

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60037; File No. SR-NASDAQ-2009-048)

June 3, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1, Thereto to Establish a New Voluntary Flash and Cancel Order

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 May 20, 2009, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On May 29, 2009, Nasdaq filed Amendment No. 1 to the proposed rule change. Nasdaq has designated the proposed rule change, as amended, as constituting a rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal, as amended, effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes a rule change to establish a new voluntary Flash and Cancel Order. The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

4751. Definitions

The following definitions apply to the Rule 4600 and 4750 Series for the trading of securities listed on Nasdaq or a national securities exchange other than Nasdaq.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

(a) through (e) No Change.

(f) The term "Order Type" shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1) – (10) No Change.

(11) "Flash and Cancel Orders" are market or marketable limit orders which are to be executed in whole or in part immediately upon receipt by the System with any unfilled balance being displayed to Nasdaq market participants (and market data vendors) for potential execution for a period of time not to exceed one-half of one second. If any unfilled balance remains after such display, such marketable unfilled balance shall be cancelled back to the entering party, and such nonmarketable unfilled balance shall be retained by the System for potential execution. The System will provide an electronic method to distinguish the Flash Order during the flash period from the System's protected quote under Regulation NMS.

(g) through (i) No Change

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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 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

Nasdaq is proposing to establish a new voluntary Flash and Cancel Order type. A Flash and Cancel Order will provide an optional pre-cancellation display period for market and marketable limit orders so designated. Under the proposal, market and marketable limit orders designated as Flash and Cancel Orders will, after first executing to the maximum extent possible in Nasdaq's book, have their unexecuted portions displayed for potential execution at the NBBO such that a trade-through will not occur, to Nasdaq market participants and market data vendors for a period of time determined by Nasdaq which will not exceed one-half of one second. If any unfilled balance remains after such display, such marketable unfilled balance shall be cancelled back to the entering party, and such non-marketable unfilled balance shall be placed on the book for potential execution. As with other Nasdaq order types, the attributes of the Flash and Cancel Order may be combined with all Nasdaq non-routable order types. Nasdaq will provide an electronic method to distinguish the Flash Order during the flash period from the System's protected quote under Regulation NMS.

Nasdaq notes that flash and cancel order functionality has already been approved by the Commission for use by the CBOE Stock Exchange and that such functionality can be expected to provide Nasdaq system users with greater control over their trading. Except for the behavior of the Flash and Cancel Order described here, nothing in the proposal will modify or alter any existing rule or process related to order priority, order execution, trade-through protection or locked or crossed markets.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Sections 6(b)(5) of the Act,⁵ 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. Nasdaq notes that similar functionality has already been found to be consistent with the Act by the Commission.⁶

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, 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

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;

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

⁶ Securities Exchange Act Release No. 54422 (September 11, 2006), 71 FR 54537 (September 15, 2006) (SR-CBOE-2004-21); Securities Exchange Act Release No. 59359 (February 4, 2009), 74 FR 6927 (February 11, 2009) (SR-CBOE-2008-123).

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 Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act⁹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq requests that the Commission waive the 30-day operative delay because the Exchange expects to have technologies in place to support the proposed rule change, as amended, on or about June 5, 2009, and believes that the expected benefits to Nasdaq market participants from the proposed rule change, as amended, should not be delayed. The Commission believes that waiving the 30-day operative delay¹¹ is consistent with the protection of investors and the public interest and designates the proposal operative on June 5, 2009.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 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.

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 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).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹²

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-2009-048 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-2009-048. 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 Web site (<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

¹² For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 29, 2009, the date on which the Nasdaq submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

available for inspection and copying 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-2009-048 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.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).