

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64821; File No. SR-NASDAQ-2011-088)

July 6, 2011

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

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 27, 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

NASDAQ is filing with the Securities and Exchange Commission (“Commission”) a proposal for the NASDAQ Options Market (“NOM”) to amend Chapter VI, Trading Systems, Section 11, Order Routing, to address the priority of routed orders, as described further below.

This change is scheduled to be implemented on NOM on or about August 15, 2011; the Exchange will announce the implementation schedule by Options Trader Alert, once the rollout schedule is finalized.

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.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to allow routed orders to retain priority in the rare instances where the routed portion returns without being fully executed, when a portion of the original order submitted by the customer remains on the book, as described in detail below. Currently, Chapter VI, Section 11 governs the routing of orders on NOM and describes when orders are routed. Section 11(a) describes order routing generally and defines the specific routing options. Section 11(b) covers non-System securities, which are options other than options that are currently trading on NOM pursuant to Chapter IV.³ Section 11(d) governs the obligation to honor trades executed on destination exchanges resulting from routing. Section 11(e) describes the broker-dealer that operates NOM's Routing Facility and how it functions.

Section 11(c) governs the priority of routed orders. Specifically, pursuant to Section 11(c), orders sent by the System to other markets do not retain time priority with respect to other orders in the System and the System continues to execute other orders while routed orders are

³ NOM Rules, Chapter VI, Section 1(b).

away at another market center.⁴ Once routed by the System, an order becomes subject to the rules and procedures of the destination market including, but not limited to, order cancellation. If a routed order is subsequently returned, in whole or in part, that routed_order, or its remainder, receives a new time stamp reflecting the time of its return to the System. Accordingly, under current NOM rules and functionality, a routed order that returns to NOM, in effect, loses its place in line on NOM.

The Exchange proposes to change that result by, instead, having the routed order that returns to NOM retain its original timestamp if any portion of that order remains on NOM. Thus, under this proposal, if a routed order is subsequently returned, in whole or in part, that routed order, or its remainder, receives a new time stamp reflecting the time of its return to the System, unless any portion of the original order remains on the System, in which case the routed order shall re-join the portion that remains on the book, retaining its timestamp and its priority. The Exchange proposes to amend Section 11(c) to reflect this.

Under this proposal, there will now be a situation where a returned routed order will retain its original timestamp and priority, as though the unsuccessful routing had never occurred. The Exchange does not believe that this result is problematic or raises regulatory issues. In fact, in situations where a portion of an order remains on the Exchange and a portion is routed, the Exchange routes such order so as to execute it and comply with the regulatory requirements to avoid trade-throughs and locked and crossed markets. Various market conditions determine the destination(s) to which an order is routed, the portion of the order that should be routed, and whether or not the routed order results in an execution. Accordingly, the Exchange believes that

⁴ Because the System routes the lesser of the disseminated size of the away markets or the order size, it is possible for a portion of an order to be routed rather than the entire order. Respecting the part of an order that is routed, that order can either be executed in full, in part or not at all on the destination exchange.

its processes to route and timestamp routed orders, which are spelled out in its rules, are intended to make clear to market participants the various outcomes that result, depending on various market conditions.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that retaining the original timestamp on a partially routed order is designed to promote just and equitable principles of trade and protect investors and the public interest, because maintaining the original order as a single order is the simplest method of handling the order, which should help entering firms manage their order flow. Respecting routable orders, market conditions, not the entering firm, determine whether the order is routed, and ultimately whether it is executed on the destination market, such that the Exchange believes that it is simpler and more logical to treat the unexecuted portion of a routed order together with the original order. In addition, retaining the original timestamp on a partially routed order does not disadvantage other orders on the book, because the partially routed order had time priority and is merely returning, in effect, to its original place in time priority on the book. The portion of the order that was not routed and remained on the book is available for execution; if it is

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

executed in full before the routed portion returns to the Exchange, the returned, routed portion receives a new timestamp book.

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 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 either solicited or 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6)⁸ thereunder.

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.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2011-088 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-2011-088. 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-2011-088 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.⁹

Cathy H. Ahn
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).