

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 FINRA. 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-FINRA-2009-058 and should be submitted on or before October 13, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60664; File No. SR-NYSEArca-2009-81]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Its Schedule of Fees and Charges for Exchange Services

September 14, 2009.

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 September 4, 2009, NYSE Arca, Inc. ("NYSE Arca" 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 Substance of the Proposed Rule Change

The Exchange proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (the "Schedule") in order to establish a fee for its Risk Management Gateway ("RMG") service. The amended section of the Schedule is included as Exhibit 5 hereto. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange'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.

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

###### 1. Purpose

On August 28, 2009 the Exchange filed with the Securities and Exchange Commission to establish its RMG Service. RMG is a service designed to facilitate the ability of Sponsoring ETP Holders to monitor and oversee the sponsored access activity of their Sponsored Participants. NYXATS offers an order-verification service to Sponsoring ETP Holders that acts as a risk filter by causing the orders of Sponsored Participants to pass through RMG prior to entering the Exchange's trading system for execution. When a Sponsored Participant's order passes through RMG, RMG software determines whether the order complies with order criteria that the Sponsoring ETP Holder has established for that Sponsored Participant. The order criteria reviewed by RMG may include the size of the order or the credit limit that the Sponsoring ETP Holder has established for the Sponsored Participant. This proposed rule change establishes fees for the RMG service.

The Exchange proposes to charge each RMG user Three Thousand Dollars (\$3,000) per month for the first Connection plus One Thousand Dollars (\$1,000) per month for each additional Connection.

A "Connection" is defined as up to 1000 messages per second inbound, regardless of the connection's actual capacity (*i.e.*, if the NYXT infrastructure allows any single End User connection to support more than 1000 messages per second inbound, such connection will be deemed to be multiple Connections).

The Exchange believes that the proposed fee is fair and reasonable and

reflects an equitable allocation of charges among its members.

The fee compares favorably with the fees that the Exchange's competitors charge for similar services, and is the same as the fee charged by the NYSE for its similar service.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),<sup>3</sup> in general, and Section 6(b)(4) of the Act,<sup>4</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that RMG will promote marketplace efficiency by providing security safeguards to the trading of securities by means of sponsored access and believes that the proposed fee is fair and reasonable for the reasons cited above.

##### 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 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

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and Rule 19b-4(f)(2) thereunder,<sup>6</sup> because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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

<sup>3</sup> 15 U.S.C. 78f(b).

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>17</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.

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-NYSEArca-2009-81 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-NYSEArca-2009-81. 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 inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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 No. SR-NYSEArca-2009-81 and should be submitted on or before October 13, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E9-22515 Filed 9-18-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60661; File No. SR-NASDAQ-2009-083]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend IM-2110-4 To Reflect Changes to a Corresponding FINRA Rule

September 11, 2009.

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 September 1, 2009, 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, II, and III below, which Items have been prepared by the Exchange. The Exchange 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

The Exchange is filing this proposed rule change to amend NASDAQ Rule IM-2110-4 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority ("FINRA"). NASDAQ will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com>, at the Exchange'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.

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

##### 1. Purpose

Many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ also proposes to initiate a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule numbers of NASDAQ rules to mirror corresponding FINRA rules, because existing or planned NASDAQ rules make use of those numbers. However, wherever possible, NASDAQ plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses NASDAQ IM-2110-04, which bars trading ahead of research reports and which formerly corresponded to NASD IM-2110-04. In SR-FINRA-2008-054,<sup>4</sup> FINRA redesignated that rule as FINRA Rule 5280 and made substantive amendments to strengthen and simplify the rule. Notably, the amended FINRA rule requires FINRA members to establish, maintain and enforce policies and procedures reasonably designed to restrict or limit the flow of information between research department personnel or other persons with knowledge of the content or timing of a research report, and trading department personnel. Such policies and procedures had formerly been recommended but not required. NASDAQ is adopting the new FINRA rule in full (with minor modifications to reflect limits on its jurisdiction to regulate non-NASDAQ conduct), but is continuing to designate its rule as IM-2110-04 in order to maintain unused numbers of the 5000 Series of the NASDAQ Rules for possible future use.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

<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).

<sup>4</sup> Securities Exchange Act Release No. 59254 (January 15, 2009), 74 FR 4271 (January 23, 2009) (SR-FINRA-2008-054).

<sup>7</sup> 17 CFR 200.30-3(a)(12).