to certain fee waivers that expired July 31, 2011.¹²

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁴ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,¹⁵ which requires, among other things, that the rules of a national securities exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In the Notice, the Exchange represented that the low latency network connections would be offered to market participants in a manner that is not unfairly discriminatory.¹⁶ The Commission believes that this program to offer low latency network connectivity, in the manner described in the proposal, is consistent with Section 6(b)(5) the Exchange Act insofar as NASDAQ makes these connectivity options uniformly available to all members who voluntarily request them and pay the associated fees. Additionally, the Commission notes that members may choose not to obtain low latency network connectivity through the Exchange and instead negotiate connectivity options separately through other vendors on site.

Regarding the associated fees, the Exchange represented that they will be applied uniformly and will not unfairly discriminate between similarly situated

market participants that use such co-location services.¹⁷ The Exchange also represented that the fees are reasonable because, among other things, they enable the Exchange to recoup its share of the costs associated with the proposed low latency network telecommunication connections.¹⁸ The Exchange further represented that the fees and associated costs of the co-location services are comparable to the costs and fees associated with comparable services offered by other trading venues.¹⁹ Finally, the Exchange noted its expectation that this service will result in a reduction in fees charged to market participants due to enhanced competition.²⁰ In light of the Exchange's representations, the Commission believes that the fees associated with the low latency network connection services are consistent with Section 6(b)(4) of the Exchange Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-NASDAQ-2011-146) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66010; File No. SR-NASDAQ-2011-160]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Co-Location Services

December 20, 2011.

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 December 9, 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 modify pricing for co-location services. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at the Exchange's principal office, on the Commission's Web site at <http://www.sec.gov>, 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 is modifying its co-location fee schedule, Exchange Rule 7034(a), to include a fee for an optional cabinet choice. Currently co-location customers have the option of obtaining several cabinet sizes and power densities. The co-located customer may obtain a half cabinet, a low density cabinet, a medium density cabinet, a medium-high density cabinet and a high density cabinet.³ Each cabinet may vary in size and maximum power capacity. The fees related to the cabinet and power usage are incremental, with additional charges being imposed based on higher levels of cabinet and/or power usage, the use of non-standard cabinet sizes or special cabinet cooling equipment. The co-location customer may obtain more power by choosing a combination of lower power density cabinets. However, the Exchange is providing a choice of a larger cabinet (30"W x 48" D x 96" H) with higher power instead of combining several units for more power (>10kW <= 17.3kW)

¹² See Notice, 76 FR at 70201; see also Securities Exchange Act Release No. 64630 (June 8, 2011), 76 FR 34783 (June 14, 2011) (SR-NASDAQ-2011-074); and Securities Exchange Act Release No. 64858 (July 12, 2011), 76 FR 42152 (July 18, 2011) (SR-NASDAQ-2011-094).

¹³ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ See Notice, 76 FR at 70201.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 7034(a).