

charged for similar services by other entities.<sup>11</sup>

The Exchange also proposed to eliminate references to certain fee waivers that expired July 31, 2011.<sup>12</sup>

### III. Discussion and Commission's Findings

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>13</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>14</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,<sup>15</sup> which requires, among other things, that the rules of a national securities exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In the Notice, the Exchange represented that the low latency network connections would be offered to market participants in a manner that is not unfairly discriminatory.<sup>16</sup> The Commission believes that this program to offer low latency network connectivity, in the manner described in the proposal, is consistent with Section 6(b)(5) the Exchange Act insofar as NASDAQ makes these connectivity options uniformly available to all members who voluntarily request them and pay the associated fees. Additionally, the Commission notes that members may choose not to obtain low latency network connectivity through the Exchange and instead negotiate connectivity options separately through other vendors on site.

Regarding the associated fees, the Exchange represented that they will be

applied uniformly and will not unfairly discriminate between similarly situated market participants that use such co-location services.<sup>17</sup> The Exchange also represented that the fees are reasonable because, among other things, they enable the Exchange to recoup its share of the costs associated with the proposed low latency network telecommunication connections.<sup>18</sup> The Exchange further represented that the fees and associated costs of the co-location services are comparable to the costs and fees associated with comparable services offered by other trading venues.<sup>19</sup> Finally, the Exchange noted its expectation that this service will result in a reduction in fees charged to market participants due to enhanced competition.<sup>20</sup> In light of the Exchange's representations, the Commission believes that the fees associated with the low latency network connection services are consistent with Section 6(b)(4) of the Exchange Act.

### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change (SR-Phlx-2011-142) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011-33118 Filed 12-23-11; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66007; File No. SR-NSX-2011-15]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee and Rebate Schedule

December 20, 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 December 15, 2011, National Stock Exchange, Inc. filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 70189-90.

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</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.

Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

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

National Stock Exchange, Inc. ("NSX" or "Exchange") is proposing to continue to make available, without charge, the Exchange's data feed, the NSX depth-of-book feed ("DOB feed"), to authorized recipients.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nsx.com>, at the principal office of the Exchange, 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 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 purpose of the proposed rule change is to continue to make available, without charge, the Exchange's data feed, the NSX depth-of-book feed ("DOB feed"), to authorized recipients.<sup>3</sup> This rule change also describes the Exchange's practices for distributing the NSX DOB feed to authorized recipients.

The Exchange first established its DOB feed in November, 2006. The Exchange does not and has never charged authorized recipients for receipt of its DOB feed.<sup>4</sup> The NSX DOB feed

<sup>3</sup> An authorized recipient of the DOB feed must execute required documentation with, and be approved by, the Exchange prior to receiving the service. Currently, the required documentation consists of the NSX Market Data Feed License Agreement, which is available on the Exchange Web site (<http://www.nsx.com/resources/content/2/4/documents/MarketDataFeed062009.pdf>).

<sup>4</sup> Although the Exchange does not charge authorized recipients for receipt of the NSX DOB feed, an ETP Holder recipient may incur third party costs associated with such feed, including pursuant to the Exchange's ability to pass through third party costs to ETP Holders pursuant to section III.B of the Fee Schedule.

<sup>11</sup> *Id.* at 70189.

<sup>12</sup> *Id.*; see also Securities Exchange Act Release No. 64630 (June 8, 2011), 76 FR 34783 (June 14, 2011) (SR-NASDAQ-2011-074); and Securities Exchange Act Release No. 64858 (July 12, 2011), 76 FR 42152 (July 18, 2011) (SR-NASDAQ-2011-094).

<sup>13</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

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

<sup>16</sup> See Notice, 76 FR at 70189.

provides the real-time quotation and execution information, including price, size, and buy or sell, for all displayed orders in the NSX book. The DOB feed does not disclose the source of any order or identify any transaction party. A more specific description of the NSX DOB feed, including the type of data, data elements and format, is contained in two technical specification documents available for review on the NSX Web site (<http://www.nsx.com/content/connect-to-nsx>). The NSX DOB feed is available on a uniform basis to all ETP Holders authorized to receive the feed, as well as to any other authorized recipients. Authorized recipients must, before receiving the DOB feed, execute required Exchange documentation and be approved for receipt of the feed. A recipient's continuing eligibility to receive the feed, and the permitted uses of the data by a recipient, among other things, is governed by the Market Data Feed License Agreement, available on the NSX Web site, that must be executed by each authorized DOB feed recipient.

Based on NSX system architecture, market data contained in the NSX DOB feed will not be distributed to authorized recipients prior to the equivalent data being transmitted to the securities information processor ("SIP").<sup>5</sup> In addition, the Exchange monitors, in real time, its data transmissions to the SIP such that, in the event of delay or interruption, the Exchange has policies and procedures in place designed to delay transmission of the equivalent data to NSX DOB feed recipients.

By making clear on the Fee Schedule that the DOB feed is available free of charge, the Exchange believes that market transparency is enhanced and competition is promoted. Should the Exchange determine at a later date to charge fees associated with the DOB feed, or develop and offer to qualified recipients any other market data feed product, the Exchange will submit a proposed rule change to the Commission concerning those subjects.

The absence of an Exchange charge to recipients for receipt of the NSX DOB feed is reflected in Section III.C of the Fee Schedule under the header "Depth of Book Feed" and in corresponding Explanatory Endnote 13.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Securities and Exchange Act of 1934

(the "Act"),<sup>6</sup> in general, and 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, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. Moreover, the proposed rule change is not discriminatory in that all qualified ETP Holders, and other qualified recipients, are eligible to receive this feed. The Exchange also believes that the proposed change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the Exchange's rules are not designed to unfairly discriminate between customers, issuers, brokers or dealers. Specially, the Exchange believes that the proposed changes to the Fee Schedule are equitable in that they apply uniformly to all data recipients.

### 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 that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

## 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 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder.

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2011-15 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-NSX-2011-15. This file number should be included on the subject line if email 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-NSX-

<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. 78f(b)(5).

<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>5</sup> As measured, based on point in time that the data passes through the NSX firewall.

2011–15 and should be submitted on or before January 17, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2011–33052 Filed 12–23–11; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66008; File No. SR–C2–2011–40]

### Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Penny Pilot Program

December 20, 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 December 15, 2011, C2 Options Exchange, Incorporated (the “Exchange” or “C2”) 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 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 amend its rules relating to the Penny Pilot Program. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.c2exchange.com/Legal/>), at the Exchange’s Office of the Secretary, and at the Commission.

#### 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 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 Penny Pilot Program is scheduled to expire on December 31, 2011. C2 proposes to extend the Pilot Program until June 30, 2012. C2 believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

During this extension of the Penny Pilot Program, C2 proposes that it may replace any option class that is currently included in the Pilot Program and that has been delisted with the next most actively-traded, multiple-listed option class that is not yet participating in the Pilot Program (“replacement class”). Any replacement class would be determined based on national average daily volume in the preceding six months<sup>3</sup>, and would be added on the second trading day following January 1, 2012. C2 will announce to its Permit Holders by circular any replacement classes in the Pilot Program.

C2 is specifically authorized to act jointly with the other options exchanges participating in the Penny Pilot Program in identifying any replacement class. C2 will submit to the Securities and Exchange Commission (the “Commission”) reports that will analyze the impact of the Pilot Program on market quality and systems capacity for the periods October 1, 2011 through March 31, 2012 and April 1 through June 30, 2012. Each report will include, but not be limited to, the following: (1) Data and analysis of the number of quotations generated for options included in the report; (2) an assessment of the quotation spreads for the options included in the report; (3) an assessment of the impact of the Pilot Program on C2’s automated systems; (4) data reflecting the size and depth of markets; and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

<sup>3</sup> The month immediately preceding a replacement class’s addition to the Pilot Program (*i.e.* December) would not be used for purposes of the six-month analysis. Thus, a replacement class to be added on the second trading following January 1, 2012 would be identified based on The Option Clearing Corporation’s trading volume data from June 1, 2011 through November 30, 2011.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act<sup>4</sup> and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act<sup>5</sup>. Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) of the Act<sup>6</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change allows for an extension of the Penny Pilot Program for the benefit of market participants.

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

C2 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 solicited or received with respect to the proposed rule change.

#### 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>7</sup> and Rule 19b–4(f)(6)(iii) thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b–4(f)(6)<sup>9</sup> normally does not become operative for 30 days after the

<sup>4</sup> 15 U.S.C. 78f.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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

<sup>8</sup> 17 CFR 240.19b–4(f)(6)(iii). 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 Commission notes that the Exchange has satisfied this requirement.

<sup>9</sup> 17 CFR 240.19b–4(f)(6).

<sup>11</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.