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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67413; File No. SR-NASDAQ-2012-084)

July 11, 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 July 2, 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 modify how the processing of a Price to Comply Order under Rule 4751(f)(7) operates based on the method of entry.

The text of the proposed rule change is below. Proposed new language is italicized; 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)

(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 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(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 that crosses the market will [may] be adjusted once and, depending on the election of the member firm, either rest on the book or [multiple times depending upon the election of the member firm and changes to the prevailing NBBO] be canceled if the previously-locking price becomes available. The displayed and undisplayed prices of a Price to Comply order entered through an OUCH port that locks the market will be adjusted once and, depending on the election of the member firm, either rest on the book, be canceled, or adjusted a second time if the previously-locking price becomes available. 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 modify how OUCH port-entered Price to Comply Orders³ will

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

operate. Price to Comply Orders, as described in Rule 4751(f)(7), allow member firms to quote aggressively and still comply with the locked and crossed markets provisions of Regulation NMS.⁴ NASDAQ recently amended Rule 4751(f)(7) to clarify the effect that the methods of order entry have on the processing of Price to Comply Orders.⁵ The rule change clarified that OUCH port-entered Price to Comply Orders are now eligible for price adjustment either once or multiple times, depending on the election of the member firm.⁶ The Exchange noted in the rule change that offering OUCH port users 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 System⁷ and ultimately canceled.⁸ Accordingly, a Price to Comply Order entered through an OUCH port that a member firm has designated for multiple price adjustment will be adjusted more than once in response to changes in the prevailing National Best Bid and Offer (“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. Prior to the clarifying rule change, OUCH

(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).

⁴ 17 CFR 242.610.

⁵ See Securities Exchange Act Release No. 67024 (May 18, 2012), 77 FR 31055 (May 24, 2012) (SR–NASDAQ–2012–060).

⁶ Member firms must designate each OUCH protocol order port that it wishes to use with the multiple price adjustment functionality, and such ports will also be designated for automatic cancellation or “kick out” of other order types whose price was adjusted upon entry to prevent a violation of Rule 610(d) of Regulation NMS. In the absence of designation from a member firm, the Exchange will default the member’s OUCH port(s) to single price adjustment.

⁷ As defined by Rule 4751(a).

⁸ The Exchange noted that the OUCH protocol is used by member firms that are able to submit a large volume of orders. Such member firm will often submit a Price to Comply Order at an aggressive price that it anticipates will be at the NBBO, but it 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. Supra note 5.

port-entered Price to Comply Orders that would lock or cross the market would be adjusted once and thereafter rest on the book. The Exchange has not implemented the recently-adopted changes⁹ so that it could subsequently modify how the OUCH port-entered Price to Comply Orders will operate under Rule 4751(f)(7), as described below.

The Exchange has determined to modify Rule 4751(f)(7) so that a Price to Comply Order entered via an OUCH port designated for multiple price adjustment that would *lock* the market can be adjusted a maximum of two times – once upon entry and once again to move the displayed price to the original entered price when it becomes permissible under Regulation NMS to do so, thereby displaying the best possible price consistent with the provisions of Regulation NMS. Under the proposed rule change, such Price to Comply Orders that would *cross* the market upon entry would be price adjusted once upon entry to display at a permissible level and thereafter cancelled when the previously locking level becomes available. This cancellation allows the member to resubmit its order at a price more aggressive than the previously locking price should the member still desire to do so.¹⁰ As such, and unlike as described in the recent rule change, the process applied to OUCH ports designated for multiple price adjustment will be similar to, yet different than, the process applied to RASH-entered Price to Comply Orders.

NASDAQ is not changing how Price to Comply Orders entered via an OUCH port not designated for multiple price adjustment operate. Such orders will continue to be adjusted once and thereafter remain on the book. Likewise, NASDAQ is not proposing to change how price adjusted orders are treated in terms of priority. Like RASH-entered Price to Comply Orders,

⁹ Supra note 5.

¹⁰ Similarly, orders other than Price to Comply Orders that are re-priced on entry due to Regulation NMS and submitted via OUCH ports designated for multiple price adjustment of Price to Comply Orders will be cancelled when the previously locking price level becomes available.

each time the OUCH-entered order is price adjusted it will receive a new timestamp for purposes of determining its price/display/time priority.¹¹ As such, an OUCH-entered Price to Comply Order that is repriced upon entry will initially be prioritized among non-displayed orders at the locking price based on its time of entry. Upon the second repricing of an OUCH-entered Price to Comply Order that is entered at a locking price, the order will be prioritized among displayed orders at the previously locking price based on its time of repricing and thus is treated as a new displayed order in terms of priority. There is no guarantee that the OUCH-entered Price to Comply Order will receive priority amongst displayed orders when it becomes actionable after repricing, as other displayed orders may be entered before the Price to Comply Order is repriced. This priority treatment is identical to the treatment provided to RASH-entered Price to Comply Orders that are price adjusted. The Exchange will provide public notice five business days prior to the implementation date of the changes proposed herein, together with the changes proposed in the recent rule filing¹² not modified by this proposal, and such implementation date will be no later than thirty calendar days from the date of filing this proposal with the Commission.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹³ in general, and with Section 6(b)(5) of the Act¹⁴ 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

¹¹ As described in Rule 4757(a)(1).

¹² Supra note 5.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

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. 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 the 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 via OUCH ports an option to have the Exchange reprice two times a single order that would lock the market upon entry. 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 Act¹⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁶

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-2012-084 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.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(6).

All submissions should refer to File Number SR-NASDAQ-2012-084. 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-2012-084 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.¹⁷

Kevin M. O'Neill
Deputy Secretary

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¹⁷ 17 CFR 200.30-3(a)(12).