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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67024; File No. SR-NASDAQ-2012-060)

May 18, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rule 4751(f)(7) Concerning the Processing of the Price to Comply 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 8, 2012, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III 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 clarify how the processing of a Price to Comply Order under Rule 4751(f)(7) operates based on the method of entry. The Exchange will implement the change effective May 14, 2012.

The text of the proposed rule change is below. Proposed new language is italics; proposed deletions are in brackets.

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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.

(a) – (e)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(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) – (6) No change.

(7) “Price to Comply Order” are orders that, if, at the time of entry, a Price to Comply Order would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers). The displayed and undisplayed prices of a Price to Comply order entered through an OUCH port may be adjusted once or multiple times depending upon [the method of order entry and]the election of the member firm and changes to the prevailing NBBO. The displayed and undisplayed prices of a Price to Comply order entered through a RASH port may be adjusted multiple times, depending upon changes to the prevailing NBBO.

(8) – (14) No change.

(g) – (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, 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 proposing to clarify the effect that the methods of order entry have on the processing of a Price to Comply Order, as described in Rule 4751(f)(7).³ A Price to Comply

³ “Price to Comply Order” is an order such that, if, at the time of entry, it would lock or cross the quotation of an external market, the order will be priced to the current low offer (for

Order allows a member firm to quote aggressively and still comply with the locked and crossed markets provisions of Regulation NMS.⁴ Prior to June 2008, if at the time of entry a Price to Comply Order would create a violation of SEC Rule 610(d) by locking or crossing the protected quote of an external market or would cause a violation of SEC Rule 611 by trading through such a protected quote, the order was converted by the NASDAQ system to a Non-Displayed Order, as defined in Rule 4751(e)(3),⁵ and re-priced to the current low offer (for bids) or to the current best bid (for offers). Thereafter, such a Non-Displayed Order would be cancelled by the NASDAQ system if the market moved through the price of the order after the order was accepted.

In June 2008, NASDAQ amended Rule 4751(f)(7).⁶ The amendment changed how the Price to Comply Order operates so that a locking or crossing order is no longer converted to a Non-Displayed Order, but rather is displayed at the most aggressive price possible, one minimum price increment worse than the locking price. NASDAQ also added language to the rule, which noted that the Exchange may adjust the displayed and undisplayed prices of a Price to Comply Order once or multiple times, depending on the method of order entry and changes to the National Best Bid and Offer (“NBBO”). In the discussion of the rule change, NASDAQ explained that the displayed and undisplayed price of an individual order may be modified one or more times depending upon the manner of order entry into the system. In particular, if a member

bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers).

⁴ 17 CFR 242.610.

⁵ “Non-Displayed Order” is a limit order that is not displayed in the NASDAQ system, but nevertheless remains available for potential execution against all incoming orders until executed in full or cancelled.

⁶ Securities Exchange Act Release No. 57910 (June 3, 2008), 73 FR 32776 (June 10, 2008) (SR-NASDAQ-2008-049).

chooses to enter a Price to Comply Order via NASDAQ's RASH protocol, the order is priced upon entry and may be adjusted multiple times in response to changes in the prevailing NBBO to move the displayed price closer to the original entered price and display the best possible price consistent with the provisions of Regulation NMS. In addition, each time the displayed price is adjusted, the order will receive a new timestamp for purposes of determining its price/time priority according to NASDAQ's existing processing rules. If a Price to Comply Order is entered via NASDAQ's OUCH protocol, however, the order will be repriced only upon entry and the order is not repriced in the event the prevailing NBBO changes.

NASDAQ is proposing to amend Rule 4751(f)(7) to clarify the effect that the method of order entry has on the processing of the Price to Comply Order. As noted above, the method of entry of a Price to Comply Order determines whether the order is repriced once or multiple times. This will continue to be the case under the amended rule; however, an OUCH subscriber will be afforded the choice to have its Price to Comply Order be subject to repricing *either* only once *or* multiple times. Member firms will designate each OUCH protocol order port to use either the single or multiple repricing functionality for any Price to Comply Order entered via that port.⁷ A RASH subscriber will continue to have the Price to Comply Order repriced multiple times, when appropriate. The methodology for repricing the Price to Comply Order will not vary based on how the order is entered. Like a RASH-entered Price to Comply Order, each time the OUCH-entered order is repriced it will receive a new timestamp for purposes of determining its price/time priority. As such, a repriced Price to Comply Order is treated as a new order in terms of priority and, as such, there is no guarantee that the OUCH-entered Price to Comply Order will receive priority when it becomes actionable after repricing.

⁷ In the absence of designation from a member firm, NASDAQ will default the member's OUCH port(s) to single repricing.

NASDAQ believes that the new functionality and related rule change will serve to reduce the order traffic received using the OUCH protocol. NASDAQ notes that, in certain cases, a member will submit a Price to Comply Order at an aggressive price that it anticipates will be at the NBBO. Often such an order is not submitted at the NBBO and is not executed after repricing because the market does not move to the adjusted order price. In such cases, the member firm will typically submit additional aggressive orders, which likewise are not executed. Because the OUCH protocol is used by member firms that are able to submit a large volume of orders, NASDAQ believes that offering such firms the ability to have NASDAQ reprice a Price to Comply Order multiple times will serve to reduce the excessive volume of orders entered into the System and ultimately canceled.

As noted, NASDAQ will continue to offer OUCH subscribers an alternative to the multiple repricing functionality so that such member firms may elect to have a locked or crossed Price to Comply Order repriced only once, consistent with the current process. NASDAQ believes that this will accommodate member firms that seek the certainty of repricing at most once or whose trading systems depend on the existing repricing mechanism.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and with Section 6(b)(5) of the Act⁹ 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

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

a national market system, and, in general, to protect investors and the public interest. NASDAQ believes this proposal is consistent with the Exchange Act and, specifically, Rules 610 and 611 of Regulation NMS in that it is designed to prevent orders from locking and crossing market or trading through protected quotes, while also promoting a more efficient market. In this regard, NASDAQ believes that the proposed rule change will promote the efficient use of the Exchange by reducing the number of orders entered into the market and ultimately canceled. The proposed rule change will accomplish this by providing the member firms that tend to enter the greatest number of such orders an option to have the Exchange reprice a single order multiple times. NASDAQ also believes that permitting a high volume user the option to continue to have the Exchange reprice its Price to Comply Order only upon order entry, when appropriate, will ensure member firms with internal systems that act in reliance of this function will continue to operate without disruption.

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)(ii) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹

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. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

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-2012-060 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.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(6).

All submissions should refer to File Number SR-NASDAQ-2012-060. 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 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-2012-060 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.¹²

Kevin M. O'Neill
Deputy Secretary

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¹² 17 CFR 200.30-3(a)(12).