

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65854; File No. SR-NASDAQ-2011-159)

November 30, 2011

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on November 22, 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 and II 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 eliminate Exchange Direct Orders. Specifically, NASDAQ proposes to delete Chapter VI, Section 1(e)(7) and Section 6(a)(2), to delete Exchange Direct Orders from its rules. The Exchange proposes to eliminate this order type, effective November 30, 2011, as explained further below.

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.

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

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

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

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 eliminate Exchange Direct Orders due to the new requirements of the recently adopted Market Access Rule.<sup>3</sup> Exchange Direct Orders, defined in Chapter VI, Section 1(e)(7), are orders that are directed to an exchange other than NOM as directed by the entering party without checking the NOM book. If unexecuted, the order (or unexecuted portion thereof) shall be returned to the entering party. This order type may only be used for orders with time-in-force parameters of IOC. NASDAQ proposes to delete this definition as well as a reference to Exchange Direct Orders in Chapter VI, Section 6(a)(2).

In adopting the Exchange Direct Order type, NASDAQ explained that Exchange Direct Orders are routed by its affiliate, NASDAQ Options Services LLC ("NOS"). NOS is a broker-dealer and member of NASDAQ as well as other exchanges.<sup>4</sup> The specific functions of NOS, as a facility of NASDAQ and its affiliates, have been approved by the Commission. On November 30, 2011, certain requirements of the Market Access Rule (Rule 15c3-5 under the Act)<sup>5</sup> become

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<sup>3</sup> See Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (File No. S7-03-10).

<sup>4</sup> See Securities Exchange Act Release No. 59420 (February 19, 2009), 74 FR 8597 (February 25, 2011)(SR-NASDAQ-2009-011).

<sup>5</sup> 17 CFR 240.15c3-5.

operative, such that broker-dealers like NOS become subject to those provisions. Specifically, the Commission extended the deadline for compliance with Rule 15c3-5(c)(1)(i),<sup>6</sup> which requires the implementation of risk management controls and supervisory procedures that are reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, because the type of controls required by the Rule are not currently in place at many broker-dealers, and developing and implementing appropriate controls in this area can be a complex exercise. NASDAQ and NOS have determined that the adoption of these controls and procedures exceeds the scope of NOS' current functions and, therefore, NOS would cease accepting Exchange Direct Orders, because the acceptance of those orders subjects NOS to the requirements of Rule 15c3-5(c)(1)(i).

NASDAQ has provided notice to its membership of its intent to discontinue Exchange Direct Orders.<sup>7</sup> Although NOM did receive such orders, they do not represent significant volume, such that NASDAQ does not believe that it will have a significant impact on its participants to eliminate this order type.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, in that it 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free

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<sup>6</sup> See Securities Exchange Act Release No. 64748 (June 27, 2011), 76 FR 38293 (June 30, 2011)(File No. S7-03-10).

<sup>7</sup> <http://www.nasdaqtrader.com/TraderNews.aspx?id=OTA2011-62>.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 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, because the Exchange is not required to make this order type available and has made a decision to eliminate it, as explained above. Moreover, in order to comply with the Market Access Rule, this order type is being eliminated rather than implementing the extensive necessary changes. Furthermore, because this order type was not widely used, NASDAQ does not believe that market quality will be impacted by its elimination.

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 Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative upon filing with the

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 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.

Commission. The Commission believes the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because eliminating Exchange Directed Orders will allow the Exchange's broker-dealer affiliate, NOS, to be in timely compliance with SEC Rule 15c3-5.<sup>12</sup> In addition, the Exchange represents that the order type is not widely used and its elimination should not have a significant impact on market quality. Therefore, the Commission designates the proposal to be operative upon filing.<sup>13</sup>

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 Number SR-NASDAQ-2011-159 on the subject line.

##### Paper comments:

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<sup>12</sup> See supra, note 6.

<sup>13</sup> 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).

- 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-2011-159. 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 the 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-2011-159 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>14</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).