

of the Act⁹ and Rule 19b-4(f)(6)(iii) thereunder.¹⁰

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.¹¹

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 proposal 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. Please include File Number SR-BX-2013-053 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-BX-2013-053. 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 10:00 a.m. and 3:00 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-BX-2013-053 and should be submitted on or before October 24, 2013.

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

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70555; File No. SR-NASDAQ-2013-125]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reduce the Fees Assessed Under NASDAQ Rule 7034 for Certain Co-Location Services

September 30, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on September 20, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or

"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 Substance of the Proposed Rule Change

NASDAQ is proposing changes to reduce the fees assessed under NASDAQ Rule 7034 for certain co-location services.

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

1. Purpose

The Exchange proposes to repeat a temporary fee reduction program to attract new customers to its co-location facility in Carteret, New Jersey.³ Specifically, the Exchange proposes to amend Rule 7034 to reduce the monthly recurring cabinet ("MRC") fees assessed for the installation of certain new co-location cabinets. The reduced MRC fees will apply to new cabinets ordered by users using the Co-Lo Console⁴ on or after October 1, 2013 through December 31, 2013. The reduced fee shall apply to any cabinet that increases the number of dedicated cabinets beyond the total number dedicated to that user as of August 31, 2013 ("Baseline Number"), for so long as the total number of

³ See Exchange Act Release No. 69887 (June 29, 2013) [sic], 78 FR 40527 (July 5, 2013) (notice of publication of SR-NASDAQ-2013-088, a two-month reduction in co-location cabinet fees); Exchange Act Release No. 68624 (Jan. 1, 2013), 78 FR 3945 (Jan. 17, 2013).

⁴ The "Co-Lo Console" is NASDAQ's Web-based ordering tool, and it is the exclusive means for ordering co-location services.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

¹¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

dedicated cabinets exceeds that user's Baseline Number. The reduced MRC fees will apply for a period of 24 months from the date the new cabinet becomes

fully operational under NASDAQ rules, provided that the user's total number of cabinets continues to exceed the Baseline Number.

The Exchange proposes to reduce the applicable fees as follows:

Cabinet type	Current ongoing monthly fee	Reduced ongoing monthly fee
Low Density	\$4,000	\$2,000
Medium Density	5,000	2,500
Medium-High Density	6,000	3,500
High Density	7,000	4,500
Super High Density	13,000	8,000

New cabinets shall be assessed standard installation fees.

NASDAQ proposes to reduce co-location cabinet fees by different amounts to maintain a sliding scale of

lower fees for higher density cabinets on a per kilowatt basis. The chart below reflects this scale:

Cabinet type	Max KW	New fee	Discount (percent)	Fee per KW
Super High Density	17 [sic]	\$8,000	38.46%	\$470.59
High Density	10	4,500	35.71%	450.00
Medium High	7	3,500	41.67%	500.00
Medium Density	5	2,500	50.00%	500.00
Low Density	2.88	2,000	50.00%	694.44

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Section 6(b)(4) of the Act,⁶ 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 the Exchange operates or controls. The proposed reduced fee will be assessed equally on all customers that place an order for a new cabinet after the designated period. The proposed amendments will provide an incentive for customers to avail themselves of the designated co-location services.

NASDAQ's proposal to reduce fees by differing amounts is fair and equitable because it reflects the economic efficiency of higher density co-location cabinets. First, the underlying costs for co-location cabinets consists of certain fixed costs for the data center facility (space, amortization, etc.) and certain variable costs (electrical power utilized and cooling required). The variable costs are in total higher for the higher power density cabinets, as reflected in their higher current prices. Second, the higher density cabinets were introduced later than the lower density cabinets (the High Density cabinet was introduced in 2009 and the Super High Density cabinet was introduced in

2011). Due to the competitive pressures that existed in 2011, Super High Density cabinets were introduced at lower fees per kilowatt. As a result of these already-reduced rates on higher density cabinets, NASDAQ has greater flexibility to discount fees for lower density cabinets, on a per kilowatt basis.

NASDAQ operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that the proposed rule change reflects this competitive environment because it is designed to ensure that the charges for use of the NASDAQ co-location facility remain competitive.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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. To the contrary, the Exchange's voluntary fee reduction is a response to increased competition for co-location services by other exchanges and trading venues. As more venues offer co-location services, competition drives costs lower. The Exchange, in order to retain existing orders and to attract new

orders, is forced to offer a lower effective rate for aggregate cabinet demand. This competition benefits users, members and investors by lowering the average aggregate cost of trading on the Exchange.

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 19(b)(3)(A) of the Act⁷ and paragraph (f) of Rule 19b-4 thereunder.⁸ 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,

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f).

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. Please include File Number SR-NASDAQ-2013-125 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-2013-125. 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 10:00 a.m. and 3:00 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-2013-125, and should be submitted on or before October 24, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Kevin M. O'Neill,
Deputy Secretary.

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**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. 34-70541; File No. SR-Phlx-2013-97]

**Self-Regulatory Organizations;
NASDAQ OMX PHLX LLC; Notice of
Filing and Immediate Effectiveness of
Proposed Rule Change to the Clearly
Erroneous Rule**

September 27, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 26, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "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. 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 extend the pilot period of recent amendments to Rule 3312, concerning clearly erroneous transactions, so that the pilot will now expire on April 8, 2014. The Exchange also proposes to remove certain references to individual stock trading pauses contained in Rule 3312(a)(2)(C)(iv).

The text of the proposed rule change is available from Phlx's Web site at <http://nasdaqomxphlx.cchwallstreet.com>, at Phlx'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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

*A. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change*

1. Purpose

On September 10, 2010, the Commission approved, for a pilot period to end December 10, 2010, a proposed rule change submitted by The NASDAQ Stock Market LLC, BATS Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, New York Stock Exchange LLC, NYSE MKT LLC (formerly, NYSE Amex LLC), NYSE Arca, Inc., and National Stock Exchange, Inc., to amend certain of their respective rules to set forth clearer standards and curtail discretion with respect to breaking erroneous trades.³ The changes were adopted to address concerns that the lack of clear guidelines for dealing with clearly erroneous transactions may have added to the confusion and uncertainty faced by investors on May 6, 2010. In connection with its resumption of trading of NMS Stocks through PSX, the Exchange amended Rule 3312 to conform it to the newly-adopted changes to the other exchanges' clearly erroneous rules, so that it could participate in the pilot program.⁴ The pilot program was extended several times since its adoption and is currently set to expire on September 30, 2013.⁵ In its rule change that extended the pilot program to September 30, 2013,⁶ the Exchange also adopted a provision designed to address the operation of the National Market System Plan to Address Extraordinary Market Volatility⁷ (the "Limit Up-Limit Down Plan"). The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through April 8, 2014, which is one year following commencement of operations of the Limit Up-Limit Down Plan. The Exchange believes that continuing the pilot during this time will protect against any unanticipated consequences. Thus, the Exchange

³ Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010).

⁴ Securities Exchange Act Release No. 63023 (September 30, 2010), 75 FR 61802 (October 6, 2010) (SR-Phlx-2010-125).

⁵ Securities Exchange Act Release No. 68820 (February 1, 2013), 78 FR 9436 (February 8, 2013) (SR-Phlx-2013-12).

⁶ *Id.*

⁷ Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012); *see also* Rule 3312(g).

⁹ 17 CFR 200.30-3(a)(12).