

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64958; File No. SR-NASDAQ-2011-095)

July 25, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Proprietary Trader Examination

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on July 12, 2011, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been 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 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 its Rule 1032, Categories of Representative Registration, to adopt a new limited category of representative registration for proprietary traders, as described further below. NASDAQ intends to implement the proposal upon Commission approval³ and availability in WebCRD; NASDAQ will communicate the applicable dates to NASDAQ members.

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 The Commission notes that this filing is effective on filing.

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

The purpose of the proposed rule change is to recognize a new category of limited representative registration for proprietary traders. Currently, under NASDAQ rules, persons performing proprietary trading functions fall within the definition of representative in Rule 1011, because Rule 1011 includes persons who are engaged in the investment banking or securities business of a member. Specifically, a "Representative" means an Associated Person⁴ of a registered broker or dealer who is engaged in the investment banking or securities business for the member including the functions of supervision, solicitation or conduct of business in securities or who is engaged in the training of persons associated with a broker or dealer for any of these functions are designated as representatives. As provided in Rule 1031, all

⁴ Pursuant to Rule 1011(b), the term "Associated Person" means any partner, officer, director, or branch manager of a NASDAQ member or Applicant (or person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such NASDAQ member or Applicant, or any employee of such NASDAQ member or Applicant, except that any person associated with a NASDAQ member or Applicant whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of the NASDAQ Rules.

Representatives of NASDAQ Members are required to be registered with NASDAQ, and Representatives that are so registered are referred to as "Registered Representatives."

NASDAQ has been working with FINRA and certain other exchanges, many of which have recently enhanced their registration requirements to require the registration of associated persons,⁵ to develop the content outline and qualification examination that would be applicable to proprietary traders. This new qualification examination, the Series 56, was recently filed with the Commission;⁶ NASDAQ expects to file the content outline with the Commission as well and make it available upon availability in WebCRD. Accordingly, NASDAQ is amending its rules to recognize the new registration category "Proprietary Trader" and the new examination, the Series 56.

Specifically, NASDAQ proposes to adopt new subparagraph (c) to Rule 1032 to recognize the "Proprietary Trader" category of registration. Like other categories of limited representative registration currently available, the new Proprietary Trader category would be limited to persons performing the functions specified in new Rule 1032(c), which is proprietary trading. The proposed rule expressly provides that such person's activities in the investment banking or securities business are limited solely to proprietary trading, that he passes the Series 56 and that he is an associated person of a proprietary trading firm as defined in Rule 1011(o).⁷

⁵ See Securities Exchange Act Release Nos. 63843 (February 4, 2011), 76 FR 7884 (February 11, 2011) (SR-ISE-2010-115); and 63314 (November 12, 2010), 75 FR 70957 (November 19, 2010)(SR-CBOE-2010-084).

⁶ One exchange has thus far filed a proposed rule change respecting the Series 56, which has become effective. See Securities Exchange Act Release No. 64699 (June 17, 2011)(SR-CBOE-2011-056).

⁷ Rule 1011(o) defines a proprietary trading firm as an Applicant with the following characteristics: (1) the Applicant is not required by Section 15(b)(8) of the Act to become a FINRA member but is a member of another registered securities exchange not registered solely under Section 6(g) of the Act; (2) all funds used or proposed to be used by the Applicant for trading are the Applicant's own capital, traded through the

Persons who deal with the public do not fit in this registration category and must continue to register as General Securities Representatives. NASDAQ believes that the new limited registration category and qualification examination are appropriate, because they are tailored to proprietary trading functions. Today, these persons are required to register as a General Securities Representative and pass the Series 7 examination, which the Exchange believes covers a great deal of material that is not relevant to proprietary trading functions. Instead, the Series 56 covers both equities and options trading rules, but not all of the rules that are applicable to firms and persons conducting a public business. As stated above, NASDAQ will describe the Series 56 in greater detail in a separate proposed rule change.

Of course, persons registered in the new category would be subject to the continuing education requirements of Rule 1120. In addition, the process for registering continues to be covered by Rule 1140, which provides that WebCRD must be used.

Today, because NASDAQ rules require it, persons associated with NASDAQ members are already registered as General Securities Representatives and have passed the Series 7 examination. This proposal does not require proprietary traders who have already registered as General Securities Representatives and have passed the Series 7 examination to register under the new category as Proprietary Traders or to pass the Series 56, because NASDAQ believes this would be redundant. Persons who are registered as General Securities Representatives and have passed the Series 7 may, of course, perform the functions of a Proprietary Trader, because the new Proprietary Trader registration category is a limited registration category. This proposal

Applicant's own accounts; (3) the Applicant does not, and will not have "customers," as that term is defined in Nasdaq Rule 0120(g); and (4) all Principals and Representatives of the Applicant acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Applicant. "Applicant" is defined in Rule 1011(a).

does not preclude associated persons from registering as General Securities Representatives and passing the Series 7 examination and then functioning as a Proprietary Trader.

NASDAQ expects that new members might consider the new category when applying for NASDAQ membership, once the new category and examination become available to NASDAQ members in WebCRD. Accordingly, NASDAQ believes that the new category should be helpful to attracting new members to NASDAQ, while at the same time preserving the important goals of appropriate registration and qualification for persons in the securities business. Additionally, members who hire new associated persons might choose to register in the new category.

Unlike the associated persons of proprietary trading firms covered by this proposal, associated persons of firms that are NOT proprietary trading firms continue to be subject to registration as General Securities Representatives and have to pass the Series 7 examination.⁸ They are not eligible for the new registration category and examination.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of : (1) Section 6(c)(3)(B) of the Act,¹⁰ pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons; and (2) Section 6(b)(5) of the Act,¹¹ in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free

⁸ Such persons may also be subject to registration as an Equity Trader pursuant to Rule 1032(f), which requires successful completion of the Series 55 exam (for which the prerequisite is the Series 7 examination).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78(c)(3)(B).

¹¹ 15 U.S.C. 78f(b)(5).

and open market and a national market system, and, in general, to protect investors and the public interest, by offering a new, limited registration category to NASDAQ members. The Exchange believes that these new requirements should help ensure that all associated persons engaged in a securities business are, and will continue to be, properly trained and qualified to perform their functions, because the new category and examination are limited and tailored to persons performing proprietary trading functions.

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 Act¹² and Rule 19b-4(f)(6)¹³ 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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 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.

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2011-095 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-2011-095. 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 NASDAQ. 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2011-095 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.¹⁴

Elizabeth M. Murphy
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).