

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79240; File No. SR-NASDAQ-2016-146)

November 4, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 9400 to Include a Cross-Reference

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 October 25, 2016, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 proposes to amend Rule 9400, entitled “Expedited Client Suspension Proceeding” to include a cross-reference for clarification.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, 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

The Exchange is filing this proposal to amend Rule 9400, entitled “Expedited Client Suspension Proceeding” to include a cross-reference Chapter III, Section 16, entitled “Disruptive Quoting and Trading Activity Prohibited” within Rule 9400. The Exchange filed a rule change to adopt an options rule, identical to equities Rule 2170, which relates to disruptive quoting and trading activity.<sup>3</sup> In that rule change, it stated that “[t]he Exchange will initiate disciplinary action for violations of Chapter III, Section 16, pursuant to Rule 9400.”<sup>4</sup> At that time, the Exchange inadvertently did not include the cross-references to Chapter III, Section 16 within Rule 9400. The Exchange proposes to add references to Chapter III, Section 16 within Rule 9400 for clarity. This rule change is non-controversial.

Background

The Exchange filed a rule change to adopt an options rule to clearly prohibit disruptive quoting and trading activity on the Exchange and to permit the Exchange to take prompt action to suspend members or their clients that violate such rule pursuant to Rule 9400.<sup>5</sup> The Exchange had previously adopted Rule 9400 to set forth procedures for issuing suspension orders, immediately prohibiting a member from conducting continued disruptive quoting and trading

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<sup>3</sup> See Securities and Exchange Release No. 78208 (June 30, 2016), 81 FR 44366 (July 7, 2016) (SR-NASDAQ-2016-092).

<sup>4</sup> See Securities and Exchange Release No. 78208 (June 30, 2016), 81 FR 44366, 44370 (July 7, 2016) (SR-NASDAQ-2016-092). Rule 9400 is located within the Code of Procedure rules which apply to both equities and options violations.

<sup>5</sup> See note 3.

activity on the Exchange.<sup>6</sup> Rule 9400 provides the Exchange the authority to order a member to cease and desist from providing access to the Exchange to a client of the member that is conducting disruptive quoting and trading activity in violation of Rule 2170. The Exchange also previously adopted Rule 2400 to specifically define and prohibit disruptive equities quoting and trading activity on the Exchange.<sup>7</sup> Chapter III, Section 16 is identical to Rule 2400, however applicable to options. Similarly, Chapter III, Section 16 prohibits members from engaging in or facilitating disruptive options quoting and trading activity on the Exchange.

The Exchange proposes to simply add the cross-references for the options rules alongside the equity rule for clarity. This rule change is consistent with the intent of the rule proposal which adopted Chapter III, Section 16.<sup>8</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, it [sic] is 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 by making clear within Rule 9400 that violations of Chapter III, Section 16 are subject to disciplinary action pursuant to Rule 9400 as stated in the Exchange's

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<sup>6</sup> See Securities and Exchange Release No. 77913 (May 25, 2016), 81 FR 35081 (June 1, 2016) (SR-NASDAQ-2016-074).

<sup>7</sup> See note 3.

<sup>8</sup> See note 3.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

rule filing.<sup>11</sup> This cross-reference will provide clarity to members and ease of reference to the corresponding options rule. The proposed rule change is non-controversial. The addition of the cross-reference is for clarity.

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. This non-controversial rule change will merely add the reference to the options rule next to the current reference for the equity rule to make clear, as noted in the rule changes, that violations of either rule relating to disruptive quoting and trading activity, will be disciplined pursuant to Rule 9400.

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>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>14</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>15</sup> permits

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<sup>11</sup> See note 4.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</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. The Exchange believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to immediately add the cross-reference within Rule 9400 which would provide clarity to members. The Exchange notes that a rule change to permit Rule 9400 to apply to violations of Chapter III, Section 16 was previously filed with the Commission. However, that filing failed to amend the rule text of Rule 9400 and only discussed the intended application of Rule 9400 to violations of Chapter III, Section 16 in the purpose section of the Form 19b-4.

The text of the rule governs what actions the Exchange can take.<sup>16</sup> However, because the description in the original filing sets forth what the Exchange intended the rule to cover, and this proposed rule change corrects an oversight by the Exchange in the previous filing, the Commission believes that waiving the 30-day operative delay<sup>17</sup> is consistent with the protection of investors and the public interest and designates the proposal operative on 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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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<sup>16</sup> See Section 6(b)(1) of the Act. 15 U.S.C. 78f(b)(1).

<sup>17</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).

#### 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-2016-146 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2016-146. 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 the 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-2016-146 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.<sup>18</sup>

Brent J. Fields  
Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).