

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61460; File No. SR-NASDAQ-2010-018)

February 1, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify NASDAQ's Order Routing Rule

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 January 29, 2010, 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. Nasdaq has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. 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

The Exchange is filing this proposed rule change to amend Rule 4758 to describe available routing options in greater detail, to modify an existing routing option, and to add a new routing option. NASDAQ proposes to implement the rule change on February 1, 2010. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at the Exchange'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).

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

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

NASDAQ is amending Rule 4758, which describes its order routing processes, to describe existing order routing options with greater specificity, to modify an existing routing option, and to add a new routing option. Currently, routing options available through NASDAQ are all variations of three main routing options, known as DOT, STGY, and SCAN. Although the rule language for these routing options describes the available variations of the main options in general terms, NASDAQ believes that understanding of these options would be enhanced by describing the different versions as separately named routing options. NASDAQ is also amending Rule 4758 to include a definition of "System routing table," defined as the proprietary process for determining the specific trading venues to which the NASDAQ System routes orders and the order in which it routes them. The definition reflects the fact that NASDAQ, like other trading venues, maintains different routing tables for different routing options and modifies them on a regular basis to reflect assessments about the destination markets. Such assessments consider factors such as a destination's latency, fill rates, reliability, and cost. Accordingly, the definition specifies that NASDAQ reserves the right to maintain a different routing table for different routing options and

to modify routing tables at any time without notice.⁴ All routing complies with the requirements of Rule 611 of Regulation NMS.

- DOT is a routing option for orders that the entering firm wishes to designate for participation in the NYSE or NYSE Amex opening or closing processes. DOT orders do not check the NASDAQ book prior to routing directly to NYSE or NYSE Amex. After attempting to execute at NYSE or NYSE Amex, DOT orders thereafter check the NASDAQ book for available shares and are then converted into SCAN or STGY orders, depending on the designation of the entering firm. If a DOT order designated to participate in the opening process is entered after 9:30 a.m., moreover, it will be converted into a SCAN or STGY order, depending on the designation of the entering firm.
- DOTI is a routing option under which orders check the NASDAQ book and destinations on the DOTI System routing table and then are sent to NYSE or NYSE Amex. Such orders do not return to the NASDAQ book if they are not executed, but rather remain on the NYSE or NYSE Amex book until executed, cancelled, or expired.
- STGY is a routing option under which orders check the NASDAQ book, check destinations on the STGY System routing table, and then return to the NASDAQ book. After returning to the NASDAQ book, a STGY order will subsequently route out to another market center if it posts a bid or offer that locks or crosses the STGY order.
- SKNY is a form of STGY in which the entering party instructs the System to bypass any market centers included in the STGY System routing table that are not posting Protected Quotations within the meaning of Regulation NMS.

⁴ At present, all System routing tables include NASDAQ's affiliate, NASDAQ OMX BX ("BX"). Thus, all routed orders have the opportunity to route to this venue, with the exception of DOT orders routed directly to the NYSE or NYSE Amex opening or closing processes and directed orders that are directed to route to venues other than BX.

- SCAN is a routing option under which orders check the NASDAQ book, check destinations on the SCAN System routing table, and then return to the NASDAQ book. After returning to the NASDAQ book, a SCAN order will not subsequently route out to another market center if it posts a bid or offer that locks or crosses the SCAN order.
- SKIP is a form of SCAN in which the entering party instructs the System to bypass any market centers included in the SCAN System routing table that are not posting Protected Quotations within the meaning of Regulation NMS.
- TFTY is a routing option that was formerly comprised within the definition of SCAN. TFTY orders currently do not check the NASDAQ book for available shares prior to routing to destinations on the TFTY System routing table. Thereafter, they return to the NASDAQ book and, like SCAN orders, do not route out again. TFTY is being modified by this proposed rule change to provide users the option of checking the NASDAQ book prior to routing out.
- MOPP is a routing option formerly comprised within the definition of SCAN. MOPP orders route only to Protected Quotes, including the NASDAQ Market Center, but only for displayed size. If shares remain un-executed after routing, they are posted to the NASDAQ book and do not route out again.
- Directed Orders, as described in Rule 4751, are orders that are directed to an exchange other than NASDAQ as requested by the entering party without checking the NASDAQ book. Directed Orders must have a time-in-force of Immediate or Cancel and therefore do not post on the book of the market to which they route, nor do they return and post on NASDAQ.
- NASDAQ is introducing the new SAVE routing option, under which a market participant

may specify that an order will either (i) route to BX, check the NASDAQ book, and then route to other venues on the SAVE System routing table, or (ii) check the NASDAQ book first and then route to destinations on the SAVE System routing table. Under the second option, the applicable routing table includes BX, and as is the case with all market destinations, the placement of BX on the routing table depends on NASDAQ's ongoing assessments of factors such as latency, fill rates, reliability, and cost. If shares remain unexecuted after routing, they are posted to the NASDAQ book and do not route out again.

NASDAQ is also removing specific references to order types and times-in-force in the routing rule with a general statement that routing options may be combined with all available order types and times-in-force, with the exception of order types and times-in-force whose terms are inconsistent with the terms of a particular routing option. Thus, for example, a good-till-cancelled order could not be combined with the DOT routing option, since a DOT-routed order is intended to execute in another market's opening or closing process on a particular day. Finally, NASDAQ is removing obsolete language that had been added to Rule 4758 last year to reflect a commitment to distinguish "flash" orders from NASDAQ's protected quote. NASDAQ discontinued the use of flash orders shortly after it introduced them.⁵

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Sections 6(b)(5) of the Act,⁷ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just

⁵ Securities Exchange Act Release No. 60570 (August 26, 2009), 74 FR 45505 (September 2, 2009) (SR-NASDAQ-2009-079).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

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. The proposed change to introduce the SAVE routing option and modify the TFTY routing option will provide market participants with greater flexibility in routing orders to low cost trading venues, including BX and other venues with low execution fees that are included on the System routing tables. The other modifications to Rule 4758 will enhance the clarity of the rule.

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

The Exchange 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.

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 Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 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.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)¹¹ 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 NASDAQ requests this waiver because it currently has the technological changes ready to support the proposed rule change, and believes that the benefits of greater flexibility and increased clarity that are expected from the rule change should not be delayed. The Commission believes that waiving the 30-day operative delay¹² is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

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 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

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 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 an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2010-018 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-2010-018. 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 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-2010-018 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).