

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60570; File No. SR-NASDAQ-2009-079)

August 26, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Eliminate Flash Orders

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 August 21, 2009, The NASDAQ Stock Market LLC (“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 prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. Nasdaq will implement the proposed rule change on September 1, 2009. 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 proposes a rule change to eliminate Flash Orders.⁴ The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

4750. Nasdaq Market Center-Execution Services

4751. Definitions

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ Nasdaq filed separate proposals to create flash orders that ultimately could be routed to other markets, and flash orders that would cancel back to the entering party. See SR-NASDAQ-2009-043 and SR-NASDAQ-2009-048. This filing eliminates both versions of these orders, with both types referred to herein collectively as Flash Orders.

The following definitions apply to the Rule 4600 and 4750 Series for the trading of securities listed on Nasdaq or a national securities exchange other than Nasdaq.

(a) through (e) No Change.

(f) The term "Order Type" shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1) – (10) No Change.

(11) Reserved ["Flash and Cancel Orders" are market or marketable limit orders which are to be executed in whole or in part immediately upon receipt by the System with any unfilled balance being displayed to Nasdaq market participants (and market data vendors) for potential execution for a period of time not to exceed one-half of one second. If any unfilled balance remains after such display, such marketable unfilled balance shall be cancelled back to the entering party, and such nonmarketable unfilled balance shall be retained by the System for potential execution. The System will provide an electronic method to distinguish the Flash Order during the flash period from the System's protected quote under Regulation NMS.]

(12) – (13) No Change.

(g) through (i) No Change.

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4758. Order Routing

(a) Order Routing Process

(1) The Order Routing Process shall be available to Participants from 7:00 a.m. until 8:00 p.m. Eastern Time, and shall route orders as described below: All routing of orders shall comply with Rule 611 of Regulation NMS under the Exchange Act.

(A) The System provides three routing options. Of these three, DOT is only available for orders ultimately sought to be directed to either the New York Stock Exchange ("NYSE") or NYSE Amex. The System will consider the quotations only of accessible markets and will provide an electronic method to distinguish orders displayed during a prerouting display period from the System's protected quote under Regulation NMS. The three System routing options are:

(i) DOT ("DOT")—under this option, after checking the System for available shares if so instructed by the entering firm, orders are sent to other available market centers for potential execution, per entering firm's instructions, before being sent to the destination exchange, so long as the price at such market centers would not violate the Order Protection Rule. [If instructed by the entering firm, prior to sending orders to other available markets, such orders shall be displayed to Nasdaq market participants (and market data vendors) for potential execution, at the NBBO price, for a period of time not to exceed one-half of one second as determined by Nasdaq.] Any un-executed portion will thereafter be sent to the NYSE or NYSE Amex, as appropriate, at the order's original limit order price. This option may only be used for orders with time-in-force parameters of either SDAY, SIOC, MDAY, MIOC, GTMC or market-on-open/close. Notwithstanding the foregoing, orders designated for participation in the NYSE or NYSE Amex opening or closing processes will not check the System for available shares prior to routing.

(ii) Reactive Electronic Only ("STGY")—under this option, after checking the System for available shares if so instructed by the entering firm, orders are sent to other available market centers for potential execution, per entering firm's instructions. When checking the book, the System will seek to execute at the price it would send the order to a destination market center. [If instructed by the entering firm, prior to sending orders to other available markets, such orders

shall be displayed to Nasdaq market participants (and market data vendors) for potential execution, at the NBBO price, for a period of time not to exceed one-half of one second as determined by Nasdaq.] If shares remain un-executed after routing, they are posted on the book . Once on the book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option.

(iii) Electronic Only Scan ("SCAN")—under this option, after checking the System for available shares if so instructed by the entering firm, orders are sent to other available market centers for potential execution, per entering firm's instructions, in compliance with Rule 611 under Regulation NMS. When checking the book, the System will seek to execute at the price it would send the order to a destination market center. [If instructed by the entering firm, prior to sending orders to other available markets, such orders shall be displayed to Nasdaq market participants (and market data vendors) for potential execution, at the NBBO price, for a period of time not to exceed one-half of one second as determined by Nasdaq.] If shares remain un-executed after routing, they are posted on the book . Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option.

Orders that do not check the System for available shares prior to routing may not be sent to a facility of an exchange that is an affiliate of Nasdaq, except for orders that are sent to the NASDAQ OMX BX Equities Market.

(B) No Change.

(b) No Change.

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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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq implemented Flash Orders on June 5, 2009. Upon further review, Nasdaq proposes to eliminate Flash Orders effective September 1, 2009.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Section 6(b)(5) of the Act,⁶ in particular, in that the proposal 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

⁵ 15 U.S.C. 78f.

⁶ 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.

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.

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 rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

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.⁹ However, Rule 19b-4(f)(6)(iii)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 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. Nasdaq has satisfied this requirement.

¹⁰ Id.

investors and the public interest. Nasdaq has requested that the Commission waive the 30-day operative delay. Nasdaq requests this waiver so as to allow it to eliminate Flash Orders on September 1, 2009.¹¹ Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative on September 1, 2009.¹²

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate 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.

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 No. SR-NASDAQ-2009-079 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities

¹¹ See SR-NASDAQ-2009-079, Item 7.

¹² For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-NASDAQ-2009-079. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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 available publicly. All submissions should refer to File No. SR-NASDAQ-2009-079 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.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).