

of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Investment Company of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company pursuant to rule 12b-1 under the Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Sub-Adviser will waive fees otherwise payable to the Sub-Adviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Sub-Adviser, or an affiliated person of the Sub-Adviser, from an Unaffiliated Fund, other than any advisory fees paid to the Sub-Adviser or its affiliated person by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Investment Company made at the direction of the Sub-Adviser. In the event that the Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. With respect to Registered Separate Accounts that invest in a Variable Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level, and other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will only be charged at the Fund of Funds level or at the Underlying

Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61787; File No. SR-NASDAQ-2010-015]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change To Apply Retroactively a Correction of a Drafting Error in Rule 7018

March 26, 2010.

#### I. Introduction

On January 26, 2010, The NASDAQ Stock Market LLC (“Nasdaq”) 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 that would apply retroactively, to the period from July 24, 2009 through January 25, 2010, the correction made by SR-NASDAQ-2010-014 <sup>3</sup> of a

<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. 61515 (February 12, 2010), 75 FR 7642 (February 22, 2010).

“typographical error” <sup>4</sup> formerly in Rule 7018.

The proposed rule change was published for comment in the **Federal Register** on February 23, 2010. <sup>5</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

In August 2009, Nasdaq filed SR-NASDAQ-2009-072, <sup>6</sup> to make clerical changes designed to streamline and simplify Rule 7018. In the “Purpose” section of the proposed rule change, Nasdaq stated “[n]one of the clerical changes will modify any fee assessed or credit earned for trading on the NASDAQ Market Center.” However, due to a drafting error, Exhibit 5 to the proposed rule change (which sets out the actual language of the proposed rule change) introduced changes to the fees for orders in securities listed on the New York Stock Exchange (“NYSE”) that are routed to other venues without attempting to execute in Nasdaq for the full size of the order prior to routing. Nasdaq has been billing members in accordance with the fees that were in place before it filed SR-NASDAQ-2009-072. Nasdaq filed SR-NASDAQ-2010-014 <sup>7</sup> to correct the error; that proposed rule change was effective upon filing with the Commission, and changed the fees from the day it was filed (January 26, 2010) going forward. The instant proposed rule change would apply the same changes retroactively to the period from July 24, 2009 through January 25, 2010.

#### III. Discussion and Commission Findings

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>8</sup> In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 6 of the Act, <sup>9</sup> in general, and with Section 6(b)(4) of the

<sup>4</sup> The Commission notes that the “typographical error” is more accurately characterized as a drafting error by Nasdaq that resulted in the omission and misplacement of rule language.

<sup>5</sup> See Securities Exchange Act Release No. 61524 (February 16, 2010), 75 FR 8160.

<sup>6</sup> Securities Exchange Act Release No. 60430 (August 4, 2009), 74 FR 40279 (August 11, 2009).

<sup>7</sup> Securities Exchange Act Release No. 61515 (February 12, 2010), 75 FR 7642 (February 22, 2010) (SR-NASDAQ-2010-014).

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f.

Act,<sup>10</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. The proposed rule change would allow the fee changes implemented by SR–NASDAQ–2010–014 to be applied retroactively throughout the entire period when the error was in the rule. Additionally, the proposed rule change would conform the text of the rule to the description of the proposed rule change that Nasdaq provided in SR–NASDAQ–2009–072, thereby eliminating any confusion as to the appropriate fees and Nasdaq’s intentions.

In approving the proposed rule change, the Commission notes that it received no comments on the proposal, and that Nasdaq stated it “has been billing members in accordance with the correct fees since the effective date of SR–NASDAQ–2009–072 on July 24, 2009, and accordingly believes that all of its members are cognizant of the correct fee.”

The Commission urges Nasdaq to carefully proofread future proposed rule changes before filing them with the Commission, to minimize errors and the additional proposed rule changes required to correct them.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR–NASDAQ–2010–015), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61782; File No. SR–BX–2010–021]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period To Receive Inbound Routes of Orders From Nasdaq Execution Services

March 25, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”) and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that, on March 23, 2010, NASDAQ OMX BX, Inc. (the “Exchange” or “BX”) 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 BX. BX has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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

BX submits this proposed rule change to extend the pilot period of BX’s prior approval to receive inbound routes of equities orders from Nasdaq Execution Services, LLC (“NES”) through June 23, 2010.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX 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. BX 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

Currently, NES is the approved outbound routing facility of the NASDAQ Stock Market LLC (“NASDAQ”) for cash equities, providing outbound routing from NASDAQ to other market centers.<sup>4</sup> BX also has been previously approved to receive inbound routes of equities orders by NES in its capacity as an order routing facility of NASDAQ.<sup>5</sup> The Exchange’s authority to receive inbound routes of equities orders by NES is subject to a pilot period ending March 23, 2010.<sup>6</sup> The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional 3 months, through June 23, 2010.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that the proposal 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 respect to, and facilitating transactions in securities, to remove impediments to

<sup>4</sup> See Securities Exchange Act Release Nos. 50311 (September 3, 2004), 69 FR 54818 (September 10, 2004) (Order Granting Application for a Temporary Conditional Exemption Pursuant To Section 36(a) of the Exchange Act by the National Association of Securities Dealers, Inc. Relating to the Acquisition of an ECN by The Nasdaq Stock Market, Inc.) and 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (SRNASD–2005–128) (Order Approving a Proposed Rule Change To Establish Rules Governing the Operation of the INET System). See also Securities Exchange Act Release Nos. 58752 (October 8, 2008), 73 FR 61181 (October 15, 2008) (SR–NASDAQ–2008–079); 58135 (July 10, 2008), 73 FR 40898 (July 16, 2008) (SR–NASDAQ–2008–061); 58069 (June 30, 2008), 73 FR 39360 (July 9, 2008) (SR–NASDAQ–2008–054); 56708 (October 26, 2007), 72 FR 61925 (November 1, 2007) (SR–NASDAQ–2007–078); 56867 (November 29, 2007), 72 FR 69263 (December 7, 2007) (SR–NASDAQ–2007–065); 55335 (February 23, 2007), 72 FR 9369 (March 1, 2007) (SR–NASDAQ–2007–005); 54613 (October 17, 2006), 71 FR 62325 (October 24, 2006) (SR–NASDAQ 2006–043); 54271 (August 3, 2006), 71 FR 45876 (August 10, 2006) (SR–NASDAQ–2006–027); and 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR–NASDAQ–2006–001).

<sup>5</sup> See Securities Exchange Act Release No. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008).

<sup>6</sup> See Securities Exchange Act Release No. 61271 (December 31, 2009), 75 FR 1102 (January 8, 2010).

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

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

<sup>10</sup> 15 U.S.C. 78f(b)(4).

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

<sup>12</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.

<sup>3</sup> 17 CFR 240.19b–4(f)(6).