

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63414; File No. SR-NASDAQ-2010-153)

December 2, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by The NASDAQ Stock Market LLC to Clarify the Exclusion of Partial Trading Days From Certain Calculations Within the Investor Support Program

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 November 24, 2010, 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 self-regulatory organization. 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 filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal for the NASDAQ Options Market (“NOM” or “Exchange”) to clarify that partial trading days will not be counted toward the calculation of certain Investor Support Program (“ISP”) credit eligibility requirements pursuant to subsection (c)(2) of the rule.

The text of the proposed rule change is available from NASDAQ’s website at <http://nasdaq.cchwallstreet.com/Filings/>, 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.

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 is proposing to amend Rule 7014 to clarify that partial trading days will not be counted toward the calculation of certain ISP credit eligibility requirements pursuant to subsection (c)(2) of the rule, particularly the average daily number of shares of liquidity provided in orders entered by the member through its ISP-designated ports and executed in the Nasdaq Market Center during the month.

The Exchange established an Investor Support Program that enables NASDAQ members to earn a monthly fee credit for providing additional liquidity to NASDAQ and increasing the NASDAQ-traded volume of what are generally considered to be retail and institutional investor orders in exchange-traded securities (“targeted liquidity”).³ The goal of the ISP is to incentivize members to provide such targeted liquidity to the NASDAQ Market Center.⁴ The Exchange

³ For a detailed description of the Investor Support Program, see Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010)(NASDAQ-2010-141)(notice of filing and immediate effectiveness)(the “ISP Filing”).

⁴ The Commission has recently expressed its concern that a significant percentage of the orders of individual investors are executed at over the counter (“OTC”) markets, that is, at off-exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. Securities Exchange Act Release No. 61358

noted in the ISP Filing that maintaining and increasing the proportion of orders in exchange-listed securities executed on a registered exchange (rather than relying on any of the available off-exchange execution methods) would help raise investors' confidence in the fairness of their transactions and would benefit all investors by deepening NASDAQ's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Partial trading days are not excluded from the average daily number of shares of liquidity provided and executed pursuant to certain ISP credit eligibility criteria in the rule and the Exchange now proposes a change to do so.⁵

To further the ISP goal of attracting certain targeted retail and institution liquidity, the ISP limits ISP credit eligibility to targeted liquidity-enhancing orders in large part by: establishing a monthly ISP Execution Ratio⁶ of 10 or above (subsection (c)(1)); and a monthly cap of 10 million for the average daily number of shares of liquidity provided in orders entered by the member through its ISP-designated ports and executed in the NASDAQ Market Center

(January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, "Concept Release"). See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) ("Schapiro Speech," available on the Commission website)(comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

⁵ NASDAQ notes that exclusion of partial trading days would be consistent with how the Exchange treats partial trading days for tabulation of pricing tiers under Rule 7018(j).

⁶ The term "ISP Execution Ratio" is defined as: the ratio of (i) the total number of liquidity-providing orders entered by a member through its ISP-designated ports during the specified time period to (ii) the number of liquidity-providing orders entered by such member through its ISP-designated ports and executed (in full or partially) in the NASDAQ Market Center during such time period (provided that: (i) no order shall be counted as executed more than once; (ii) no Pegged Orders, odd-lot orders, or MIOC or SIOC orders shall be included in the tabulation; and (iii) no order shall be included in the tabulation if it executes but does not add liquidity). Rule 7014 (d)(3).

during the month (subsection (c)(2)). As noted, in the ISP Filing the Exchange did not exclude partial trading days from the calculation of order numbers pursuant to subsection (c)(2) of the rule. The Exchange believes that the inclusion of partial trading days⁷ may serve to improperly skew the operative calculations. As such, the Exchange proposes to add new section (c)(3) that states that for purposes of determining the average daily number of shares of liquidity provided pursuant to subsection (c)(2) of this Rule, any day that the market is not open for the entire trading day will be excluded from such calculation.⁸

The Exchange believes that the proposed change to the ISP, which will be equally applicable to all ISP participants, should be conducive to further enhancing the program's fairness and equitability.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ 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, and it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The rule change enhances the Investor Support Program, which helps to raise investors' confidence in the fairness of their transactions and benefit all investors

⁷ A partial trading day may occur, as an example, immediately after the Thanksgiving holiday.

⁸ There have been no partial trading days in the month of November previous to the date of submission of the filing and it would therefore not be retroactive in effect.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

by deepening NASDAQ's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

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.

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.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. 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

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2010-153 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-2010-153. 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, 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 such 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-2010-153 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.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).