

or otherwise in furtherance of the purposes of the Act.

BX believes that the proposed rule change does not significantly affect the protection of investors or the public interest because it merely clarifies the application of an existing rule to avoid erroneous interpretation of its applicability, prevents unnecessary regulatory duplication among self-regulatory organizations, and makes a minor technical correction to the rule.

BX has asked that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii).<sup>12</sup> BX requests this waiver so that these corrections can be immediately operative, eliminating any potential confusion caused by the currently unclear rule.

The Commission notes the proposal presents no novel issues and is designed to provide clarity regarding the application of an existing rule. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.<sup>13</sup>

#### 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-BX-2009-075 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-BX-2009-075. 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 BX. 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-BX-2009-075 and should be submitted on or before December 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-29039 Filed 12-4-09; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61075; File No. SR-NYSE-2009-119]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending the Operation of its Supplemental Liquidity Providers Pilot, Until the Earlier of the Securities and Exchange Commission's Approval To Make Such Pilot Permanent or March 30, 2010

November 30, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 25, 2009, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 to extend the operation of its Supplemental Liquidity Providers Pilot ("SLP Pilot" or "Pilot") (see Rule 107B), until the earlier of the Securities and Exchange Commission's approval to make such pilot permanent or March 30, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

#### 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 self-regulatory organization 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 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

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot<sup>4</sup> approved by the Securities and Exchange Commission ("SEC" or "Commission") to operate until November 30, 2009, until the earlier of the SEC's approval to make such pilot permanent or March 30, 2010.

##### Background<sup>5</sup>

In October 2008, the NYSE implemented significant changes to its market rules, execution technology and the rights and obligations of its market

<sup>4</sup> See Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR-NYSE-2008-108) (establishing the SLP Pilot). See also Securities Exchange Act Release No. 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR-NYSE-2009-46) (extending the operation of the SLP Pilot to October 1, 2009). See also Securities Exchange Act Release No. 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR-NYSE-2009-100) (extending the operation of the New Market Model and the SLP Pilots to November 30, 2009).

<sup>5</sup> The information contained herein is a summary of the NMM Pilot and the SLP Pilot, for a fuller description of those pilots see *supra* notes 1 and 2 [sic].

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model referred to as the "New Market Model" ("NMM Pilot").<sup>6</sup> The SLP Pilot was launched in coordination with the NMM Pilot (see Rule 107B).

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.<sup>7</sup> Separately, the NYSE established the SLP Pilot, which established SLPs as a new class of market participants to supplement the liquidity provided by DMMs.<sup>8</sup>

The SLP Pilot is scheduled to end operation on November 30, 2009 or such earlier time as the Commission may determine to make the rules permanent. The Exchange is currently preparing a rule filing seeking permission to make the SLP Pilot permanent, but does not expect that filing to be completed and approved by the Commission before November 30, 2009.<sup>9</sup>

#### Proposal To Extend the Operation of the SLP Pilot

The NYSE established the SLP Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers, including the DMMs, and add new competitive market participants. The Exchange believes that the SLP Pilot, in coordination with the NMM Pilot, allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the SLP Pilot (Rule 107B) should be made permanent. Through this filing the Exchange seeks to extend the current operation of the SLP Pilot until March 30, 2010, in order to allow the Exchange to formally submit a filing to the Commission to convert the pilot rule to a permanent rule.

<sup>6</sup> See Securities Exchange Act Release No. 58845 (October 24, 2008) 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46).

<sup>7</sup> See NYSE Rule 103.

<sup>8</sup> See NYSE Rules 107B.

<sup>9</sup> The NMM Pilot was scheduled to expire on November 30, 2009 as well. On November 16, 2009 the Exchange filed to extend the NMM Pilot until March 30, 2010 (see Securities Exchange Act Release No. 61031 (November 19, 2009) (SR-NYSE-2009-113) (extending the operation of the New Market Model Pilot to March 30, 2010).

## 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are 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 that the instant filing is consistent with these principles because the SLP Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the SLP Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the SLP Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b-4 approval process.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose 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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>13</sup> the Commission may 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 the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that because the pilot program will expire on November 30, 2009, waiver of the operative delay is necessary so that no interruption of the pilot program will occur. In addition, the Commission notes that the Exchange has requested extensions of the pilot to allow the Exchange time to formally request permanent approval for the pilot. Therefore, the Commission designates the proposal operative upon filing.<sup>14</sup>

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-NYSE-2009-119 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> 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).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-119. 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 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 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-NYSE-2009-119 and should be submitted on or before December 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61074; File No. SR-NASDAQ-2009-102]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify the Definition of Material Changes in Business Operations Found in the Membership Rules and to Make a Technical Correction

November 30, 2009.

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 November 23, 2009, The NASDAQ Stock Market LLC (“Nasdaq”) 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. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</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 the Substance of the Proposed Rule Change

Nasdaq proposes to amend Rule 1011(g)(2) to clarify the definition of what Nasdaq considers a “material change in business operations,” and to delete a superfluous “and” from the rule text.

The text of the proposed rule change is below. Proposed new language is in *italics* and proposed deletions are in brackets.<sup>4</sup>

##### 1011. Definitions

Unless otherwise provided, terms used in the Rule 1000 Series shall have the meaning as defined in Rule 0120.

(a)-(f) No change.

(g) “material change in business operations”

The term “material change in business operations” includes, but is not limited to:

(1) removing or modifying a membership agreement restriction;  
(2)(A) [market making, underwriting, or] acting as a dealer for the first time;  
*or*

*(B) market making for the first time on Nasdaq; provided, however, that market making for the first time on Nasdaq will not be considered a material change in business operations if the member's market making has previously been approved by FINRA under NASD Rule 1017 or NASDAQ OMX BX under NASDAQ OMX BX Equity Rule 1017;*  
[and]

(3) adding business activities that require a higher minimum net capital under SEC Rule 15c3-1; and

(4) adding business activities that would cause a proprietary trading firm

no longer to meet the definition of that term contained in this rule.

(h)-(o) No change.

\* \* \* \* \*

#### 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 amend Rule 1011(g)(2) to clarify its applicability. Rule 1011(g) defines what Nasdaq considers a “material change in business operations.” Pursuant to Rule 1017(a)(5), a member must file an application for approval of any material change in its business operations with Nasdaq. Rule 1011(g)(2) includes “market making, underwriting, or acting as a dealer for the first time” within the definition of “material change in business operations.” Rule 1011(g)(2) is intended to require Nasdaq members to undergo an assessment and obtain approval pursuant to Rule 1017 if they intend to expand their business operations to include market making, underwriting, or acting as a dealer. The definition found in Rule 1011(g)(2) could, however, also be interpreted to include engaging in market making for the first time on a market other than Nasdaq, notwithstanding that Nasdaq has no regulatory responsibility with respect to that business activity.

Nasdaq's Rule 1011(g)(2) is based on NASD Rule 1011(k)(2), and as such, was drafted by NASD<sup>5</sup> (now known as “FINRA”) to be broad in application given its broad, cross-market regulatory responsibilities. In adopting Rule 1011(g)(2), however, Nasdaq did not contemplate that the rule would extend to business operations engaged in on

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> Changes are marked to the rules of The NASDAQ Stock Market LLC found at <http://nasdaqomx.cchwallstreet.com>.

<sup>5</sup> In late July 2007, NASD changed its name to the Financial Industry Regulatory Authority (“FINRA”). Accordingly, we use the term NASD in this filing only (i) when referring to period of time before the name change, and (ii) with respect to rules that are still officially designated by FINRA as “NASD rules.”

<sup>15</sup> 17 CFR 200.30-3(a)(12).