

Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>11</sup>

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 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-NYSEArca-2010-72 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-NYSEArca-2010-72. 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 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 a.m. and 3 p.m. Copies of the 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-NYSEArca-2010-72 and should be submitted on or before August 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-19224 Filed 8-3-10; 8:45 am]

**BILLING CODE 8010-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62598; File No. SR-NYSEArca-2010-48]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Relating to the Guaranteed Allocation for Lead Market Makers and Directed Order Market Makers

July 29, 2010.

On June 8, 2010, NYSE Arca, Inc. ("NYSE Arca" 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the guaranteed allocation for Lead Market Makers ("LMM"s) and Directed Order Market Makers ("DOMM"s). Notice of the proposed rule change was published for comment in the **Federal Register** on June 29, 2010.<sup>3</sup> The Commission received no comments on the proposal.

Generally, incoming marketable orders are allocated among contra side orders resting on the NYSE Arca Consolidated Book at the same price on the basis of time priority. Exchange Rule 6.76A nonetheless provides an exception to this principle: When an LMM or DOMM is quoting on the book at the National Best Bid or Offer ("NBBO"), the LMM or DOMM receives

a guaranteed allocation of 40% of the incoming order ahead of any other non-Customer interest ranked earlier in time. Rule 6.76A further provides that if a Customer order is ranked earlier than the LMM or DOMM, the Customer order is filled first. The LMM or DOMM then receives its 40% guarantee out of the remainder, if any, of the incoming order, and any other non-Customer is filled from the balance on the basis of time priority.

According to the Exchange, in the latter situation, non-Customers have submitted orders that set a new price, only to find themselves left with just a small portion of an incoming order, because Customer orders at the same price must be satisfied first, and 40% of the balance is allocated to the LMM or DOMM before the price-setter can receive any allocation. Thus, the Exchange proposes to amend Rule 6.76A to provide that the guaranteed allocation will not apply if there are Customer orders on the Consolidated Book ranked ahead of the LMM or DOMM. In such a case, the incoming order will be allocated strictly on the basis of time priority. The guarantee will apply only if there are no resting Customer orders ranked ahead of the LMM or DOMM.

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.<sup>4</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>5</sup> which requires, among other things, that the rules of a national securities exchange remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that eliminating the 40% guarantee for LMMs and DOMMs when Customer orders are ranked ahead in the Consolidated Book is reasonable to encourage non-Customer market participants to competitively price their orders.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSEArca-2010-48), be and hereby is approved.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

<sup>12</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> See Securities Exchange Act Release No. 62328 (June 21, 2010), 75 FR 37516.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-19223 Filed 8-3-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

Release No. 34-62592; File No. SR-NASDAQ-2010-095)

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Closing Cross Fees for Market-on-Close and Limit-on-Close Orders

July 29, 2010.

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 July 28, 2010, 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. 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 increase closing cross fees for Market-on-Close and Limit-on-Close orders. NASDAQ will implement the proposed rule change on August 2, 2010. The text of the proposed rule change is available at <http://nasdaqomx.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 is proposing to increase the fee it charges for Market-on-Close and Limit-on-Close orders executed in its closing cross from \$0.0007 per share executed to \$0.0010 per share executed. NASDAQ will continue to charge no fee for other quotes and orders executed in the closing cross.

Since NASDAQ last modified the fee in July 2009, NASDAQ has made significant enhancements to the crossing network operating technology that have resulted in increased performance in the speed of closing crosses executed at NASDAQ, thereby providing market participants with more immediate information about the results of the closing cross. NASDAQ believes this fee change is fair in that it will be incurred by the market participants that benefit from the enhancements.

Market participants entering Market-on-Close and Limit-on-Close orders seek a high probability of executing their orders at the closing price. Other closing cross orders, however, can be entered in response to the order imbalance indicator disseminated prior to the closing cross. The order imbalance indicator provides market participants with information about the number of shares that could not be matched in the closing cross if it occurred at the time of the indicator's dissemination. This information encourages market participants to enter additional orders to eliminate the imbalance, thereby ensuring the execution of more Limit-on-Close and Market-on-Close orders. Accordingly, NASDAQ does not believe that it is appropriate to charge for these orders, since they support the operation of an efficient close process that promotes liquidity and order interaction.

##### 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>3</sup> in general, and with Section 6(b)(4) of the Act,<sup>4</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. NASDAQ is increasing its closing cross

fee for Market-on-Close and Limit-on-Close orders due to technology enhancements to the NASDAQ crossing network that have resulted in increased performance in the closing crosses executed at NASDAQ. NASDAQ believes the increase is reasonable in comparison to the benefit in expedited closing crosses executed at NASDAQ, and also notes that the fee for executing orders in the closing cross remains much lower than the \$0.003 per share fee for executing orders during regular market hours. NASDAQ also believes this fee is equitable, as the technology enhancement to the crossing network benefits the market participants that will incur the increase.

#### 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 rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>6</sup> 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File

<sup>6</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. 78f.

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).