

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70316; File No. SR-NASDAQ-2013-108)

September 4, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 1120 and to Adopt a Corresponding Fee

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 22, 2013, The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NASDAQ has designated the proposed rule change as constituting a non-controversial rule change under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 proposing to amend Rule 1120 as described below, and to adopt a corresponding fee.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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1120. Continuing Education Requirements

This Rule prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with Nasdaq. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

(a) Regulatory Element

(1) Requirements

No member shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person unless such person has complied with the requirements of paragraph (a) hereof.

Each registered person shall complete the Regulatory Element on the occurrence of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by Nasdaq. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the "base date," shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element shall be determined by Nasdaq and shall be appropriate to either the registered representative or principal status of the person subject to the Rule. The following Regulatory Elements administered by FINRA shall be required:

Persons registered solely as Proprietary Traders pursuant to Rule 1032(c) must complete the S501.

Persons registered as General Securities Representatives pursuant to Rule 1032(a) must complete the S101.

Persons registered in a supervisory capacity pursuant to Rules 1021 and 1022 must complete the S201.

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7003. Registration and Processing Fees

(a) The following fees will be collected and retained by FINRA via the Web CRD registration system for the registration of associated persons of Nasdaq members that are not also FINRA members:

(1) – (6) No change

(7) a \$[75]100 session fee for each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Nasdaq Rule 1120 (S101 and S201) and a \$60 session fee for each individual who is required to complete the Proprietary Trader Regulatory Element (S501).

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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 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 purpose of the proposed rule change is to codify in Rule 1120 the specific continuing education requirements that currently apply and to adopt a continuing education requirement for persons registered as Proprietary Traders. NASDAQ also proposes to adopt a fee in Rule 7003 for the new continuing education program applicable to Proprietary Traders.

NASDAQ adopted the Proprietary Trader⁵ registration in 2011,⁶ working with various other exchanges and Financial Industry Regulatory Authority (“FINRA”). At that time, NASDAQ stated that persons registered in the new category would be subject to its continuing education requirements in Rule 1120.

At this time, the new continuing education program for Proprietary Traders will soon become available and will be administered by FINRA. The new program, the S501, is intended to address the specific continuing education of Proprietary Traders, based on the content outline for the Series 56 exam, which covers the main categories of rules and regulations generally applicable to such persons.⁷ The Continuing Education Regulatory Element is a computer-based education program administered by FINRA to help ensure that registered persons are kept current on regulatory, compliance and trading practice matters in the industry.

⁵ A Proprietary Trader is a person whose activities in the investment banking and securities business are limited solely to proprietary trading. NASDAQ Rule 1032(c).

⁶ See Securities Exchange Act Release No. 64958 (July 25, 2011), 76 FR 45629 (July 29, 2011) (SR-NASDAQ-2011-095).

⁷ These generally include recordkeeping and recording requirements, types and characteristics of securities and investments, trading practices and display execution and trading systems. See Securities Exchange Act Release No. 65040 (August 5, 2011), 76 FR 49809 (August 11, 2011) (SR-NASDAQ-2011-108).

NASDAQ proposes to amend Rule 1120(a)(1) to specify the required Regulatory Element for each category of registered persons. Currently, Rule 1120(a)(1) provides that no member shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of paragraph (a). Each registered person shall complete the Regulatory Element of the continuing education program on the occurrence of their second registration anniversary date(s), and every three years thereafter or as otherwise prescribed by NASDAQ. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the "base date," shall establish the cycle of anniversary dates for purposes of this Rule. This applies to persons registered as Proprietary Traders as well.

The Rule further provides that the content of the Regulatory Element of the program shall be determined by NASDAQ for each registration category of persons subject to the Rule. NASDAQ now proposes to make clear which specific programs are required, including both existing programs (S101 and S201) as well as the new Proprietary Trader continuing education program (S501). NASDAQ has determined that the following Regulatory Elements administered by FINRA shall be required:

- Persons registered solely as Proprietary Traders pursuant to Rule 1032(b) [sic] must complete the S501.
- Persons registered as General Securities Representatives pursuant to Rule 1032(a) must complete the S101.
- Persons registered in a supervisory capacity pursuant to Rules 1021 and 1022 must complete the S201.

NASDAQ believes that specifying the applicable Regulatory Element in the Rule should be helpful to members in complying with the Rule. Only one Regulatory Element is required. For example, members registered as supervisors are subject to the S201 only; they do not also have to complete the Regulatory Element applicable to their prerequisite registration, such as the S501 or the S101.⁸ This proposal does not change the registration requirements.

NASDAQ also proposes to adopt a fee applicable to Proprietary Trader Regulatory Element. Currently, the applicable fee for the Regulatory Element (S101 and S201) is \$100.⁹ NASDAQ proposes to adopt a \$60 fee for the S501. FINRA administers these programs on behalf of the exchanges and therefore the fees are payable directly to FINRA.¹⁰ The \$60 fee will only be used for the administration of the S501 versus the S101 which utilizes the \$100 fee for both development and administration. The costs associated with the development of the S501 are included in the examination fee.

2. Statutory Basis

NASDAQ believes that its proposal is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of: (1) Section 6(c)(3)(B) of the Act,¹² pursuant to which a

⁸ In the event that a person is registered both as a Proprietary Trader and a General Securities Representative, only one Regulatory Element is required – the “higher” of the two, which is the S101.

⁹ The Commission notes that the Exchange is correcting its fee schedule to reflect the \$100 fee for the S101 and the S201 continuing education.

¹⁰ The S501 was established for those registrants who have passed the Series 56 Qualification Exam as reflected in WebCRD. WebCRD is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78(c)(3)(B).

national securities exchange prescribes standards of training, experience and competence for members and their associated persons; and (2) Section 6(b)(5) of the Act,¹³ in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, 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, by requiring registered persons to complete the applicable continuing education program. NASDAQ believes that a strong continuing education program should bolster the integrity of NASDAQ by helping to ensure that all associated persons engaged in a securities business are, and will continue to be, properly trained and qualified to perform their functions. The Exchange does not believe that the proposal is unfairly discriminatory with respect to persons registered as a General Securities Representative who function in their current job as a Proprietary Trader, even though these persons are subject to the more stringent S101 rather than the S501; such persons are registered and qualified (Series 7) in a “higher” capacity and are therefore qualified to function in a capacity other than a Proprietary Trader, whether they choose to or not. Accordingly, requiring the S101 for such persons is appropriate and facilitates them being able to maintain their “higher” registration. The Exchange also believes that permitting General Securities Representatives functioning as Proprietary Traders to complete the S501 would be confusing and difficult to monitor.

NASDAQ also believes that the proposal furthers the objectives of Section 6(b)(4) of the Act,¹⁴ in that it provides for an equitable allocation of reasonable fees and other charges among exchange members and other persons using its facilities. Specifically, the new \$60 fee is applicable to persons registered as a Proprietary Trader, which is a limited registration under

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(4).

NASDAQ rules. Accordingly, the proposed S501 Regulatory Element specifically correlates to the rules and obligations applicable to Proprietary Traders, which are fewer than those applicable to persons registered in other categories. Thus, the S501 is a more limited form of continuing education. Therefore, NASDAQ believes that the lower fee (\$60 rather than \$100) is reasonable.¹⁵ The proposed fee is equitable, because it applies equally to all persons registered solely as Proprietary Traders.

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

NASDAQ 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. All of the exchanges that recognize the Proprietary Trader registration category are expected to adopt the same continuing education fee and all Proprietary Traders, regardless of where they are registered, will be subject to same continuing education requirements and the same continuing education fees. Thus, the proposal treats similarly situated persons in the same way.

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

¹⁵ The Commission notes that in the Purpose section of this filing, NASDAQ correctly represents that the \$100 fee for the S101 covers costs associated with both development and administration of the program, but the \$60 fee for the S501 covers only the cost to administer the continuing education.

Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay. The proposed rule change: specifies the continuing education requirements that currently apply to registered persons; adopts a continuing education requirement, the S501, and a related fee for persons registered as Proprietary Traders; and corrects the Exchange's fee schedule to reflect the proper fee, \$100 rather than \$75, for the S101 and S201. Waiver of the operative delay would allow the Exchange to clarify and correct its rules and implement the proposed rule change at once, enabling its members to comply with their continuing education requirements in a timely manner, and thus is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.¹⁷

At any time within 60 days of the filing of this 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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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:

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 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).

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-2013-108 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-2013-108. 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 available publicly. All submissions should refer

to File Number SR-NASDAQ-2013-108 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

Kevin M. O'Neill
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).