

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63836; File No. SR-NASDAQ-2011-004)

February 3, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4758 to Add a New Routing Option, LIST

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on January 24, 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 and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. 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

The Exchange is filing this proposed rule change to amend NASDAQ Rule 4758 to add a new routing option, LIST. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.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

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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 those 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 parts of such statements.

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

1. Purpose

The Exchange proposes to add a routing strategy, LIST, that will provide firms flexibility to participate in the opening and closing processes of the primary listing markets and also take advantage of the Exchange's liquidity during the remainder of the trading day. LIST is a variation on a currently existing routing strategy, SKIP, but offers increased sensitivity to the opening and closing crosses on securities' primary listing markets.

Under LIST, an order received before the security's primary listing market opening will participate in the primary listing market's opening cross, after which any unexecuted shares will check the NASDAQ book. The security's primary listing market is considered "open" after the first of the following occurs: (1) the primary listing market returns the order; (2) NASDAQ receives the first regular way print from the primary; or (3) the time is 9:45am.

Remaining shares will then be routed to Reg-NMS protected market centers in accordance with the LIST System routing table,⁴ and then return to be posted on the NASDAQ

⁴ As provided, in Rule 4758(a)(1)(A), the term "System routing table" refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. NASDAQ reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice.

book.⁵ Similarly, LIST orders entered after the primary listing market's opening process but prior to 3:58 p.m. will check the NASDAQ book, route in accordance with the LIST System routing table, and then post to the NASDAQ book.

At 3:58 p.m., all LIST orders on the book will be sent to their primary listing market, as "day" orders, to participate in the closing cross. LIST orders entered at or after 3:58 p.m. but before 4:00 p.m. will also be sent to their primary listing market for the closing cross, after first checking the NASDAQ book and routing in accordance with the LIST System routing table.⁶ Shares unexecuted in the closing process will be posted to the NASDAQ book.

LIST orders received after 4:00 p.m. will be posted to the NASDAQ book. Where NASDAQ is the primary listing market for a LIST order security, the order will be routed as described above, although rather than route out for the open and/or close, it will participate in NASDAQ's open and/or closing cross.

If trading in the security is stopped across all markets, LIST orders will be sent to the primary listing market to participate in the re-opening process. When normal trading resumes, the orders will be cancelled off of the primary and posted on the NASDAQ book.

NASDAQ has designed LIST to be Reg-NMS compliant, and believes that LIST, like all NASDAQ routing strategies, conforms to Reg-NMS requirements. LIST orders may not be designated as MGTC or SGTC.

⁵ Pursuant to NASDAQ Rule 4758(a)(1)(B), if a routed order is returned, in whole or in part, that order will receive a new time stamp reflecting the time of its return to the System.

⁶ Due to the possibility that orders received very near the 4:00pm deadline (e.g. 3:59:59:999) will be routed to the primary listing market but arrive after the security has closed, customers are encouraged to submit their LIST orders prior to 3:58.

The proposed LIST option is similar to two order types utilized by NYSE Arca, as established by SR-NYSEArca 2009-56:⁷ the “Primary Until 9:45 Order” and the “Primary After 3:45 Order.” NASDAQ’s LIST order type combines these two separate NYSE Arca routing options into a single order type. In addition, under a LIST routing strategy, unlike under its NYSE Arca counterparts, orders will be removed from the primary listing market upon the primary listing market’s open rather than at the 9:45 cutoff time.

This rule change also introduces fees for the new LIST routing strategy. The fees for LIST orders that participate in the open or closing process at the securities’ primary listing market are the fees charged to Nasdaq by those venues, passed through to the member. Specifically, the fee for LIST orders that participate in the NYSE closing process is \$0.00085 per share executed, while the fee for orders participating in the opening process or the re-opening process after trading is halted across all markets is \$0.0005 per share executed. The fee for LIST orders and DOT orders⁸ participating in the NYSE opening process is subject to a \$10,000 per month per member cap. The fee for LIST orders that participate in the NYSEAmex closing process is \$0.00085 per share executed, while the fee for orders participating in the opening process or the re-opening process after trading is halted across all markets is \$0.0005 per share executed. The fee for LIST orders that participate in the NYSEArca closing process or the re-opening process after trading is halted across all markets is \$0.0010 per share executed, while the fee for orders participating in the opening process is \$0.0005 per share executed. The fee for LIST orders participating in the NYSEArca opening process is subject to a \$10,000 per month per member cap. LIST orders that participate in NASDAQ’s opening, closing, and halt re-

⁷ Securities Exchange Act Release No. 60256 (July 7, 2009), 74 FR 33489 (July 13, 2009) (SR-NYSEArca-2009-56).

⁸ DOT orders are an existing order type that is also eligible to participate in the NYSE opening process.

opening processes are charged NASDAQ's usual fees for those processes, as provided in Rule 7018(d) and (e).

LIST orders that execute at venues other than NASDAQ, but not in the opening or closing processes, are charged \$0.0030 per share executed, and orders that execute in NASDAQ outside of its opening and closing processes are charged NASDAQ's regular execution fee, which is also \$0.0030 per share executed. Because LIST orders have the potential to post at NYSEArca or NYSEAmex and then be routed to other venues by those exchanges, NASDAQ is also adding language stipulating that it will pass on to its member any routing fees charged to it by NYSEArca or NYSEAmex. Similar language is already in Rule 7018 with respect to routing charges assessed by NYSE.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general, and with Sections 6(b)(5) of the Act,¹⁰ 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 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. The Exchange believes that the proposed routing option will accomplish those ends by providing more flexible options, inasmuch as it offers a means for NASDAQ members to route to the opening and closing processes of U.S. listing venues, while also allowing unexecuted shares to route to other trading venues and post on the NASDAQ book.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

The rule change is also consistent with Section 6(b)(5) of the Act,¹¹ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. The fees assessed for a LIST order to participate in the open and closing of the security's primary listing market are based on the fees and rebates that are charged and offered to NASDAQ by the exchanges to which it routes. As such, a member will pay the same fees for participation in the opening and closing of the security's primary listing market when using LIST as it would if it went to that venue directly. A member will also pay the same fee for executing at venues other than NASDAQ outside the open or close under LIST as it would under alternative NASDAQ routing strategies, including STGY, SCAN, SKNY, and SKIP. Finally, LIST orders that participate in NASDAQ's opening and closing processes are charged NASDAQ's usual fees for those processes, as provided in Rule 7018(d) and (e). In sum, the LIST order fees are set to reflect NASDAQ's routing costs while offering members a routing option they have requested. Use of the routing option is, of course, entirely voluntary.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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

¹¹ 15 U.S.C. 78f(b)(5).

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 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that it expects to have the technological changes in place to support the proposed rule change by February 7, 2011, and believes that the benefits to market participants expected from the rule change should not be delayed. The Exchange believes that the rule change will reduce the messaging traffic that is now required to achieve the same result, and thus contribute to a more efficient public market.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposed routing

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. NASDAQ has satisfied this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

strategy is similar to routing order types that were implemented by NYSE Arca.¹⁶ Therefore, the Commission designates the proposal operative upon filing.¹⁷

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. Please include File Number SR-NASDAQ-2011-004 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-2011-004. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

¹⁶ Securities Exchange Act Release No. 60256 (July 7, 2009), 74 FR 33489 (July 13, 2009) (SR-NYSEArca-2009-56).

¹⁷ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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-2011-004 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.¹⁸

Cathy H. Ahn
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).