

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63022; File No. SR-NASDAQ-2010-116)

September 30, 2010

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

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 September 27, 2010, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, which Items have been prepared by Nasdaq. 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 a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to modify Chapter VI, Section 11 of the NOM rules, to add a new order routing option and to assign a name to the existing routing option.

The text of the proposed rule change is available from Nasdaq's website 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

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

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

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

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 Section 11, Order Routing, of Chapter VI of the NOM rules which describes NOM's order routing processes, to add a new routing option, and to assign the name "SEEK" to the existing routing option. Currently SEEK, the only routing option available through NOM, is described in Section 11(a) of Chapter VI. NOM is now proposing to replace this existing language with text describing new, separately named routing options, including SEEK. The proposed change to introduce the SRCH, routing option will provide market participants additional tools with which to manage their order flow. 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. The routing options are described below.

Section 11(a)(1)(A) provides a description of SEEK which is the Exchange's existing, unnamed order routing option. Section 11(a)(1)(A) also specifically assigns the name SEEK to this existing routing option. Pursuant to this option, an order first checks the System for available contracts for execution. After checking the System for available contracts, orders are sent to other available market centers for potential execution, per the entering firm's instructions. When checking the book, the System seeks to execute at the price at which it would send the order to a destination market center. If contracts remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System does not route the order to the locking or crossing market

center. The SEEK option is valuable to Participants interested in executing as many contracts as possible upon submission of the order to the Exchange. After executing on the Exchange and routing to other destinations, any remaining unfilled portion will rest passively on the Exchange book regardless of whether the order is subsequently locked or crossed by another options exchange. This provides participants with the ability to aggressively seek available liquidity in the marketplace while also allowing the participant to set the new market price (once available liquidity has been exhausted in the marketplace) and avoid re-routing the order, potentially reducing the fees paid by the participant.

The SRCH routing option operates in the same manner as SEEK except that if the order is not completely executed after routing and is then posted on the Exchange book, if another options exchange subsequently locks or crosses the limit price of the order, it will re-route. Similarly to SEEK, the SRCH option is valuable to Participants interested in executing as many contracts as possible upon submission of the order to the Exchange. However, there may be times that participants wish to execute against any available liquidity that may exist in the marketplace after the order has been posted, regardless of other drawbacks associated with re-routing, in which case the SRCH routing option better fits the participant's needs.

Pursuant to Section 11(c) of Chapter VI, orders sent by the System pursuant to the SEEK and SRCH routing options to other markets would not retain time priority with respect to other orders in the System. If an order routed pursuant to SEEK or SRCH is subsequently returned, in whole or in part, that order, or its remainder, will receive a new time stamp reflecting the time of its return to the System.

Nasdaq is also deleting language from subsection 11(a) of Chapter VI, which describes existing order routing processes. This language is no longer necessary because it would be duplicative of the SEEK rule language.

Nasdaq is also amending Section 11 to include a definition of “System routing table,” defined as the proprietary process for determining the specific trading venues to which NOM routes orders and the order in which it routes them.<sup>3</sup> The definition reflects the fact that NOM, 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 NOM reserves the right to maintain a different routing table for different routing options and to modify routing tables at any time without notice. All routing complies with Chapter XII of the NOM rules, the Options Order Protection and Locked and Crossed Market Rules.

Use of the various NOM routing options is purely voluntary. Market Participants wishing to use a NOM routing option must provide the Exchange with instructions specifying the option they wish to use. If no instructions are provided, the Exchange will not route on behalf of the participant.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>5</sup> in particular, in that it is

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<sup>3</sup> Nasdaq has previously defined the term “System routing table” in connection with the Nasdaq Stock Market. See Securities Exchange Act Release No. 34-61460 (February 1, 2010), 75 FR 6077 (February 5, 2010) (SR-NASDAQ-2010-018).

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

designed 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. The Exchange believes that the proposed change to introduce the new routing options will provide market participants with greater flexibility and success in managing and executing order flow while also minimizing trading costs.

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 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 Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>8</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6) permits

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</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. Nasdaq has satisfied this requirement.

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

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 that are expected from the rule change should not be delayed.

The Exchange believes that the rule change is designed to provide market participants with an additional choice when availing themselves of NOM's order routing and execution services. By offering an additional routing option, Nasdaq hopes to benefit market participants and their customers by allowing them greater flexibility in their efforts to fill orders and minimize trading costs. Nasdaq provides these services in a highly competitive market in which participants may avail themselves of a wide variety of routing options. In such an environment, system enhancements such as the changes proposed in this rule filing do not burden competition, because they can succeed in attracting order flow to NOM only if they offer investors higher quality and better value than services offered by others. Encouraging competitors to provide higher quality and better value is the essence of a well-functioning competitive marketplace.

The Exchange also believes that immediate effectiveness of this proposed rule change is especially appropriate given that routing through NOM is purely optional. Market participants have the flexibility to mark their orders as not available for routing. If there is no benefit to the new routing strategy, market participants will simply not use it. The Exchange will not apply the new order routing strategy to market participants' orders without their positive consent. In fact, market participants would have to make programming changes to adopt the new routing strategy and would need to do nothing if they chose not to adopt it.

The Commission believes that waiving the 30-day operative delay<sup>9</sup> 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 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-2010-116 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-2010-116. 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

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<sup>9</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).

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 No. SR-NASDAQ-2010-116 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).