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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66972; File No. SR-NASDAQ-2012-059)

May 11, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Establish “Benchmark Orders” under NASDAQ Rule 4751(f)

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 1, 2012, 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, II and III below, 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 with the Commission a proposed rule change to establish various “Benchmark Orders” under NASDAQ Rule 4751(f). The text of the proposed rule change is available from NASDAQ’s website at <http://nasdaq.cchwallstreet.com/Filings/>, 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, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the most significant aspects of such statements.

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

1. Purpose

In order to provide enhanced functionality, NASDAQ is proposing to establish a set of “Benchmark Orders,” a new order type for use in trading cash equities. The Benchmark Order will offer members the ability to enter a single order in a single security seeking to match the performance of a selected benchmark over a pre-determined period of time. The Benchmark Order will provide entering firms additional tools to manage large trades, including potentially reducing price impact from such large trades. These Benchmark Orders will also assist entering firms by increasing flexibility to manage their trading interest intraday. To further assist members, NASDAQ will provide those entering Benchmark Orders with detailed analytics with which to measure the performance of Benchmark Orders vis a vis the relevant benchmarks.

The Benchmark Order will not itself be available for execution, but instead will be used by a sub-system of the trading system to generate a series of “Child Orders” of the types that already exist in the current NASDAQ rules. The Child Orders of a Benchmark Order may be executed within the NASDAQ system under NASDAQ’s existing processing rules, or made available for routing under NASDAQ’s current routing rules.³ All Child Orders of Benchmark Orders will comport with NASDAQ’s existing rules, including (for example) rules designed to enforce compliance with Regulation NMS and the SEC Market Access Rule.

Initially, NASDAQ will offer three underlying benchmarks for the Benchmark Orders: Volume Weighted Average Price (“VWAP”), Time Weighted Average Price (“TWAP”) and

³ As with routable orders today, Child Orders entered onto the NASDAQ book will be in the members’ name, while orders routed to other venues will be performed by NASDAQ Execution Services (“NES”).

Percent of Volume (“POV”). In addition to order entry information common to all order types of all attributes – security, buy/sell side, shares, and price – a member choosing the Benchmark Order will enter order information relevant to the Benchmark Order attribute, including (for example) the benchmark selected, the start time and duration of the order, and the percent of volume target (if any). NASDAQ members may enter Benchmark Orders via an existing NASDAQ protocol and an existing NASDAQ port; no new protocols or ports will be required.⁴ Benchmark Orders will be assigned unique identification numbers, as is the case for all orders in the NASDAQ system, used for tracking purposes as described below.

Benchmark Orders will not be executed by the NASDAQ matching engine, but will upon entry be directed to a system application dedicated to processing Benchmark Orders (“Application”).⁵ The Application will process the Benchmark Order in accordance with predetermined logic designed to achieve benchmark performance based upon the entering firm’s instructions. For example, consider a Benchmark Order containing instructions for the Application to buy 5,000 shares and achieve a VWAP in Security ABCD over the period from 9:30 a.m. to 10:00 a.m. The Application logic will include the calculation of a VWAP, the method for replicating that VWAP, the order types necessary to achieve that replication, and the prices at which such orders would need to execute. The Application will generate such Child Orders as are necessary to achieve the desired benchmark selected by the entering firm. Child Orders will be formatted using already-approved NASDAQ order types and times in force as set

⁴ Currently, orders that may become available for routing, including Benchmark Orders if approved, are entered using either NASDAQ’s proprietary INET FIX or RASHport protocol.

⁵ The relationship between NASDAQ and the Application technology provider is described in more detail below.

forth in NASDAQ Rule 4751.⁶ Child Orders will also be marked with unique identifiers, as is the case for all orders, for use in linking Child Orders to Benchmark Orders. Other than creating a Benchmark Order type for entry purposes, no new order types or times in force are being proposed.

The Application will not be capable of executing either Benchmark Orders or Child Orders but will instead send Child Orders, using the proper system protocol,⁷ to the NASDAQ matching engine or to the NASDAQ router as needed to complete the Benchmark Order.⁸ Thus, returning to the previous example of a Benchmark Order to buy 5,000 shares at the VWAP, the Application may determine it is necessary to send a marketable limit order to buy 1,000 shares of security ABCD at \$10.00 in order to complete the desired VWAP order. The Application will format the necessary orders, perhaps two orders for 500 shares each, and send those orders to the NASDAQ matching engine because NASDAQ is displaying 900 shares of ABCD at \$10.00. The Application will continue to monitor market conditions, recalculate the VWAP as necessary, monitor the Child Orders generated and executions received (via standard system messaging and tracking processes) and produce new Child Orders as necessary to achieve the desired overall

⁶ Child Orders may be generated by the System using preexisting order types in the RASH system, including previously filed strategies (e.g. SCAN, STGY, ISNY). Child Orders may be generated with instructions available to pre-existing order types including but not limited to Limit Orders, Market Pegged Orders, Primary Pegged Orders, Midpoint Pegged Orders, orders with instructions to participate in opening or closing crosses, Post-Only Orders, Intermarket Sweep Orders, Minimum Quantity Orders, Non-Display Orders, and Directed Orders.

⁷ Benchmark Orders may be entered using the INET FIX or NASDAQ RASH protocols. Child Orders will use available protocols in the same way that similar orders use them independent of Benchmark Orders. Different protocols offer members different means of setting parameters based on the technological characteristics of the protocols.

⁸ Child Orders that require routing will be routed by NES, NASDAQ's wholly-owned routing broker-dealer, according to the same rules and processes applicable to all orders routed from NASDAQ pursuant to NASDAQ Rule 4758.

execution. Benchmark Orders will be available for entry and execution during the system hours specified in NASDAQ rules. The parent order will remain active in the NASDAQ system until fully executed, expired, or cancelled by the entering member.⁹

Child Orders of Benchmark Orders will be processed in an identical manner to orders generated independently of a Benchmark Order. Trade reporting, OATS reporting, and clearing of Child Orders and trades will occur in the same manner as currently existing order types. Additionally, pre-trade checks required by the Market Access Rule (SEC Rule 15c3-5) will be made on both Benchmark Orders submitted by members as well as Child Orders created by the Application. All Child Orders will be checked for compliance with Regulation NMS prior to being routed. All fees applicable to existing orders and trades will apply to Child Orders.¹⁰ The only difference in processing of Child Orders vis a vis independently formatted orders of the same type will be the system messages transmitted between the Application and other parts of the NASDAQ system.

NASDAQ considers the Application to be a functional offering of the NASDAQ Stock Market, similar to other functions that process member trading interest, including other order types, order routing and order matching capabilities. Thus, although the technology will be licensed from a third party (“Third Party Provider”), the Application will be integrated closely with the NASDAQ system and provided to members subject to NASDAQ’s obligations and responsibilities as a self-regulatory organization.

⁹ In the event a member cancels an order, that member will be responsible for all executions completed prior to the time of cancellation, as well as all fees appurtenant to such executions.

¹⁰ NASDAQ has not determined the level of fee to assess for the execution of a Benchmark Order. When NASDAQ determines the proper fee for the Benchmark Order, it will file a proposed rule change as required.

NASDAQ has taken steps to provide that the Application performs to the standards NASDAQ sets for itself and that the SEC sets for all SROs. For example, NASDAQ will test the Application rigorously and regularly to ensure that the Application is performing the desired calculations and that it is doing so in a manner that complies with applicable SEC regulations and NASDAQ rules. NASDAQ will monitor the Application performance on a real-time and continuous basis just as it monitors all functions performed by the NASDAQ system. NASDAQ will have access to the technology, employees and books and records of the third party provider that are related to the Application and its interaction with NASDAQ and NASDAQ members.

The Third Party Provider will have no discretion with respect to Benchmark Orders and will have no authority other than to apply the licensed technology to such Benchmark Orders it receives from NASDAQ. Neither the Third Party Provider nor its employees will have information or access to information about NASDAQ members that submit Benchmark Orders. Benchmark Orders will be received by NASDAQ and not by the Third Party Provider, and messages sent from NASDAQ to the Third Party Provider will contain no information by which the Third Party Provider can identify the specific NASDAQ member that entered the order(s). The Third Party Provider will store messages related to NASDAQ Benchmark Orders only for the purposes of providing end-of-day analytics and to comply with applicable books and records requirements.

The Third Party Provider will have no actionable advantage over NASDAQ members with respect to the NASDAQ system. The third party hardware and software will be subordinate to the NASDAQ matching engine and router. The Application will not itself be capable of executing orders; it will only generate messages and instructions to be carried out by the

NASDAQ system in accordance with existing NASDAQ rules. NASDAQ will maintain control of and responsibility for the Application and the NASDAQ system. The Third Party Provider has a registered broker-dealer affiliate; however that affiliate will be performing no broker-dealer functions with respect to NASDAQ Benchmark Orders.¹¹ The sole function to be performed by the Third Party Provider's broker-dealer affiliate will be to accept from NASDAQ post-execution per-share compensation related to Benchmark Orders.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹² in general, and with Section 6(b)(5) of the Act,¹³ 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.

Specifically, NASDAQ believes that the Benchmark Order is consistent with and supports the goals of Section 6(b)(5) because it facilitates transactions in securities and improves trading within the national market system. The Benchmark Order will permit members to achieve on an exchange via a single order type what previously has required access to multiple venues using multiple order types. NASDAQ will enable members to leverage NASDAQ's

¹¹ As described above, Child Orders generated by the Application that require routing will be routed by NES and not by the Third Party Provider or its broker-dealer affiliate. As a result, the Third Party Provider and affiliate will have no reporting obligations with respect to Benchmark Orders under NASDAQ's OATS rules. See OATS Technology Specifications Scenario 4.4.22 (Routing Services Provided By Members).

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(5).

existing access and existing order types to make benchmarking easier and more efficient. For the members that already have such capabilities, the Benchmark Order will represent another option. Additionally, the Benchmark Order will expand benchmarking capability to firms that currently lack it or lack an exchange-based alternative.

NASDAQ further believes that the Benchmark Order will achieve new efficiency and cost savings for members. For NASDAQ members that rely on NASDAQ to help manage a significant percentage of their order flow, the Benchmark Order will extend that capability and thereby allow members to manage more order flow at a single trading platform. Members that choose to use Benchmark Orders will use the same ports and connectivity and the same programming protocols that they currently use for other NASDAQ orders. Additionally, because Benchmark Orders will be based on the same market data that NASDAQ uses today, members should incur no additional charges for market data feeds.

Finally, the Benchmark Order will increase transparency because NASDAQ will offer members detailed analytics regarding the performance of their Benchmark Orders. These analytics will be a “scorecard” not available today against which members will measure the actual performance of Benchmark Orders versus the selected benchmark. Members may use this tool to experiment with Benchmark Orders and, if successful, determine to enter additional Benchmark Orders or to refrain from entering them. The analytics will be limited to information concerning the members’ own executions and as such will include no market data that is proprietary to another member.

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. To the contrary, the establishment of Benchmark Orders on NASDAQ will enhance NASDAQ's ability to compete with similar functionality that already is widely dispersed in the industry both among members and trading venues. The Benchmark Order is a voluntary offering; voluntary on the part of the Exchange which is not required to offer it and voluntary on the part of members that are not required to use it. If the predicted enhancements and improvements of the Benchmark Order do not materialize, members will simply choose to ignore it. NASDAQ's decision to offer the Benchmark Order is a further indication of the competitiveness of the market for trading platforms. Continued improvements and enhancements such as the Benchmark Order are necessary in order to attract order flow and execute transactions. This need is heightened because the functionality underlying the Benchmark Order has for some time been made available by alternative trading systems that perform functions similar to NASDAQ but that have been exempted from the requirements of filing proposed rule changes, among others.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2012-059 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-2012-059. 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 Nasdaq. 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-2012-059 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

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¹⁴ 17 CFR 200.30-3(a)(12).