

its implementation in the BOX trading system.

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>11</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>12</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that Initiating Participant's use of the Surrender Quantity function could benefit investors by allowing an Initiating Participant the flexibility to designate a lower amount than the forty percent (40%) of the PIP Order to which the Initiating Participant is entitled, thereby providing the other PIP Participants with the opportunity to receive increased trade allocations.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-BX-2010-083), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Elizabeth M. Murphy,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63732; File No. SR-  
NASDAQ-2011-007]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Impose a Quarterly Maximum on the Listing of Additional Shares Fees Payable by Closed-End Funds

January 19, 2011.

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

<sup>11</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>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 6, 2011, 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, 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 to impose a quarterly maximum on the listing of additional shares fees payable by Closed-End Funds. Nasdaq will implement the proposed rule change immediately.

The text of the proposed rule change is below. Proposed new language is in italics.

##### 5910. The NASDAQ Global Market

(a) No change.

(b) Additional Shares

(1)-(5) No change.

(6) *The maximum fee charged to an issuer that is a Closed-End Fund in any quarter is \$25,000 per Company.*

(c)-(f) No change.

##### 5920. The Nasdaq Capital Market

(a) No change.

(b) Additional Shares

(1)-(5) No change.

(6) *The maximum fee charged to an issuer that is a Closed-End Fund in any quarter is \$25,000 per Company.*

(c)-(e) 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.

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

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

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Nasdaq currently assesses a fee for listing additional shares of an already listed class in the amount of \$5,000 or \$0.01 per additional share, whichever is higher, up to an annual maximum of \$65,000 per listed company.<sup>3</sup> There is no fee assessed for issuances of less than 50,000 shares per quarter.<sup>4</sup> This fee applies to both operating companies and closed-end companies ("Closed-End Funds").

A Closed-End Fund is a type of company regulated under the Investment Company Act of 1940.<sup>5</sup> Generally, a Closed-End Fund sells a fixed number of shares and invests the proceeds in investments chosen by its investment adviser to achieve the funds stated investment objectives. Shareholders have an interest in the fund's investments, but generally cannot redeem shares from the fund. Instead, the Closed-End Fund's shares are listed and trade at a value which may be greater or less than the fund's assets. Unlike operating companies, a Closed-End Fund is not taxed on its income so long as it generates at least 90% of its income from permissible sources, including dividends on and gains from the sale of stock or securities, and distributes that income to its shareholders.<sup>6</sup> As a consequence, a Closed-End Fund generally distributes all of its income annually and does not have access to retained earnings for new investment opportunities. A Closed-End Fund, therefore, frequently needs to issue additional shares to raise new capital in order to fund such opportunities. This is in contrast to operating companies, which generally have access to retained earnings to acquire new assets, and as a consequence are not limited to issuing shares.

Given the unique nature of Closed-End Funds, Nasdaq believes it is appropriate to provide them relief from the fee for listing additional shares in the form of a \$25,000 quarterly limit. The quarterly maximum will reduce the likelihood of reaching the existing \$65,000 annual limit and eliminate the possibility of reaching the annual maximum with a single capital raise or

<sup>3</sup> See Nasdaq Listing Rule 5910(b), applicable to Nasdaq Global and Global Select Market companies and Nasdaq Listing Rule 5920(b), applicable to Nasdaq Capital Market companies.

<sup>4</sup> *Id.*

<sup>5</sup> 15 U.S.C. 80a-5.

<sup>6</sup> 26 U.S.C. 851-856.

in a single quarter. Nasdaq previously had a fee schedule for listing additional shares that, like the proposed amended rule, included both an annual and quarterly fee cap, but was applicable to operating companies and Closed-End Funds alike.<sup>7</sup> As such, and for the reasons discussed above, we believe it is appropriate to adopt a quarterly maximum on the listing of additional shares fees payable by closed-end funds in addition to the current annual maximum.

While Nasdaq believes the proposed quarterly cap is appropriate, Nasdaq continues to believe that it is also appropriate to charge Closed-End Funds a listing of additional shares fee. In that regard, Nasdaq notes that it must review share issuances by Closed-End Funds for compliance with the shareholder approval rules. In addition, other markets also charge fees for the listing of additional Closed-End Fund shares, separate from operating companies.<sup>8</sup>

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and with Sections 6(b)(4) and (b)(5) of the Act,<sup>10</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, and it does not unfairly discriminate between customers, issuers, brokers or dealers. Nasdaq is instituting a quarterly maximum on the listing of additional shares fees applicable to Closed-End Funds based on their unique characteristics and their need to issue shares as a primary means by which they may expand their businesses. As such, Nasdaq believes that Closed-End Funds are differently impacted than operating companies by the current listing of additional shares fees, and believes that the proposed quarterly fee cap will serve to lessen the adverse impact of the current fees. In light of these considerations, Nasdaq believes that the proposed rule change will promote a more equitable allocation of listing fees by reducing the impact of listing of additional share fees on a class of issuers that must issue shares as a

primary means by which to expand their business, and, accordingly, consistent with Section 6(b)(5) of the Act<sup>11</sup> will not unfairly discriminate between issuers.

Nasdaq also believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act<sup>12</sup> because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. As noted above, Nasdaq is implementing the quarterly fee cap because it believes that Closed-End Funds are differently impacted than operating companies by the current listing of additional shares fees. The proposed quarterly fee cap will serve to lessen the adverse impact of the current fee, and, as noted above, does not unfairly discriminate between issuers. As such, Nasdaq believes that the proposed rule change promotes just and equitable principles of trade.

### 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) of the Act<sup>13</sup> and paragraph (f)(2) of Rule 19b-4 thereunder,<sup>14</sup> because it establishes a due, fee, or other charge imposed by Nasdaq.

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. If the

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2011-007 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-NASDAQ-2011-007. 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 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 No. SR-NASDAQ-2011-007 and should be submitted on or before February 15, 2011.

<sup>7</sup> Securities Exchange Act Release No. 48631 (October 15, 2003), 68 FR 60426 (October 22, 2003) (SR-NASD-2003-127) (eliminating the quarterly fee cap for listing additional shares while retaining the annual fee cap).

<sup>8</sup> The New York Stock Exchange assesses a Closed-End Fund listing of additional securities fee. See NYSE Listed Company Manual Sections 902.03 and 902.04.

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (b)(5).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> *Id.*

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

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

Elizabeth M. Murphy,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63729; File No. SR-FINRA-2011-003]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period Regarding the Use of Multiple MPIDs on FINRA Facilities

January 18, 2011.

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 January 5, 2011, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by 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 Substance of the Proposed Rule Change

FINRA is proposing a rule change to extend through January 27, 2012, the current rules regarding the use of multiple Market Participant Symbols (“MPIDs”) in FINRA Rules 6160 (with respect to Trade Reporting Facilities (“TRFs”)), 6170 (with respect to the Alternative Display Facility (“ADF”)), and 6480 (with respect to the OTC Reporting Facility (“ORF”)).

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA has three rules governing the use of multiple MPIDs on FINRA facilities: Rule 6160 (Multiple MPIDs for Trade Reporting Facility Participants), Rule 6170 (Primary and Additional MPIDs for Alternative Display Facility Participants), and Rule 6480 (Multiple MPIDs for Quoting and Trading in OTC Equity Securities). The pilot period for all three rules is scheduled to expire on January 28, 2011. FINRA believes that there continue to be legitimate business reasons for members to maintain multiple MPIDs for use on FINRA facilities. Consequently, FINRA is proposing to extend the pilot period for each of the three rules until January 27, 2012. FINRA is not proposing any other changes to the rules at this time; however, FINRA notes that it intends to file a proposed rule change within the next year that amends the rules governing multiple MPIDs, including a proposed rule change to make the rules permanent.

###### (1) Rule 6160

Rule 6160 provides that any Trade Reporting Facility Participant that wishes to use more than one MPID for purposes of reporting trades to a TRF must submit a written request to, and obtain approval from, FINRA Operations for such additional MPIDs. In addition, Supplementary Material to the rule states that FINRA considers the issuance of, and trade reporting with, multiple MPIDs to be a privilege and not a right. A Trade Reporting Facility Participant must identify the purpose(s) and system(s) for which the multiple MPIDs will be used. If FINRA determines that the use of multiple MPIDs is detrimental to the marketplace, or that a Trade Reporting Facility Participant is using one or more additional MPIDs improperly or for

other than the purpose(s) identified by the Participant, FINRA staff retains full discretion to limit or withdraw its grant of the additional MPID(s) to such Trade Reporting Facility Participant for purposes of reporting trades to a TRF. FINRA believes that Rule 6160 is necessary to consolidate the process of issuing, and tracking the use of, multiple MPIDs used to report trades to TRFs.

Rule 6160 was approved by the Commission in 2006 on a pilot basis.<sup>4</sup> The pilot period has been extended several times since the rule was originally adopted and currently expires on January 28, 2011.<sup>5</sup>

###### (2) Rule 6170

Rule 6170 provides that a Registered Reporting ADF ECN may request additional MPIDs for displaying quotes and orders and reporting trades through the ADF trade reporting facility, TRACS, for any ADF-Eligible Security. Among other things, Registered Reporting ADF ECNs are prohibited from using an additional MPID to accomplish indirectly what they are prohibited from doing directly through their Primary MPID. In addition, FINRA staff retains full discretion to determine whether a bona fide regulatory and/or business need exists for being granted an additional MPID privilege and to limit or withdraw the additional MPID display privilege at any time. The procedures for requesting, and the restrictions surrounding the use of, multiple MPIDs are set forth in Supplementary Material to the rule.

The Commission approved Rule 6170 on a pilot basis on August 11, 2006.<sup>6</sup> The pilot period has been extended several times since the rule was

<sup>4</sup> See Securities Exchange Act Release No. 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006); see also Securities Exchange Act Release No. 54715A (November 14, 2006), 71 FR 67183 (November 20, 2006).

<sup>5</sup> See Securities Exchange Act Release No. 61297 (January 6, 2010), 75 FR 2173 (January 14, 2010); Securities Exchange Act Release No. 59183 (December 30, 2008), 74 FR 842 (January 8, 2009); Securities Exchange Act Release No. 57217 (January 28, 2008), 73 FR 6234 (February 1, 2008); Securities Exchange Act Release No. 55206 (January 31, 2007), 72 FR 5479 (February 6, 2007).

<sup>6</sup> See Securities Exchange Act Release No. 54307 (August 11, 2006), 71 FR 47551 (August 17, 2006). By its terms, the initial pilot period expired on January 26, 2007, to coincide with the expiration of the ADF pilot period. See Securities Exchange Act Release No. 53699 (April 21, 2006), 71 FR 25271 (April 28, 2006). On January 26, 2007, the Commission approved a proposed rule change to make the ADF rules permanent. See Securities Exchange Act Release No. 55181 (January 26, 2007), 72 FR 5093 (February 2, 2007).

<sup>15</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> 17 CFR 240.19b-4(f)(6).