

expiration months in any index options upon which the Exchange calculates a constant three-month volatility index.

In support of its proposal, CBOE stated that, since 2009, volatility trading has experienced significant growth in trading volume. In order to satisfy growing demand for a wider variety of volatility investment strategies, the Exchange is seeking to increase, from seven to 12, the number of expiration months for broad-based security index options upon which the Exchange calculates a volatility index. In doing so, the Exchange hopes to create flexibility that would enable it to create volatility indexes of varying lengths in response to demand for a wider variety of volatility investment strategies. Accordingly, the Exchange also proposes to delete language from the rule text restricting the volatility index options to indexes on which the Exchange calculates a constant three-month volatility index. The Exchange believes that the additional expirations, which will be listed in monthly intervals over a one-year time frame, will provide the Exchange with the flexibility to create indexes that represent unique volatility exposures, and enable the Exchange to respond quickly to investor demand for new volatility-based products.

CBOE further stated that it has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the ability to list series with up to 12 expiration months for broad-based security index options upon which the Exchange calculates a volatility index.

III. Discussion

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.⁴ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁵ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, 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 proposal will provide investors with added flexibility in the trading of volatility index options and allow investors to establish options positions that are more precisely tailored to meet their investment objectives. The Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to accommodate market participants by offering a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series and the corresponding increase in quotes. The Commission expects the Exchange to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

In addition, the Commission notes that CBOE has represented that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the newly permitted listings.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-CBOE-2010-077) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63095; File No. SR-MSRB-2010-10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Consisting of Amendments to Rule A-13 To Increase Transaction Assessments for Certain Municipal Securities Transactions Reported to the Board and To Institute a New Technology Fee on Reported Sales Transactions

October 13, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("the

Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 30, 2010, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the MSRB. 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 MSRB has filed with the Commission a proposed rule change relating to assessments for brokers, dealers, and municipal securities dealers ("dealers") under MSRB Rule A-13. The proposed rule change consists of amendments to Rule A-13 to increase transaction assessments for certain municipal securities transactions reported to the Board and to institute a new technology fee on reported sales transactions. The proposed rule change would amend Rule A-13 to (a) Increase the existing transaction assessments for inter-dealer and customer sales from .0005% to .001% of the total par value of inter-dealer sales and sales to customers that are reported by dealers to the MSRB (the "transaction fee"), and (b) impose a technology fee of \$1.00 per transaction for inter-dealer and customer sales reported to the Board (the "technology fee"). The technology fee would be transitional in nature and would be reviewed by the Board periodically to determine whether it should continue to be assessed. The MSRB proposes an effective date for this proposed rule change of January 1, 2011.

The text of the proposed rule change is available on the MSRB's Web site at <http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2010-Filings.aspx> 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 MSRB 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 Board has

⁴ 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).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 purpose of the proposed rule change is to assess reasonable fees necessary to defray the costs and expenses of operating and administering the MSRB. The proposed rule change would amend Rule A-13 to (a) Increase the existing transaction assessments for inter-dealer and customer sales from .0005% to .001% of the total par value of inter-dealer sales and sales to customers that are reported by dealers to the MSRB (the "transaction fee"), and (b) impose a technology fee of \$1.00 per transaction for inter-dealer and customer sales reported to the Board (the "technology fee"). The technology fee would be transitional in nature and would be reviewed by the Board periodically to determine whether it should continue to be assessed.

Current Sources of Revenue

The MSRB currently levies four types of fees that are generally applicable to dealers. Rule A-12 provides for a \$100 initial fee paid once by a dealer when it first begins to engage in municipal securities activities. Rule A-13 provides for an underwriting fee of \$.03 per \$1000 par value of municipal securities purchased in a primary offering (with specified exceptions), and a transaction fee of \$.005 per \$1000 par value of sale transactions of municipal securities (with specified exceptions). Finally, Rule A-14 provides for an annual fee of \$500 from each dealer who conducts municipal securities activities.

At present, approximately 90% of the Board's revenue is generated through underwriting fees and transaction fees. In fiscal year 2009, approximately 55% of the Board's revenue was generated by underwriting fees and approximately 36% of its revenue was generated by transaction fees. The underwriting and transaction fees assessed pursuant to Rule A-13 are generally proportionate to a dealer's activity within the industry, as based on the par value amount of underwriting and customer and inter-dealer transactions during the year. Underwriting fees are based on a dealer's participation in the underwriting of municipal securities, and transaction fees are based on a dealer's participation in the municipal securities market in terms of par value sold.

The transaction assessment was last modified in 2000 when the Board commenced assessments on customer sale transactions reported by dealers. The transaction fee has not been increased since that date, despite the additional activities undertaken by the MSRB over the last ten years. The amount of the underwriting assessment has not been increased since 1992, although in December 2009 the MSRB eliminated certain exemptions from the underwriting assessment.

Rationale for Proposed Rule Change

The Board is proposing to increase the transaction fee and establish a new technology fee for three reasons. First, the expenses of the MSRB are increasing and additional revenue is necessary in order to meet projected expenses associated with ongoing operations. Second, the MSRB needs additional revenue to cover anticipated expenses associated with its new regulatory responsibilities mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010) (the "Dodd-Frank Act"). Third, the MSRB needs additional revenue to replace aging and outdated information technology software and hardware. In particular, funding is needed to ensure the operational integrity of the MSRB's information systems, retire and update computer hardware and software, and conduct ongoing risk management including business continuity activities and system maintenance. The new technology fee would be used to establish a new technology renewal fund, which would be segregated for accounting purposes. The technology renewal fund is intended to fund replacement of aging and outdated technology systems and to fund new technology initiatives.

As reflected in the 2009 audited financial statement, revenue decreased from fiscal year 2008 to 2009 from approximately \$22.2 million to approximately \$19.6 million, while expenses increased from approximately \$18.6 million to approximately \$21.3 million. Although revenue has increased in fiscal year 2010, primarily due to the elimination of certain exemptions from underwriting fees, expenses have also continued to increase. Moreover, the MSRB has not set aside separate reserves for major technology systems that will need replacement or upgrades in the near future.

Several factors have contributed to the recent, large increase in operating expenses. First, over the last two years, the MSRB has significantly improved

transparency in the municipal securities market by developing and implementing market information transparency systems for the (a) Collection and dissemination of electronic official statements and other primary market documents and information, allowing dealers, in most instances, to discontinue sending paper copies of official statements to new issue customers; (b) collection and dissemination of electronic continuing disclosure documents and related information from issuers and their agents; (c) collection and dissemination of current interest rates and other information on auction rate securities and variable rate demand obligations (the "SHORT" system); (d) production and publication of statistical information on the municipal securities market; and (e) display on a publicly available, user-friendly Web site of the documents and information described above, as well as real-time trade information, which are made continuously available to the general public (the Electronic Municipal Market Access System or "EMMA" Web site).

The EMMA and SHORT systems were initially developed and launched using general revenue and cash reserves. Since inception, significant demand from users of these systems and regulatory requirements established by the SEC have resulted in the development of new functionality, with an attendant rise in development and operating costs. Additionally, the rapid adoption by the marketplace of these systems as key sources for market disclosures, trade prices and interest rate information has resulted in an accelerated investment in resources to support the technology systems.

In addition, Congress recently passed, and the President signed into law, comprehensive financial reform legislation, the Dodd-Frank Act. Effective October 1, 2010, the Dodd-Frank Act expands the MSRB's mission in a number of ways that will require a more substantial commitment of staff and technical resources. The expansion of the MSRB's jurisdiction to include regulation of municipal advisors will require additional rulemaking capabilities. The MSRB will also need to focus additional resources on establishing regulatory protections for municipal entities. The MSRB has also been given additional responsibilities in connection with providing enforcement and examination support to the Commission, the Financial Industry Regulatory Authority ("FINRA") and the Federal bank regulators, and the MSRB has been authorized to develop information systems with other Federal

regulators in furtherance of their missions.

Given the significant resource commitments needed to further develop its information systems, and the additional statutory obligations imposed on the MSRB by the Dodd-Frank Act, the MSRB must generate sufficient revenue to ensure that these systems operate in a continuous, reliable manner while at the same time devoting substantial staff resources to developing an extensive new body of regulatory requirements.

Description of Proposed Rule Change

In order to address the projected revenue shortfall, the MSRB proposes to increase revenue in two ways. First, the MSRB proposes to increase the amount of the transaction fee assessed on the par value of inter-dealer and customer sale transactions reported to the MSRB by dealers under MSRB Rule G-14(b), except for transactions currently exempted from the transaction fee as provided in MSRB Rule A-13(c)(iii), from \$.005 per \$1000 par value to \$.01 per \$1000 par value of such sale transactions. Transactions exempted from the transaction fee consist of sale transactions in municipal securities that have a final stated maturity of nine months or less or that, at the time of trade, may be tendered at the option of the holder to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent. This increase in the transaction fee is expected to generate an estimated \$7 million in revenue annually.

The second fee proposed by the MSRB would consist of a technology fee assessed at \$1.00 per transaction for each sale transaction reported to the MSRB by dealers under MSRB Rule G-14(b). The exemptions from the transaction fee, as described above, would not apply to the technology fee. The technology fee is expected to generate an estimated \$10 million in revenue annually, and would be transitional in nature, in that it would be reviewed periodically by the MSRB in relation to the level of funding needed for capital expenditures and to maintain the technology renewal fund. The funds accumulated in the technology renewal fund would be solely dedicated to funding capital expenses for technology investments.

As noted above, the bulk of the MSRB's revenue is derived from the underwriting and transaction fees, which are generally proportionate to a dealer's activity within the industry, as

based on the par value amount of underwriting and customer and inter-dealer transactions during the year. The proposed new technology fee would help to establish a more balanced assessment of overall fees paid by dealers since it would be based on a dealer's participation in the market as measured by the total number of inter-dealer and customer sale transactions reported to the MSRB, rather than par value, and therefore would help to more evenly distribute the burden of dealer assessments. The MSRB believes these fees are fair and balanced, based on the activities of regulated market participants.

Finally, with regard to the expansion of the MSRB's regulatory mandate to include regulation of municipal advisors and the protection of municipal entities, the MSRB will continue to review its assessments on the market participants it regulates to ensure that costs of rulemaking are appropriately allocated among the entities it regulates. Although the MSRB recognizes that an appropriate allocation of such regulatory costs may not be feasible during the transition of the MSRB to its broader mission, it expects to revisit the manner in which its activities are funded in the coming years, as appropriate. The MSRB is committed to ensuring that its assessments are balanced based in large measure on the level of activity of all of its regulated entities.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(J) of the Act,³ which requires, in pertinent part, that the MSRB's rules shall:

Provide that each municipal securities broker and each municipal securities dealer shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges.

The proposed rule change provides for commercially reasonable fees to partially offset costs associated with operating RTRS⁴ and producing and disseminating transaction reports to subscribers.

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

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or

appropriate in furtherance of the purposes of the Act since it would apply equally to all market participants that chose to subscribe to the services.⁵

C. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-MSRB-2010-10 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-MSRB-2010-10. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all

³ 15 U.S.C. 78o-4(b)(2)(J).

⁴ RTRS refers to the MSRB's Real-time Transaction Reporting System.

⁵ The Commission notes that this filing does not appear to relate to a subscription service.

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 such filing also will be available for inspection and copying at the MSRB's offices. 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-MSRB-2010-10 and should be submitted on or before November 9, 2010.

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

Florence E. Harmon,
Deputy Secretary.

[FR Doc. 2010-26278 Filed 10-18-10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63092; File No. SR-NASDAQ-2010-129]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Fee Pilot Program for NASDAQ Last Sale

October 13, 2010.

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 October 1, 2010, The NASDAQ Stock Market LLC ("NASDAQ") 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 Substance of the Proposed Rule Change

NASDAQ is proposing to extend for three months the fee pilot pursuant to which NASDAQ distributes the NASDAQ Last Sale ("NLS") market data products. NLS allows data distributors to have access to real-time market data for a capped fee, enabling those distributors to provide free access to the data to millions of individual investors via the internet and television. Specifically, NASDAQ offers the "NASDAQ Last Sale for NASDAQ" and "NASDAQ Last Sale for NYSE/Amex" data feeds containing last sale activity in US equities within the NASDAQ Market Center and reported to the jointly-operated FINRA/NASDAQ Trade Reporting Facility ("FINRA/NASDAQ TRF"), which is jointly operated by NASDAQ and the Financial Industry Regulatory Authority ("FINRA"). The purpose of this proposal is to extend the existing pilot program for three months, from October 1, 2010 to December 31, 2010.

This pilot program supports the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors. Based upon data from NLS distributors, NASDAQ believes that since its launch in July 2008, the NLS data has been viewed by over 50,000,000 investors on Web sites operated by Google, Interactive Data, and Dow Jones, among others.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

7039. NASDAQ Last Sale Data Feeds

(a) For a three month pilot period commencing on [July] *October 1, 2010*, NASDAQ shall offer two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the NASDAQ/FINRA Trade Reporting Facility.

(1)-(2) No change.

(b)-(c) 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, 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 III 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Prior to the launch of NLS, public investors that wished to view market data to monitor their portfolios generally had two choices: (1) Pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. To increase consumer choice, NASDAQ proposed a pilot to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data via the internet and television at no cost to millions of internet users and television viewers. NASDAQ now proposes a three-month extension of that pilot program, subject to the same fee structure as is applicable today.³

NLS consists of two separate "Level 1" products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF. First, the "NASDAQ Last Sale for NASDAQ" data product is a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the "NASDAQ Last Sale for

³ NASDAQ previously stated that it would file a proposed rule change to make the NLS pilot fees permanent. NASDAQ has also informed Commission staff that it is consulting with FINRA to develop a proposed rule change by FINRA to allow inclusion of FINRA/NASDAQ TRF data in NLS on a permanent basis. Because NASDAQ and FINRA are continuing to discuss such a proposed rule change, and notably, are evaluating what effect the decision of the Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC*, No. 09-1042 (D.C. Cir. 2010) and recent amendments to Section 19 of the Act may have on a proposal to make the pilot permanent, FINRA and NASDAQ have not completed their consultations regarding such a proposed rule change. Accordingly, NASDAQ is filing to seek a three-month extension of the existing pilot.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.