

### III. Discussion

Section 19(b)(2)(B) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.<sup>7</sup> For example, Section 17A(b)(3)(F) of the Act<sup>8</sup> requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible.

If approved, the proposed rule change would for the first time permit a Commission-registered clearing agency to clear sovereign CDS contracts, and ICC has informed the Commission that it intends to introduce clearing of SES Contracts on four sovereign reference entities (the Federative Republic of Brazil, the United Mexican States, the Bolivian Republic of Venezuela, and the Argentine Republic) products promptly after obtaining Commission approval. By bringing additional products into clearing, the Commission believes the proposed rule change is consistent with the requirements of the Act in that it would contribute to the national system for the prompt and accurate clearance and settlement of securities transactions.

Given the particular characteristics of the products proposed to be cleared, the Commission also carefully considered ICC's ability to clear SES Contracts in a safe and sound manner. After considering the representations made by ICC regarding its belief that the clearance of SES Contracts will contribute to the safeguarding of securities and funds associated with security-based swap transactions based on its analysis,<sup>9</sup> the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act, including ICC's obligation to ensure that its rules be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the

Act and in particular with the requirements of Section 17A of the Act<sup>10</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (File No. SR-ICC-2011-01) be, and hereby is, approved.<sup>12</sup>

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65587; File No. SR-NASDAQ-2011-144]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Establishment of a Direct Market Data Product, NASDAQ Options Trade Outline ("NOTO")

October 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 October 12, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") 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 the Substance of the Proposed Rule Change

The Exchange proposes to establish a direct market data product, NASDAQ Options Trade Outline ("NOTO").

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

<sup>10</sup> 15 U.S.C. 78q-1.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<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, the Exchange 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 Exchange 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

The purpose of the proposed rule change is to establish the NOTO market data product. NOTO is a market data product offered by the Exchange that is designed to provide proprietary electronic trade data to subscribers. NOTO is available as either an "End-of-Day" data product or an "Intra-Day" data product, as described more fully below. NOTO is available to any person who wishes to subscribe to it, regardless of whether or not they are a member of the Exchange. NOTO is available only for internal use and distribution by subscribers.

#### Data Included in NOTO

NOTO provides information about the activity of a particular option series during a particular trading session. NOTO subscribers will receive the following data:

- Aggregate number of buy and sell transactions in the affected series;
- Aggregate volume traded electronically on the Exchange in the affected series;
- Aggregate number of trades effected on the Exchange to open a position;<sup>3</sup>
- Aggregate number of trades effected on the Exchange to close a position;<sup>4</sup>

<sup>3</sup> NOTO will provide subscribers with the aggregate number of "opening purchase transactions" in the affected series. An opening purchase transaction is an Exchange options transaction in which the purchaser's intention is to create or increase a long position in the series of options involved in such transaction. NOTO will also provide subscribers with the aggregate number of "opening writing transactions." An opening writing transaction is an Exchange options transaction in which the seller's (writer's) intention is to create or increase a short position in the series of options involved in such transaction.

<sup>4</sup> NOTO will provide subscribers with the aggregate number of "closing purchase transactions" in the affected series. A closing

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

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>9</sup> *Supra* note 6.

- Origin of the orders involved in trades on the Exchange in the affected series during a particular trading session, specifically aggregated in the following categories of participants: customers, broker-dealers, and market makers.

#### End of Day Product

The End of Day product includes the aggregate data described above representing the entire trading session. It is calculated during an overnight process after each trading session and is available to subscribers for download the following morning at approximately 7 a.m., E.T.

The Exchange will establish a monthly subscriber fee for the End of Day product by way of a separate proposed rule change, which the Exchange will submit after the NOTO market data product is established.

#### Intra-Day Product

The Intra-Day product includes periodic, cumulative data for a particular trading session. The Intra-Day product is produced and updated every ten minutes during the trading day. Data is captured in “snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within 5 minutes of the conclusion of each 10 minute period. For example, subscribers to the Intra-Day product will receive the first calculation of intra-day data by 9:44 a.m. E.T., which represents data captured from 9:30 a.m. to 9:39 a.m. Subscribers will receive the next update at 9:54 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:49 a.m., and so forth. Each update will represent the aggregate data captured from the current “snapshot” and all previous “snapshots.”

The Exchange will establish a monthly subscriber fee for the Intra-Day product by way of a separate proposed rule change, which the Exchange will submit after the NOTO market data product is established.

NOTO provides subscribers data that should enhance their ability to analyze option trade and volume data, and to create and test trading models and analytical strategies. The Exchange believes that NOTO is a valuable tool

purchase transaction is an Exchange options transaction in which the purchaser's intention is to reduce or eliminate a short position in the series of options involved in such transaction. NOTO will also provide subscribers with the aggregate number of “closing sale transactions.” A closing sale transaction is an Exchange options transaction in which the seller's intention is to reduce or eliminate a long position in the series of options involved in such transaction.

that subscribers can use to gain comprehensive insight into the trading activity in a particular option series.

NOTO is virtually identical to a market data product currently available on NASDAQ OMX PHLX LLC (“PHLX”) known as the PHLX Options Trade Outline (“PHOTO”) market data product.<sup>5</sup>

#### 2. Statutory Basis

NASDAQ believes that its proposal is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> in particular, in that it is designed to promote just and equitable principles of trade, 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, by establishing a market data product that enhances subscribers' ability to make decisions on trading strategy, and by providing option trade and volume data that should help bring about such decisions in a timely manner.

#### 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

No written comments were either solicited or 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)<sup>9</sup> thereunder.

<sup>5</sup> See Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121).

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</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

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.

#### 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-2011-144 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-2011-144. 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/shhtml>). 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

Commission. The Exchange has satisfied this requirement.

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-2011-144 and should be submitted on or before November 14, 2011.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65586; File No. SR-Phlx-2011-135]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Tether Monthly Service Fee

October 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 October 5, 2011, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) 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 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

The Exchange proposes to eliminate the Tether Monthly Service Fee from the Fee Schedule. The Exchange also proposes to make other minor amendments to the Fee Schedule.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the elimination of the Tether Monthly Service Fee to be operative on November 1, 2011.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, on the Commission’s Web site at <http://www.sec.gov>, and at the Commission’s Public Reference Room.

[www.sec.gov](http://www.sec.gov), 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 Exchange 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 Exchange 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

The purpose of the proposed rule change is to eliminate the Tether Monthly Service Fee. A tether is a hardware connection to an existing Exchange communication network (local areas network) on the Exchange’s options trading floor. It allows users on the options floor to connect their handheld devices to the existing Exchange communication network and thereby interface with member firm communication networks via a wireless network.

The Exchange currently assesses Registered Options Traders<sup>3</sup> and floor brokers on the options trading floor a Tether Monthly Service Fee of \$150.<sup>4</sup> The number of users of the tether service on the options trading floor has diminished significantly since the tethers were first put into place in 2001.<sup>5</sup> While the Exchange will continue to offer its members the ability to use the tethers, it will no longer assess a fee as of November 1, 2011.

The Exchange also proposes an amendment to eliminate an unnecessary reference to the Market Access Provider Subsidy (“MAP”). The Exchange

<sup>3</sup> A Registered Options Trader (“ROT”) includes a SQT, a RSQT and a Non-SQT ROT, which by definition is neither a SQT nor a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014(b)(i) and (ii).

<sup>4</sup> Specialists are not assessed this fee. The fee was initially assessed in 2001 and based on actual and estimated expenses incurred in installing and maintaining the tethered connections.

<sup>5</sup> See Securities Exchange Act Release No. 44963 (October 19, 2001), 66 FR 54317 (October 19, 2011) (SR-Phlx-2001-84).

previously eliminated this subsidy from the Fee Schedule.<sup>6</sup> The remaining reference to the MAP in Section I of the Fee Schedule, entitled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols” is outdated. The Exchange also proposes to replace the word “charges” in the Fee Schedule with the word “fees”, in order to conform the verbiage in the Fee Schedule to maintain clarity.

###### 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>8</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposed elimination of the Tether Monthly Service Fee is reasonable, equitable and not unfairly discriminatory because members will still have the ability to tether on the options trading floor, but will not be assessed a fee. In 2001, the Exchange installed tethers due to an increase in bandwidth demands and the use of applications by traders. All floor members will still have access to this service, however no member will be assessed a fee for this service.

The Exchange believes that other proposed modifications to the Fee Schedule to eliminate outdated references in the Fee Schedule and amend certain verbiage are reasonable and equitable to clarify the Fee Schedule.

##### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange 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.

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

No written comments were either solicited or 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

<sup>6</sup> See Securities Exchange Act Release No. 64539 (May 24, 2011), 76 FR 31384 (May 31, 2011) (SR-Phlx-2011-68).

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>10</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.