

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64916; File No. SR-NASDAQ-2011-010]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Link Market Data Fees and Transaction Execution Fees

July 19, 2011.

On January 10, 2011, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to discount certain market data fees and increase certain liquidity provider rebates for members that both (1) Execute specified levels of transaction volume on NASDAQ as a liquidity provider, and (2) purchase specified levels of market data from NASDAQ. The proposed rule change was published for comment in the **Federal Register** on January 27, 2011.<sup>3</sup> The Commission suspended the proposed rule change and instituted proceedings to determine whether to approve or disapprove the proposed rule change in an order published in the **Federal Register** on February 3, 2011.<sup>4</sup> The Commission has received three comment letters on the proposed rule change.<sup>5</sup> The Exchange responded to these comments on April 4, 2011.<sup>6</sup>

Section 19(b)(2) of the Act<sup>7</sup> provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180

days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on January 27, 2011. July 26, 2011 is 180 days from that date, and September 23, 2011 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change, the issues raised in the comment letters that have been submitted in connection with this proposed rule change, and the Exchange’s response to such issues in its response letter. Specifically, as the Commission noted in the Order Instituting Proceedings, the proposal raises issues such as whether a tying arrangement may not be consistent with the statutory requirements applicable to a national securities exchange and, in particular, whether the proposal may fail to satisfy the standards under the Exchange Act and the rules thereunder that require market data fees to be equitable, fair, and not unreasonably discriminatory.<sup>8</sup>

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> designates September 23, 2011, as the date by which the Commission should either approve or disapprove the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Elizabeth M. Murphy,**  
Secretary.

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<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. 63745 (January 20, 2011) 76 FR 4970 (“Notice”).

<sup>4</sup> See Securities Exchange Act Release No. 63796 (January 28, 2011) 76 FR 6165 (“Order Instituting Proceedings”).

<sup>5</sup> See Letter dated January 13, 2011 from William O’Brien, Chief Executive Officer, Direct Edge to Florence E. Harmon, Deputy Secretary, Commission; Letter dated January 31, 2011 from Christopher Nagy, Managing Director Order Strategy, and Richard P. Urian, Global Head of Market Data, TD Ameritrade Inc. to Elizabeth M. Murphy, Secretary, Commission; and Letter dated March 21, 2011 from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA, and Markham Erickson, Executive Director and General Counsel, NetCoalition to Elizabeth M. Murphy, Secretary, Commission.

<sup>6</sup> See Letter dated April 4, 2011 from Joan Conley, Senior Vice President, NASDAQ OMX Group, Inc. to Elizabeth M. Murphy, Secretary, Commission.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> See Order Instituting Proceedings, *supra* note 4 at 6165.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64914; File No. SR-BATS-2011-022]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by BATS Exchange, Inc. To Expand the Short Term Option Program

July 19, 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 July 13, 2011, BATS Exchange, Inc. (the “Exchange” or “BATS”) 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 BATS. 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 is proposing to amend Rules 19.6 and 29.11 to expand the Short Term Option Series Program (“STO Program” or “Program”)<sup>3</sup> so that the Exchange may select fifteen option classes on which Short Term Option Series<sup>4</sup> may be opened.

The text of the proposed rule change is available from the Exchange’s Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

<sup>3</sup> The STO Program was established about a year ago on BATS Options. See Securities Exchange Act Release No. 62597 (July 29, 2010), 75 FR 47335 (August 5, 2010) (SR-BATS-2010-020) (notice of filing and immediate effectiveness establishing Short Term Option Series Program on BATS). Other exchanges have also established permanent short term option programs, including The NASDAQ Stock Market LLC (“NOM”), NASDAQ OMX PHLX LLC (“Phlx”), Chicago Board Options Exchange (“CBOE”), International Securities Exchange (“ISE”), NYSE Arca Options (“Arca”), NYSE Amex, LLC (“Amex”), and NASDAQ OMX BX (“BX”).

<sup>4</sup> Short Term Option Series are series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Thursday or Friday that is a business day and that expires on the Friday of the next business week. If a Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Thursday or Friday, respectively. BATS Rules 16.1(a)(56) and 29.2(n).