

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64365; File No. SR-NASDAQ-2011-058)

April 28, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Limitation of Liability

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 April 28, 2011, The NASDAQ Stock Market LLC (“NASDAQ”), filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially 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 (“SEC” or “Commission”) a proposal for The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) to amend Rule 4626 (Limitation of Liability) regarding expansion of the Exchange’s limitation of liability under specified circumstances.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).³

The text of the proposed rule change is available from NASDAQ’s website at <http://nasdaq.cchwallstreet.com/Filings/>, 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 17 CFR 240.19b-4(f)(6)(iii).

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

The purpose of this proposed rule change is to amend Rule 4626 regarding expansion of the Exchange’s limitation of liability rule under specified circumstances.

Rule 4626 currently states that except as provided for in subsection (b) of the rule, Nasdaq and its affiliates shall not be liable for any losses, damages, or other claims arising out of the Nasdaq Market Center or its use. Subsection (b)(1) states that for the aggregate of all claims made by all market participants related to the use of the Nasdaq Market Center during a single calendar month, Nasdaq's payments under Rule 4676 [sic] shall not exceed the larger of \$500,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy.⁴

⁴ Rule 4676 [sic] was amended in 2009 to the current version. See Securities Exchange Act Release No. 60794 (October 6, 2009), 74 FR 52522 (October 13, 2009)(SR-NASDAQ-2009-084)(notice of filing and immediate effectiveness). The Commission notes that the references to “Rule 4676” herein are typographical errors and the correct rule number is 4626.

The Exchange now proposes to add a new section to expand the maximum amount of payments that the Exchange may make during a calendar month pursuant to Rule 4626 in enumerated circumstances added in new subsection (b)(2).

First, the (b)(2) claims have to be related to a systems malfunction or error of the Nasdaq Market Center concerning one the following functions that are system enforced by the Nasdaq trading system on behalf of the claimant: locked/crossed markets, trade through protection, market maker quoting, order protection, or firm quote compliance.⁵ And second, Nasdaq has to determine in its sole discretion that such systems malfunction or error was caused exclusively by Nasdaq's trading system and that no outside factors contributed to the malfunction or error. That is, the trading system issue would have to be caused exclusively by the Exchange to trigger subsection (b)(2).⁶

For example, if the needed market data provided to the Exchange to properly perform a locked/crossed markets analysis was incorrect and therefore caused the Exchange's relevant trading system functionality to quote or execute improperly, the requirements of subsection (b)(2) would not be met because any resulting issue was not caused exclusively by the Exchange. A similar result would occur should any other third party or non-Exchange specific input to the Exchange's trading systems likewise cause incorrect processing by the Exchange.

Nasdaq's payments under subsection (b)(2) for all claims made by all market participants during a single calendar month, shall not exceed the larger of \$3,000,000, or the amount of the

⁵ Rule 610 and 611 of Regulation NMS and Exchange Rule 4613. Notwithstanding this provision, the Exchange notes that market participants are not absolved of their compliance obligations under the Exchange rules or the Act.

⁶ Claims under subsection (b)(2) would remain subject to the other limitations for recovery contained in Rule 4672 [sic], including the limitations on covered losses contained in the introductory language of subsection (b).

recovery obtained by Nasdaq under any applicable insurance policy, subject to the overall cap on payments under Rule 4626 discussed below.

Finally, the Exchange proposes to add new subsection (b)(3) stating that Nasdaq's total payment during a single calendar month pursuant to Rule 4626 (including both subsections (b)(1) and (b)(2)) shall not exceed \$3,000,000.⁷

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ in particular, in that it is designed to promote just and equitable principles of trade, 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 its proposal to expand Rule 4626 (Limitation of Liability) under specified circumstances will promote fairness in the market place in situations where the firm's claim results from a problem in a compliance function performed by the Exchange's trading system that is solely the fault of the Exchange.¹⁰

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.

⁷ The Exchange proposes to add the word "payment" in subsection (b)(1) for consistency with proposed new subsections (b)(2) and (b)(3).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ This would include events like the one on Monday, April 25, 2011 involving a quoting problem with the Exchange's automated quotation refresh system (AQR). Because the claim for redress for trades impacted by this AQR problem does not arise until settlement, claims timely filed from this event will be eligible for review pursuant to proposed Rule 4626(b)(2).

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 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 Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)(iii) thereunder.¹² The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to immediately expand Rule 4626 to help promote fairness in the marketplace in specified circumstances where claims result from systems malfunctions or errors that are solely the fault of the Exchange.¹³ Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the five business day notice requirement. The Commission waives the five day notice requirement.

¹³ For 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).

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-2011-058 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-2011-058. 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 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2011-058 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

Cathy H. Ahn
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).