

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64715; File No. SR-NASDAQ-2011-084)

June 21, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NASDAQ Rule 4763

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 June 15, 2011, 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 and II below, which Items have been substantially 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 the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend NASDAQ Rule 4763 to modify the Exchange’s procedures for early termination of the short sale price test restrictions of Rule 201 of Regulation SHO. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 February 26, 2010, the Commission adopted amendments to Rules 200(g) and 201 of Regulation SHO.³ The amendments became effective on May 10, 2010, and compliance was required by February 28, 2011.⁴ The amendments to Rule 201 require trading centers⁵ such as NASDAQ to establish, maintain, and enforce certain written policies and procedures reasonably designed to comply with the rule.⁶ NASDAQ is proposing to amend NASDAQ Rule 4763 to modify the Exchange's procedures for early

³ See Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010) (File No. S7-08-09; Amendments to Regulation SHO) ("Rule 201 Adopting Release"). In the Rule 201 Adopting Release, the Commission also adopted amendments to Rule 200(g) of Regulation SHO to include a "short exempt" marking requirement. 17 CFR 242.200(g).

⁴ See Securities Exchange Act Release No. 63247 (November 4, 2010), 75 FR 68702 (November 9, 2010) (File No. S7-08-09).

⁵ Rule 201(a)(9) states the term "trading center" will have the same meaning as in Rule 600(b)(78). 17 CFR 242.201(a)(9). Rule 600(b)(78) of Regulation NMS defines a "trading center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." 17 CFR 242.600(b)(78).

⁶ See 17 CFR 242.201(b). As a general matter, Rule 201 requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from the covered security's prior day's closing price. 17 CFR 242.201(b)(1)(i).

termination of the short sale price test restrictions of Rule 201 based on a triggering transaction that another exchange or SRO has determined was a clearly erroneous execution pursuant to the rules of that exchange or SRO.

Under NASDAQ Rule 4763(d), Duration of Short Sale Price Test, once triggered, the short sale price test restriction shall remain in effect until the next trading day when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan,⁷ as provided for in Rule 201(b)(1)(ii) (the “Short Sale Period”). The duration of the Short Sale Period may differ under two different scenarios provided for in Rule 4763.⁸ First, if the Exchange determines pursuant to NASDAQ Rule 4763(d)(1) that the short sale price test restriction for a covered security was triggered because of a clearly erroneous execution,⁹ NASDAQ may lift the short sale price test restriction before the

⁷ See 17 CFR 242.201(b)(1)(ii). See also Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A No. 2.1.

⁸ In addition, if the price of a covered security declines intra-day by at least 10% on a day on which the security is already subject to the short sale price test restriction of Rule 201, the restriction will be re-triggered and, therefore, will continue in effect for the remainder of that day and the following day. See Rule 201 Adopting Release, 75 FR at 11253, n. 290. In addition, Rule 201 does not place any limit on the frequency or number of times the circuit breaker can be re-triggered with respect to a particular stock. See Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A No. 2.2.

⁹ See NASDAQ Rule 4762 which cross-references NASDAQ Rule 11890 for the standard of determining when a trade is “clearly erroneous.” The terms of a transaction executed on NASDAQ are “clearly erroneous” when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security. A transaction made in clearly erroneous error and cancelled by both parties or determined by NASDAQ to be clearly erroneous will be removed from the consolidated tape.

Short Sale Period ends for covered securities for which the Exchange is the listing market.¹⁰ Second, if NASDAQ determines pursuant to NASDAQ Rule 4763(d)(2) that the prior day's closing price for a covered security is incorrect in the System and resulted in an incorrect determination of the Trigger Price,¹¹ the Exchange may correct the prior day's NASDAQ official closing price and lift the short sale price test restriction before the Short Sale Period ends.

For securities for which the Exchange is the listing market, NASDAQ Rule 4763 currently addresses only clearly erroneous triggering transactions deemed to be clearly erroneous executions under the Exchange's rules, and does not address situations where another exchange or SRO determines, under its respective rules, that a triggering transaction was a clearly erroneous execution. To address this scenario, the Exchange proposes to amend NASDAQ Rule 4763(d) to provide that the Exchange may also lift the short sale price test restrictions before the Short Sale Period ends, for covered securities for which the Exchange is the listing market, if the Exchange has been informed by another exchange or SRO that a transaction in the covered security that occurred at the Trigger Price was a clearly erroneous execution, as determined by that exchange or SRO under its rules.¹²

¹⁰ See 17 CFR 242.201(a)(3).

¹¹ The term "Trigger Price" is used in Rule 4763(b) to refer to a decrease of 10% or more in a security's price from the security's closing price on the listing market at the end of regular trading hours on the prior day.

¹² The Exchange will only lift the short sale price test restrictions before the Short Sale Period ends under these circumstances when informed by another exchange or SRO that a triggering transaction has been determined to be a clearly erroneous execution under the rules of the exchange or SRO, consistent with the authority of that exchange or SRO for making such determinations.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed to, among other things, prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposal is designed to refine the Exchange's written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security in violation of the short sale price test restrictions established in NASDAQ Rule 4763 and Rule 201. To that end, the proposed rule change expands the ability of the Exchange, as a listing market, to lift short sale price test restrictions to include situations where the Exchange has been informed by another exchange or SRO that a transaction in the covered security that occurred at the Trigger Price was a clearly erroneous execution, as determined by that exchange or SRO under its rules.

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. Rather, the change will promote greater competition by allowing NASDAQ to adopt functionality already in use at competing national securities exchanges.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

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.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹⁷ However, Rule 19b-4(f)(6)(iii)

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self regulatory organization submit to 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. The Exchange has satisfied this requirement.

permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.¹⁸ NASDAQ has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing, pursuant to Section 19(b)(3)(A) of the Act¹⁹ and Rule 19b-4(f)(6)²⁰ thereunder. The Exchange believes that waiver of the delayed operative date is appropriate because the proposed rule change is consistent with the original objective of Rule 4763 (*i.e.*, to permit the Exchange to lift the short sale price test restrictions before the end of a Short Sale Period in the event of a clearly erroneous triggering trade). Specifically, the current rule only addresses triggering transactions deemed to be clearly erroneous executions under the Exchange’s rules. The proposed change would permit the Exchange to lift the short sale price test restrictions before the Short Sale Period ends, for covered securities for which the Exchange is the listing market, if the Exchange has been informed by another exchange or SRO that a transaction in the covered security that occurred at the Trigger Price was a clearly erroneous execution, as determined by that exchange or SRO under its rules.

The Exchange believes that this proposal is “non-controversial” because it merely seeks to implement additional protections against the triggering of short sale price test restrictions based on transactions determined by an exchange or SRO to be clearly erroneous executions under the rules of that exchange or SRO. For the foregoing

¹⁸ *Id.*

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4.

reasons, this rule filing qualifies for immediate effectiveness as a “noncontroversial” rule change under paragraph (f)(6) of Rule 19b-4.²¹

The Commission has considered the Exchange’s request to waive the 30-day operative delay, and hereby grants the request.²² The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will permit the Exchange to lift the short sale price test restrictions of Rule 201, in a covered security for which the Exchange is the listing market, when such restrictions were triggered by a transaction that another exchange or SRO has determined to be a clearly erroneous execution, under the rules of that exchange or SRO. For this reason, the Commission designates the proposed rule change to be operative upon filing.

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:

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-2011-084 on the subject line.

²¹ 17 CFR 240.19b-4(f)(6).

²² For the purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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-2011-084. 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-2011-084, 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.²³

Cathy H. Ahn
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).