

organization consents, the Commission will:

(A) By order approve or disapprove the 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2011-53 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-2011-53. 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 Section, 100 F Street, NE., Washington, DC 20549-1090, on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at <http://www.nyse.com>. 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-2011-53 and should be submitted on or before September 14, 2011.

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. 34-65159; File No. SR-NASDAQ-2011-118]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Change the Name and Modify the Contents of the NASDAQ Ouch BBO Feed

August 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 August 12, 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 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

The Exchange is filing this proposed rule change to change the name of the NASDAQ Ouch BBO Feed to the NASDAQ MatchView Feed (the "Feed") and to modify the contents of the Feed in two ways. The Feed provides a view of how the Exchange views the Best Bid and Offer ("BBO") available from all market centers for each individual security the Exchange trades.

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.

<sup>13</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.

#### 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

This proposal regards the NASDAQ MatchView Feed (formerly known as the NASDAQ Ouch BBO Feed), a data feed that represents the Exchange's view of best bid and offer data received from all market centers. The Feed is available to all Exchange members and market participants equally at no charge, offering all participants transparent, real-time data concerning the Exchange's view of the BBO data. The Exchange makes the Feed available on a subscription basis to market participants that are connected to the Exchange whether through extranets, direct connection, or Internet-based virtual private networks.

Currently, the Feed reflects the Exchange's view of the BBO data, at any given time, based on orders executed on the Exchange and updated quote information from the network processors.<sup>3</sup> The Feed contains the following data elements: symbol, bid price, and ask price.<sup>4</sup> Unlike the Nasdaq TotalView feed, the MatchView feed does not contain information about individual orders, either those residing within the Exchange system or those executed or routed by the Exchange. Unlike the network processor feeds containing the National Best Bid and Offer ("NBBO"), the MatchView Feed does not identify either the market center quoting the BBO or the size of the

<sup>3</sup> The Feed does not reflect all information available to the Exchange. Specifically, the Feed excludes information about the routing of orders to away exchanges. Thus, although the Exchange execution system and routing engine know when a bid or offer from an away market is no longer available because the Exchange has routed an order to the bid or offer, the Feed does not reflect such routing activity.

<sup>4</sup> The Feed also contains a time stamp and message type field for reference.

BBO quotes. It merely contains the symbol and bid and offer prices.

The Exchange is modifying the inputs used for calculating the prices reflected on the Feed. Currently, the Feed reflects bids and offers contained on data feeds from the network processors, as well as certain NASDAQ orders referenced below. In the future, the Feed will continue to reflect these orders entered on the Exchange but rather than reflect only individual exchange bids and offers received from the network processors, the Feed will reflect individual exchange bids and offers received either from the network processor or directly from an exchange that disseminates bids and offers to vendors via a proprietary data feed. The Exchange will reflect bids and offers from another exchange's proprietary data feed only when the Exchange deems the proprietary data feed to be sufficiently reliable and also faster than the network processor.<sup>5</sup>

This determination—whether to utilize bids and offers from the network processor feed or from a direct proprietary data feed—will be made by the Exchange on a market-by-market basis based upon objective criteria about reliability and speed. The determination, once made, will apply to all bids and offers from an exchange; it will not be made on a stock-by-stock basis. Additionally, the determination, once made, will be valid until such time as the away exchange stops disseminating the proprietary data feed in a manner that meets NASDAQ's objective criteria (for example, when that exchange experiences operational difficulties that reduce the reliability and speed of its proprietary data feed). For exchanges that do not disseminate proprietary data feeds or whose proprietary data feeds lack sufficient reliability and speed, the Feed will continue to reflect bids and offers disseminated via the network processor feeds.

Additionally, in a previous filing, the Exchange noted that the Feed depicts the Exchange's view of the BBO for all

<sup>5</sup> The Exchange is also changing its policies and procedures under Regulation NMS governing the data feeds used by its execution system and routing engine. Current policies state that those systems use data provided by the network processors. In the future, those systems will use data provided either by the network processors or by proprietary feeds offered by certain exchanges directly to vendors. The determination of which data feed to utilize will be the same as the determination made with respect to the Feed. In other words, the Exchange execution system, routing engine and Feed will each utilize the same data for a given exchange although, as set forth in footnote 3 above, the Feed does not contain all information available to the execution system and routing engine.

markets other than the Exchange.<sup>6</sup> In one narrow set of circumstances, the Feed will show the BBO for all markets including the Exchange. Specifically, an order received by the Exchange that improves the BBO will be reflected in the Feed when three circumstances are met: (1) The Exchange receives an order marked by the entering member as any visible bookable order that is not an IOC and is an "Inter-market Sweep" (an order known as a "Day ISO"); (2) the Day ISO order is priced higher than the current Best Bid or lower than the current Best Offer disseminated by the network processor or applicable exchange proprietary data feed; and (3) the Day ISO represents the new best bid or offer on the Exchange. In those circumstances, the new best bid or offer on the Exchange will be transmitted to the network processor and then reflected on the Feed (and the Exchange's other proprietary data feeds, such as NASDAQ TotalView). As stated above, the Feed does not show the market center responsible (whether the Exchange or an away market) for either the Best Bid or Best Offer reflected on the Feed.

These modifications to the Feed will enhance market transparency and foster competition among orders and markets. Member firms may use the Feed to more accurately price their orders based on the Exchange's view of what the BBO is at any point in time, including bids and offers received via proprietary data feeds which may not be reflected in the official NBBO due to latencies inherent in the NBBO's dissemination. As a consequence, member firms may more accurately price their orders on the Exchange, thereby avoiding price adjustments by the Exchange based on a quote that is no longer available. Additionally, members can use the Feed to price orders more aggressively to narrow the NBBO and provide better reference prices for investors.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general and with Sections 6(b)(5) of the Act,<sup>8</sup> in particular in that 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 regulating, clearing, settling, processing information with

<sup>6</sup> See Securities Exchange Act Release No. 61451 (Feb. 1, 2010); 75 FR 6246 (Feb. 8, 2010) (filing SR-NASDAQ-2010-012).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

respect to, and facilitating transactions in securities, 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 Exchange believes that this proposal is in keeping with those principles by enhancing transparency through the dissemination of the most accurate quotations data and by clarifying its contents.

## 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>11</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay because it would permit the Exchange to immediately provide the new content of the NASDAQ MatchView Feed to market participants. The Commission believes that waiving

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 satisfied this requirement.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

the 30-day operative delay<sup>13</sup> is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

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 change 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-2011-118 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-2011-118. 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

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room 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 NASDAQ. 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-2011-118 and should be submitted on or before September 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65165; File No. SR-NYSEAmex-2011-59]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting the Text of NYSE Amex Equities Rules 92, 513, 514 and Adopting New NYSE Amex Equities Rule 5320 That Is Substantially the Same as Financial Industry Regulatory Authority Rule 5320 To Prohibit Trading Ahead of Customer Orders With Certain Exceptions (Commonly Known as the Manning Rule)

August 18, 2011.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on August 11, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete the text of NYSE Amex Equities Rules 92, 513, and 514, which limit trading ahead of customer orders, and adopt a new NYSE Amex Equities Rule 5320 that is substantially the same as Financial Industry Regulatory Authority ("FINRA") Rule 5320. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

### 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 IV 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

The Exchange proposes to delete the text of NYSE Amex Equities Rules 92, 513, and 514 which limit trading ahead of customer orders, and adopt a new NYSE Amex Equities Rule 5320 that is substantially the same as FINRA Rule 5320.<sup>4</sup> As with FINRA Rule 5320, proposed NYSE Amex Equities Rule 5320 would prohibit trading ahead of customer orders with certain exceptions, including large order and institutional account exceptions, a no-knowledge exception, a riskless principal exception, an intermarket sweep order ("ISO") exception, and odd lot and bona fide error transaction exceptions, discussed in detail below. Proposed NYSE Amex Equities Rule 5320 also provides the same guidance as FINRA Rule 5320 on minimum price improvement standards, order handling

<sup>4</sup> See Securities Exchange Act Release No. 63895 (February 11, 2011), 76 FR 9386 (February 17, 2011) (SR-FINRA-2009-090). The Exchange's affiliates, New York Stock Exchange LLC and NYSE Arca, Inc., also have filed substantially similar rule filings. See SR-NYSE-2011-42 and SR-NYSEArca-2011-57.