

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70569; File No. SR-NASDAQ-2013-102)

September 30, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change to Assume Operational Responsibility for Certain Surveillance Activity Currently Performed by FINRA under the Exchange's Authority and Supervision

On July 31, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to assume operational responsibility for certain surveillance activity currently performed by the Financial Industry Regulatory Authority ("FINRA") under the Exchange's authority and supervision. The proposed rule change was published for comment in the Federal Register on August 16, 2013.³ The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁴ and, in particular, the requirements of Section 6(b)(5) of the Act.⁵ Since it became a national securities exchange, NASDAQ has contracted with FINRA through various regulatory services agreements to perform certain surveillance and other regulatory functions on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 70159 (August 12, 2013), 78 FR 50123 (August 16, 2013)("Notice").

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

its behalf.⁶ NASDAQ Rule 0150 requires that, unless NASDAQ obtains prior Commission approval, the regulatory functions subject to the regulatory services agreement in effect at the time when NASDAQ became a national securities exchange must continue to be performed by FINRA or an affiliate thereof or by another independent self-regulatory organization. NASDAQ now proposes to reallocate operational responsibility from FINRA to NASDAQ Regulation for a limited number of equities surveillance patterns and related review functions focused on: (1) manipulation patterns that monitor solely NASDAQ activity, including patterns that monitor the Exchange's opening and closing crosses and compliance with minimum bid listing requirements, and (2) monitoring of compliance by member firms with elements of the Commission's Regulation M⁷ and NASDAQ Rule 4619 compliance.

In the Notice, the Exchange represents that it has the ability to conduct the surveillances and regulatory functions that it will assume. The Commission also notes that the Exchange represents that its expertise in its own market structure, along with its existing real-time monitoring of these activities, may enable the Exchange to better detect improper activities on its market. Moreover, these patterns, underlying rules, and analytical requirements are similar to patterns that NASDAQ regulatory personnel already operate for affiliated options markets. The Exchange represents that NASDAQ's MarketWatch group, which already handles other real-time surveillance of the NASDAQ market, should be able to adequately and effectively handle the surveillances related to the instant proposed rule change.

In the Notice, the Exchange further represents that it will continue to refer potentially violative conduct to FINRA for further review and that FINRA will continue to perform most of

⁶ See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

⁷ 17 CFR 242.100 et seq.

the surveillance activity for NASDAQ's equity markets. The Exchange also represents that FINRA will continue to perform examination and enforcement work, subject to NASDAQ's supervision and ultimate responsibility.

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NASDAQ-2013-102) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Kevin M. O'Neill
Deputy Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).