

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63959; File No. SR-NASDAQ-2011-031)

February 24, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the NASDAQ Order Imbalance Snapshot

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 23, 2011, The NASDAQ Stock Market LLC (the “Exchange” or “NASDAQ”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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

The Exchange is filing this proposed rule change regarding the NASDAQ Order Imbalance Snapshot, a data feed of electronic messages for newswire providers to monitor the NASDAQ Opening Cross, Closing Cross, IPO Cross and Halt Cross. 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

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

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

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

NASDAQ facilitates participation in electronic auctions by disseminating the Order Imbalance Indicator, a data feed containing information regarding the status of the NASDAQ book just prior to a crossing auction. The data contained in the Order Imbalance Indicator is set forth in NASDAQ Rules governing the crosses for the Opening Cross (Rule 4752), Halt/IPO Cross (Rule 4753), and Closing Cross (Rule 4754).

The NASDAQ Order Imbalance Snapshot (“NOIS”) is a separate service that provides a snapshot version of the Order Imbalance Indicator that is streamlined and filtered for use by newswire services. Rather than providing continuous order imbalance data, NOIS provides the data for certain stocks at selected time intervals in a format designed to optimize systems used by newswire providers. In other words, NOIS contains a subset of information already approved to be disseminated via the Order Imbalance Indicator.

Specifically, for the NASDAQ Opening and Closing Crosses, NOIS disseminates messages only for exchange-listed securities that show an imbalance shares amount equal to or more than 50,000 shares. For those messages NOIS disseminates, the message includes all imbalance information set forth in the Order Imbalance Indicator set forth in NASDAQ Rule 4752(a), 4753(a), and 4754(a). NOIS disseminates messages for securities listed on any national securities exchange, not just those listed on NASDAQ.

For NASDAQ IPO Crosses, NOIS messages are disseminated approximately 3 minutes

and 13 minutes after the “Trading Action – Quote Resumption” message, which signals imminent launch of trading, is disseminated for the issue. NOIS will also disseminate a message if the quotation window is extended for the IPO security. There is no share size filter for the IPO cross. NASDAQ currently disseminates IPO Cross messages only for NASDAQ-listed securities.

For the NASDAQ Halt Cross, which NASDAQ uses to release securities subject to a regulatory trading halt or single security trading pause, NOIS messages will be disseminated approximately 3 minutes after the “Trading Action – Quote resumption” message is transmitted for the issue. NOIS will also disseminate a message if the quotation window is extended for the halted or paused security. There is no share size filter for the Halt cross. For the Halt Cross, NOIS disseminates messages for NASDAQ-listed issues only.

NOIS data elements are disseminated to newswires for further dissemination to newswire subscribers. Therefore, the NOIS feed is not directly actionable by investors for quoting, order entry or trade execution.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>3</sup> in general and with Section 6(b)(5) of the Act,<sup>4</sup> in particular, in that it 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

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

<sup>4</sup> 15 U.S.C. 78f(b)(5).

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.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Nasdaq believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of more useful proprietary data and also by clarifying its availability to market participants.

Additionally, NASDAQ is making a voluntary decision to make this data available. NASDAQ is not required by the Exchange Act in the first instance to make the data available, unlike the best bid and offer which must be made available under the Act. NASDAQ chooses to make the data available as proposed in order to improve market quality, to attract order flow, and to increase transparency. Once this filing becomes effective, NASDAQ will be required to continue making the data available until such time as NASDAQ changes its rule.

**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. NASDAQ provides routing services in a highly competitive market in which participants may avail themselves of a wide variety of routing options offered by self-regulatory organizations, alternative trading systems, other broker-dealers, market participants' own proprietary routing systems, and service bureaus. In such an environment, system enhancements such as the changes proposed in this rule filing do not burden competition, because they can

succeed in attracting order flow to NASDAQ only if they offer investors higher quality and better value than services offered by others. Encouraging competitors to provide higher quality and better value is the essence of a well-functioning competitive marketplace.

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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder.<sup>6</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 change 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

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

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

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-2011-031 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-2011-031. 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 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-2011-031 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.<sup>7</sup>

Cathy H. Ahn  
Deputy Secretary

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