

market information from one platform may not be a perfect substitute for market information from one or more other platforms, the existence of alternative sources of information can be expected to constrain the prices platforms charge for market data.

Besides the fact that similar information can be obtained elsewhere, the feasibility of supra-competitive pricing is constrained by the traders' ability to shift their trades elsewhere, which lowers the activity on the exchange and so in the long run reduces the quality of the information generated by the exchange.

Competition among platforms has driven NASDAQ continually to improve its platform data offerings and to cater to customers' data needs. For example, NASDAQ has developed and maintained multiple delivery mechanisms (IP, multi-cast, and compression) that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. NASDAQ offers front end applications such as its "Bookviewer" to help customers utilize data. NASDAQ has created new products like TotalView Aggregate to complement TotalView ITCH and Level 2, because offering data in multiple formatting allows NASDAQ to better fit customer needs. NASDAQ offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. NASDAQ has developed an online administrative system to provide customers transparency into their data feed requests and streamline data usage reporting. NASDAQ has also expanded its Enterprise License options that reduce the administrative burden and costs to firms that purchase market data.

Despite these enhancements and a dramatic increase in message traffic, NASDAQ's fees for depth-of-book data have remained flat. In fact, as a percent of total customer costs, NASDAQ data fees have fallen relative to other data usage costs—including bandwidth, programming, and infrastructure—that have risen. The same holds true for execution services; despite numerous enhancements to NASDAQ's trading platform, absolute and relative trading costs have declined. Platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

Additional evidence cited by NYSE Arca in SR-NYSE Arca-2010-097<sup>14</sup> which was not before the *NetCoalition* court also demonstrates that availability

of depth data attracts order flow and that competition for order flow can constrain the price of market data:

1. Terrence Hendershott & Charles M. Jones, *Island Goes Dark: Transparency, Fragmentation, and Regulation*, 18 *Review of Financial Studies* 743 (2005);

2. Charts and Tables referenced in Exhibit 3B to that filing;

3. PHB Hagler Bailly, Inc., "Issues Surrounding Cost-Based Regulation of Market Data Prices;" and

4. PHB Hagler Bailly, Inc., "The Economic Perspective on Regulation of Market Data."

*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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>15</sup> 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 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-2011-021 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-2011-021. 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 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-NASDAQ-2011-021 and should be submitted on or before March 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Cathy H. Ahn,

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63893; File No. SR-NASDAQ-2011-023]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Routing Option SOLV and Corresponding Fees

February 11, 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>

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>14</sup> See Securities Exchange Act Release No. 63291 (Nov. 9, 2010).

<sup>15</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

notice is hereby given that on February 4, 2011, The NASDAQ Stock Market LLC (the "Exchange" or "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 substantially 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 Substance of the Proposed Rule Change**

NASDAQ proposes to amend NASDAQ Rule 4758 to add a new routing option, SOLV, and add corresponding fees to the fee schedule.

The text of the proposed rule change is available on Nasdaq's Web site <http://nasdaq.cchwallstreet.com>, at Nasdaq's principal office, 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, 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 the Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The Exchange proposes to add a routing strategy, SOLV, that will offer members a means of accessing liquidity in a wide range of execution venues at varying price levels. SOLV will operate in the same manner as the current SAVE strategy in most respects, but will differ in the treatment of shares that remain unexecuted after completing the order route and posting to the NASDAQ book. Whereas such shares under SAVE, if locked or crossed by another market center, are not routed to the locking or crossing market center, SOLV orders will be routed out for execution at the other market center.

Under the new SOLV routing option, like under the current SAVE routing option, a market participant may specify that an order will either (i) route to NASDAQ OMX BX ("BX") and

NASDAQ OMX PSX ("PSX"), then check the NASDAQ book, and then route to other venues on the SOLV System routing table, or (ii) check the NASDAQ book first and then route to destinations on the SOLV System routing table.<sup>3</sup> Under the second option, the applicable routing table includes BX and PSX, and as is the case with all market destinations, the placement of BX and PSX on the routing table depends on NASDAQ's ongoing assessments of factors such as latency, fill rates, reliability, and cost. Under either routing option in SOLV and SAVE, shares that remain unexecuted after this routing are then posted on the NASDAQ book.<sup>4</sup> Under SOLV, however, unlike under SAVE, unexecuted shares posted to the NASDAQ book will be routed out if the order is locked or crossed by another market center.

NASDAQ has designed SOLV to comply with the requirements of Rule 611 of Regulation NMS, and believes that SOLV, like all NASDAQ routing strategies, conforms to Reg-NMS requirements.

SOLV is similar in concept to a routing strategy offered by BATS called "SLIM," under which an order checks the System for available shares, is routed to BATS Y-Exchange, Inc. and then is sent to destinations on the System routing table before posting to the book.<sup>5</sup>

This rule change also amends the fee schedule to account for the SOLV routing strategy. The fees charged for SOLV are the same as currently charged under SAVE. Under Rule 7018, NASDAQ passes through, without modification, applicable BX and PSX fees or rebates. In the case of BX, this means that NASDAQ passes through the \$0.0014 per share executed credit paid by BX to market participants when accessing liquidity, and in the case of PSX, NASDAQ will pass through the fee charged by PSX to market participants when accessing liquidity.<sup>6</sup> SOLV thus provides market participants with the

<sup>3</sup> As provided in Rule 4758(a)(1)(A), the term "System routing table" refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. NASDAQ reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice.

<sup>4</sup> Pursuant to NASDAQ Rule 4758(a)(1)(B), if a routed order is returned, in whole or in part, that order will receive a new time stamp reflecting the time of its return to the System.

<sup>5</sup> Securities Exchange Act Release No. 63147 (October 21, 2010), 75 FR 66183 (October 27, 2010) (SR-BATS-2010-029).

<sup>6</sup> The fee is currently \$0.0013 per share executed, but NASDAQ OMX PSX anticipates increasing the fee to \$0.0025 per share executed as of February 1, 2011.

option of routing to a venue with a negative execution cost (BX) and a relatively lower execution cost (PSX) before accessing liquidity on NASDAQ and other venues. Market participants that wish to access NASDAQ before routing to BX and PSX may also do so using SOLV, and will receive the same pricing as those that opt to route to BX and PSX first, subject to the fact that they are likely to have more shares executed on NASDAQ, at a higher cost, than those that use SOLV to route to BX and PSX first. SOLV orders that execute at venues other than NASDAQ, BX or PSX or NYSE will be charged \$0.0026 per share executed, orders that execute at NYSE will be charged \$0.0022 per share executed, and orders that execute in NASDAQ are charged the same execution fee as SAVE, which is \$0.0027 per share executed.

##### **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 Sections 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 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 the proposed routing option will accomplish those ends by providing more flexible options, inasmuch as it offers NASDAQ members a routing strategy with a wide range of execution venues at varying price levels.

The rule change is also consistent with Section 6 of the Act,<sup>9</sup> in general, and with Sections 6(b)(5) of the 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 fees assessed for SOLV are the same fees and rebates currently charged for the similar routing strategy SAVE. Use of the routing option is, of course, entirely voluntary.

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

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

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

### 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

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:

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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.

### 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-2011-023 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-2011-023. 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 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.<sup>15</sup> 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-2011-023 and should be submitted on or before March 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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<sup>15</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63900; File No. SR-NASDAQ-2011-026]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Offer Additional Routing Option

February 14, 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 February 10, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") 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. NASDAQ has designated the proposed rule change as constituting a 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

The Exchange is filing this proposed rule change to offer an additional routing option. NASDAQ proposes to implement the proposed rule change on February 22, 2011 or as soon thereafter as practicable. 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.

#### 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.

<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).