

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62735; File No. SR-NASDAQ-2010-101)

August 17, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delete Rule 4770 in its Entirety and to Eliminate a Related Reference from the Rules

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 August 10, 2010, The NASDAQ Stock Market LLC (“NASDAQ”) filed with the Securities and Exchange Commission (“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 the Substance of the Proposed Rule Change

NASDAQ is proposing to delete Rule 4770 in its entirety from the NASDAQ rulebook and to also eliminate a reference to Rule 4770 from Rule 4751(f)(13). The text of the proposed rule change is below. Proposed new language is underlined and proposed deletions are in brackets.

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4751. Definitions

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) – (e) No change.

(f) The term “Order Type” shall mean the unique processing prescribed for designated orders

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

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

that are eligible for entry into the System, and shall include:

(1) – (12) No change.

(13) “Collared Orders” are all Unpriced Orders except: (1) Market On Open Orders as defined in Rule 4752; (2) Market On Close Orders as defined in Rule 4754; or (3)

Unpriced Orders included by the System in any Nasdaq Halt Cross or Nasdaq Imbalance Cross, each as defined in Rule 4753[; or (4) Unpriced Orders that are Reference Price Cross Orders as defined in Rule 4770]. Any portion of a Collared Order that would execute (either on NASDAQ or when routed to another market center) at a price more than \$0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled.

(g) - (i) No change.

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4770. Reserved[Nasdaq Crossing Network

(a) Definitions. For the purposes of this rule the term:

(1) “Nasdaq Reference Price Cross” shall mean the process for executing orders at a predetermined reference price at a randomly selected point in time during a five-second trading window beginning at 10:45 a.m., 12:45 p.m. and 2:45 p.m. Eastern Time during the regular hours session and at 4:30 p.m. during the after hours session.

(2) “Nasdaq Reference Price Cross eligible securities” shall mean Nasdaq-listed securities and securities listed on the New York Stock Exchange, the American Stock Exchange or a regional exchange.

(3)

(A) “Reference Price Cross Order” or “RPC” shall mean a market or limit order to buy or sell in Nasdaq Reference Price eligible securities that may be executed only during a Nasdaq Reference Price Cross. RPC orders shall not be displayed and must be designated with a time-in-force value to participate either:

(i) in the next scheduled regular hours cross with unexecuted shares being immediately canceled back to the market participant after that cross

(NXT);

(ii) in all remaining crosses during the trading day with unexecuted shares being immediately canceled back to the market participant after the final regular hours cross (REG); or

(iii) in all remaining crosses in the current day with unexecuted shares immediately canceled back to the market participant after the after hours cross (ALX).

(B) Starting at 7:30 a.m. Eastern Time until the time of the last after hours session Reference Price Cross, participants may enter, cancel or correct RPC orders, but such orders shall not be available for execution until the next eligible Reference Price Cross. RPC orders must be entered in round lots with a minimum size of one round lot and may designate a minimum acceptable execution quantity. All RPC orders must be available for automatic execution.

(b) Processing of Nasdaq Reference Price Cross.

(1) Each Nasdaq Reference Price Cross shall occur during the regular hours session or the after hours session window commencing at such times as may be designated by Nasdaq upon prior notice to market participants.

(2) Nasdaq Reference Price Crosses that occur during the regular hours session shall be executed at the midpoint of the national best bid and offer, trade reported without identifying the contra party, and disseminated via the consolidated tape.

(3) Nasdaq Reference Price Crosses that occur during the after hours session shall execute at the Nasdaq Official Closing Price for Nasdaq-listed securities or at the official closing price of the primary market for securities listed on the New York Stock Exchange, the American Stock Exchange or a regional exchange, shall be trade reported without identifying the contra party, and disseminated via the consolidated tape.

(4) RPC orders will be allocated on a pro-rata basis, such that shares will be allocated pro-rata in round lots to eligible orders based on the original size of the order. If additional shares remain after the initial pro-rata allocation, those shares will continue to be allocated pro-rata to eligible orders until a number of round lots remain that is less than the number of eligible orders. Any remaining shares will be allocated to the order which has designated the smallest minimum acceptable execution quantity. If more than one such order exists, any remaining shares will be allocated to the oldest eligible order. If the allocation to an eligible order would be less than the minimum acceptable execution quantity for that order, the order shall not be eligible for execution in that cross.

(5) If the reference price described in subparagraph (3) above is outside the benchmarks established by Nasdaq by a threshold amount at the time an after hours cross is scheduled

to occur, the Nasdaq Reference Price Cross shall not occur for that security. Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.

(6) If the national best bid and offer is crossed at the time of a Reference Price Cross during the regular hours session, the cross shall be delayed for up to five minutes beyond the time the Reference Price Cross was scheduled to occur and shall execute at the midpoint of the national best bid and offer when the quote becomes uncrossed. In the event the quote remains crossed beyond five minutes after the time of the scheduled Reference Price Cross, the cross will not occur and unexecuted NXT orders shall be returned to market participants.

(7) If the national best bid and offer is locked at the time of a Reference Price Cross during the regular hours session, the cross shall execute at the lock price.

(8) If trading in a security is halted for regulatory or other reasons at the time a cross is scheduled to occur, the cross will not occur and all unexecuted NXT orders shall be returned to market participants.]

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The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaq.com>, on the Commission's Web site at <http://www.sec.gov>, at the Exchange, and at the Commission's Public Reference Room. A copy of this filing is available on the Exchange's Web site at <http://www.nasdaq.com>, at the Exchange'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, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to eliminate Rule 4770 in its entirety. Rule 4770 sets forth the rules applicable to the Nasdaq Crossing Network. The Commission approved the Nasdaq Crossing Network on July 5, 2006.<sup>3</sup> The Nasdaq Crossing Network provides an execution option to market participants trading in NASDAQ and other exchange-listed securities that facilitates the execution of trades quickly and anonymously. The Nasdaq Crossing Network executes the Nasdaq Reference Price Cross, an automated and random matching mechanism, at certain pre-determined points during the day. All eligible orders for the Nasdaq Reference Price Crosses are executed in accordance with a predetermined algorithm at the NBBO midpoint on a pro-rata basis and at the NOCP or Primary Market Close, as applicable, for post-close cross executions. The likelihood that a participant will be able to execute all or some of its orders in the Nasdaq Reference Price Cross is directly related to the number of participants acting as counterparties in the cross any one time. NASDAQ notes that there is light participation in the Nasdaq Reference

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<sup>3</sup> Securities Exchange Act Release No. 54248 (July 31, 2006), 71 FR 44738 (August 7, 2006) (SR-NASDAQ-2006-019). Prior to the effective date of NASDAQ's operation as an exchange for NASDAQ-listed securities, the rule governing the Nasdaq Crossing Network had been approved as an NASD rule (NASD Rule 4716). Securities Exchange Act Release No. 54101 (July 5, 2006), 71 FR 39382 (July 12, 2006) (SR-NASD-2005-140).

Price Cross, and is therefore proposing to cease offering the cross and to remove Rule 4770 from NASDAQ's rules. NASDAQ is also eliminating reference to Rule 4770 from Rule 4751(f)(13).

2. Statutory Basis

NASDAQ believes the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general and with Section 6(b)(5) of the Act,<sup>5</sup> in particular, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change is consistent with these requirements in that NASDAQ has determined that it will eliminate an automated crossing mechanism based on low usage and lack of customer demand, which negate its usefulness in facilitating transactions in securities.

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.

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<sup>4</sup> 15 U.S.C. 78f.

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

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b-4 thereunder, in that the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given 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 believes that the proposed rule change will eliminate a little-used crossing process from NASDAQ's rules, which, because of the low number of participants, does not benefit the price-discovery process and overall market confidence in any material manner. NASDAQ will remove Rule 4770 from its rules effective September 13, 2010.

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.

### 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](mailto:rule-comments@sec.gov). Please include File No. SR-NASDAQ-2010-101 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 No. SR-NASDAQ-2010-101. 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 Web site 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 available publicly. All submissions should refer

to File No. SR-NASDAQ-2010-101 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>6</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).