

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68153; File No. SR-NASDAQ-2012-124)

November 5, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend Several NASDAQ Rules to Reflect Changes to Rules of the Financial Industry Regulatory Authority (“FINRA”)

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 October 22, 2012, The NASDAQ Stock Market LLC (“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. On October 26, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 thereto, from interested persons.

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

The Exchange proposes to amend several NASDAQ rules to reflect changes to rules 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://nasdaq.cchwallstreet.com>, at NASDAQ’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange amended Exhibit 1 to: (1) explain the lapse of effectiveness of Nasdaq Rule 6958; (2) redesignate Rule 6958 as Rule 7470A; and (3) reinstate that Rule’s effectiveness to grant Nasdaq exemptive authority with regard to the application of OATS rules. In addition, the Exchange made technical amendments to Exhibit 5 to reflect that prior Rule 6958 is being redesignated as Rule 7470A.

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 governing member conduct 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 has also been undertaking a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. To the extent possible, NASDAQ will designate a NASDAQ rule that is intended to parallel a FINRA rule with the suffix "A". For example, the NASDAQ rule paralleling FINRA Rule 5320 will be designated as Rule 5320A. This filing makes the following changes:

(1) NASDAQ is redesignating IM-2110-2 (Trading Ahead of Customer Limit Order) and Rule 2111 (Trading Ahead of Customer Market Orders) as NASDAQ Rule 5320A, which incorporates FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders) by

reference.⁴ FINRA Rule 5320.02(b) and the reference to Rule 6420 contained therein, which relate to over-the-counter equity securities, will not be reflected in NASDAQ's rule since NASDAQ, unlike FINRA, does not regulate the over-the-counter market.

(2) NASDAQ is redesignating Rules 6950, 6951, 6952, 6953, 6954, 6955, and 6956 as Rules 7400A (Order Audit Trail System), 7410A (Definitions), 7420A (Applicability), 7430A (Synchronization of Member Business Clocks), 7440A (Recording of Order Information), 7450A (Order Data Transmission Requirements), and 7460A (Violation of Order Audit Trail System Rules). NASDAQ is also deleting Rule 6957 (Effective Date), redesignating Rule 6958 as Rule 7470A, and amending that rule to reinstate its effectiveness until July 10, 2015 and make [sic] conforming changes to rule cross-references. By its terms, the effectiveness of the rule had lapsed on July 10, 2011. NASDAQ is reinstating the rule in order to ensure that NASDAQ has the same exemptive authority as FINRA with regard to the application of OATS rules, to ensure that its respective members are not subject to disparate requirements.⁵ NASDAQ is also making changes to rule text to conform to changes to corresponding FINRA rules.⁶

(3) NASDAQ is redesignating Rule 2110 as Rule 2010A (Standards of Commercial Honor and Principles of Trade) and deleting IM-2110-1 (Reserved).⁷

NASDAQ notes that in some instances, the amended rules reference rules that are being adopted by contemporaneous NASDAQ rule filings that have been filed on an immediately

⁴ See Securities Exchange Act Release No. 63895 (February 11, 2011), 76 FR 9386 (February 17, 2011) (SR-FINRA-2009-090).

⁵ The Commission notes that no retroactive coverage is granted to Nasdaq for any actions taken under this Rule during its lapsed period.

⁶ See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR-FINRA-2008-021, -022, -026, -028, -029).

⁷ Id.

effective basis.⁸

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general, and with Section 6(b)(5) of the Act,¹⁰ 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 proposed changes will conform various NASDAQ Rules to changes made to corresponding FINRA rules, thus promoting application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with NASDAQ.

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.

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.

⁸ See SR-NASDAQ-2012-122 (October 22, 2012); SR-NASDAQ-2012-123 (October 22, 2012).

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act¹¹ and paragraph (f)(6) of Rule 19b-4 thereunder,¹² in that the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its 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.

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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

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. Please include File Number SR-NASDAQ-2012-124 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-2012-124. 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 website (<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 website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-2012-124, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).