

nominate any other disinterested director, and that legal counsel for those disinterested directors be independent legal counsel.

9. Section 17(j) of the Act and paragraph (b) of rule 17j-1 under the Act make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j-1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicant requests an exemption from the provisions of rule 17j-1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to RCI.

10. Applicant requests an exemption from the requirements in sections 30(a), 30(b), and 30(e) of the Act, and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicant contends that the forms prescribed by the Commission for periodic reports have little relevance to RCI and would entail administrative and legal costs that outweigh any benefit to the Participants in RCI. Applicant also requests an exemption from section 30(h) of the Act to the extent necessary to exempt THC, directors and any officer or other persons who may be deemed to be members of an advisory board of RCI from filing Forms 3, 4, and 5 under section 16(a) of the Securities Exchange Act of 1934 with respect to their ownership of RCI common stock. Applicant asserts that, because there will be no trading market and the transfers of RCI common stock will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

11. Rule 38a-1 requires investment companies to adopt, implement and periodically review written policies reasonably designed to prevent violation of the federal securities laws and to appoint a chief compliance officer. Applicant requests an exemption from the requirements of rule 38a-1 on the basis that they are burdensome and unnecessary and such exemption would be consistent with the policies of the Act. Applicant asserts compliance with the rule would serve little purpose given the limited nature of RCI's operations and since the sole purpose of RCI is to

create a structure to provide favorable tax treatment to THC.

#### **Applicant's Conditions**

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. Transactions otherwise prohibited by section 17(a) or section 17(d) and rule 17d-1 in which RCI is a party (the "Section 17 Transactions") will be effected only if the RCI Board determines that:

(a) The terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the Participants of RCI and do not involve overreaching of RCI or its Participants on the part of any person concerned; and

(b) The Section 17 Transactions are consistent with the interests of the Participants and with RCI's organizational and offering documents.

2. RCI and RCI's Board will maintain and preserve, for the life of RCI and at least six years thereafter, all accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Participants, and agree that all such records will be subject to examination by the Commission and its staff. RCI will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

3. RCI's Board will send to each Participant who held RCI common stock at any time during the fiscal year then ended, RCI's audited financial statements, which audited financial statements may be presented on a combined basis with THC's financial statements.

For the Commission, by the Division of Investment Management, under delegated authority.

**Cathy H. Ahn,**  
*Deputy Secretary.*

[FR Doc. 2011-3272 Filed 2-14-11; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

### **Sunshine Act Meeting**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, February 17, 2011 at 1:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the

Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, February 17, 2011 will be:

A litigation matter;  
Institution and settlement of injunctive actions;  
Institution and settlement of administrative proceedings; and  
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: February 10, 2011.

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. 2011-3451 Filed 2-11-11; 11:15 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-63852; File No. SR-NASDAQ-2011-017]**

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center**

February 7, 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 27, 2011, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and

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

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

III 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 Substance of the Proposed Rule Change**

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on February 1, 2011. The text of the proposed rule change is available at <http://nasdaq.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 the Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

NASDAQ is amending Rule 7018 to make modifications to its pricing schedule for execution and routing of orders through the NASDAQ Market Center. First, with respect to fees for NASDAQ's Closing Cross, NASDAQ is introducing a pricing discount to encourage market participants that might otherwise internalize orders at a price established through the Closing Cross to bring their orders to NASDAQ for full participation in the Closing Cross.

Currently, all "Market-on-Close" and "Limit-on-Close" orders that execute in the Closing Cross pay a fee of \$0.0010 per share executed. Under the proposed change, a member that trades through a Market Participant Identifier ("MPID") that qualifies as a High Volume MPID will pay a discounted fee of \$0.0001 per share executed with respect to executions of Market-On-Close and Limit-on-Close orders when the same High Volume MPID is on both sides of the trade. For this purpose, a "High Volume MPID" is defined as an MPID

through which a member: (a) Executes more than 100 million shares of "Market-On-Close" or "Limit-On-Close" orders in the NASDAQ Closing Cross per month, and (b) has an average daily volume through the NASDAQ Market Center of more than: (1) 95 million shares of liquidity provided, if average total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities is more than 10 billion shares per day during the month; (2) 85 million shares of liquidity provided, if average total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities is between 9,000,000,001 and 10 billion shares per day during the month; (3) 75 million shares of liquidity provided, if average total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities is between 8,000,000,001 and 9 billion shares per day during the month; or (4) 65 million shares of liquidity provided, if average total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities is 8 billion or fewer shares per day during the month. The tier levels for liquidity provision are identical to the tier levels that qualify a member to receive a liquidity provider rebate of \$0.00295 per share executed with respect to shares executed through NASDAQ during the regular trading day. Such a member is, by that standard, a member with high volumes of order flow that enhances NASDAQ's market quality through extensive liquidity provision. NASDAQ believes that introducing a volume-based tier in the Closing Cross will maximize the extent to which high volumes of orders are brought to the Closing Cross, rather than being internalized by firms at the price established by the Closing Cross. The change is also reflective of a similar pricing change recently made by the New York Stock Exchange ("NYSE") under which it established a volume discount for participants in its closing process.<sup>3</sup>

Second, NASDAQ is modifying the fee for routing directed orders to the NASDAQ OMX PSX ("PSX") facility of NASDAQ OMX PHLX ("PHLX"), to reflect a change in the fee for executing orders at that venue that is being made as of February 1, 2011.<sup>4</sup> Currently, the fee to access liquidity at PSX is \$0.0013

per share executed, and the fee for routing directed orders to PSX is \$0.0015 per share executed. With the fee charged by PSX rising to \$0.0025 per share executed, the fee for routing directed orders to it will rise to \$0.0027 per share executed, thereby maintaining the \$0.0002 markup that exists in the current fee schedule.

##### **2. Statutory Basis**

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Section 6(b)(4) of the Act,<sup>6</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 believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated members will be subject to the same fee structure, and access to the Exchange's market is offered on fair and non-discriminatory terms.

The impact of the change in Closing Cost fees will be unambiguously positive or neutral to market participants, since members qualifying for the favorable tier will pay reduced fees for executing orders in the Closing Cross, while members that do not qualify will continue to pay existing fees. Volume-based discounts such as the reduced execution fee proposed here have been widely adopted in the cash equities markets, and are equitable because they are open to all members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes of the Closing Cross. NASDAQ further notes that it operates in a highly competitive market in which market participants can readily favor competing venues, or in this case, internalize orders rather than exposing them to the broader market, if they deem fee levels at a particular venue to be excessive. NASDAQ believes that the fee reduction will help ensure that its Closing Cross continues to attract high levels of participation.

The change for directed orders sent to PSX reflects recent pricing changes by that venue, and allows NASDAQ to maintain the current markup of \$0.0002 per share executed for directed orders that it routes to that venue. In this

<sup>3</sup> Securities Exchange Act Release No. 63642 (January 4, 2011), 76 FR 1653 (January 11, 2011) (SR-NYSE-2010-87).

<sup>4</sup> SR-PHLX-2011-11 (January 26, 2011).

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

regard, the fees charged and rebates offered by NASDAQ for routing orders to PSX are reasonable and equitable, in that the decision to use NASDAQ as a router is entirely voluntarily, and members can avail themselves of numerous other means of directing orders to PSX, including becoming members of PHLX or using any of a number of competitive routing services offered by other exchanges and brokers.

#### *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. Because the market for order execution and routing is extremely competitive, members may readily opt to disfavor NASDAQ's execution and routing services if they believe that alternatives offer them better value. NASDAQ's reduction of Closing Cross fees is reflective of the need to ensure that fees are set at competitively viable levels, and its change to routing fees is necessary to reflect pricing changes at PSX.

#### *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>7</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. 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-2011-017 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-2011-017. 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-NASDAQ-2011-017 and should be submitted on or before March 8, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-3270 Filed 2-14-11; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63875; File No. SR-Phlx-2010-183]

### **Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change Expanding Its Short Term Option Program**

February 9, 2011.

#### **I. Introduction**

On December 15, 2010, NASDAQ OMX PHLX LLC ("Phlx" or "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 to expand the Short Term Option Program ("Program") to allow the Exchange to select up to 15 option classes on which Short Term Option Series may be listed. The proposed rule change was published for comment in the **Federal Register** on December 28, 2010.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

#### **II. Description of the Proposal**

Currently, Rule 1101A(b)(vi)(A) and Commentary .11(a) to Rule 1012 permit the Exchange to open for trading on any Thursday or Friday that is a business day series of options on no more than five option classes that expire on the Friday of the following business week that is a business day. The Exchange has proposed to increase from five to 15 the number of option classes that may be opened pursuant to the Program.

In its filing, the Exchange stated that, because of the five-class limit imposed by the Program, on numerous occasions it has had to eliminate option classes from the Program in order to select new classes, even though demand remained for the eliminated classes. The Exchange noted that it believes an expansion of the current Program would allow the Exchange to better meet customer demand for short-term option classes.

Phlx stated that it has analyzed its capacity and represented that it believes that it and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of classes in the Program.

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

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

<sup>3</sup> Securities Exchange Act Release No. 63594 (December 21, 2010), 75 FR 81689 ("Notice").

<sup>7</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>8</sup> 17 CFR 200.30-3(a)(12).