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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-67639; File No. SR-NASDAQ-2012-071)

August 10, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change to Amend Rule 4758(a)(1)(A) to Reflect a Change in NASDAQ's Routing Functionality

I. Introduction

On June 14, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 4758(a)(1)(A) to reflect a change in NASDAQ's routing functionality. The proposed rule change was published for comment in the Federal Register on June 29, 2012.³ The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description

NASDAQ has proposed to amend Rule 4758(a)(1)(A) to reflect a change in NASDAQ's order routing functionality, which will allow routable orders⁴ to simultaneously execute against NASDAQ available shares and route to other markets for execution of the remainder of the order. Currently, when a routable order is entered into the NASDAQ system, the NASDAQ book is first checked for available shares. If such an order is not filled or filled only partially,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 67246 (June 25, 2012), 77 FR 38875 ("Notice").

⁴ For purposes of this filing, a "routable order" is an order entered into the NASDAQ System, which is not of an Order Type precluded from routing to other markets.

then the order is routed to away markets with the best bid or best offer pursuant to NASDAQ's System routing table.⁵

NASDAQ stated that it has observed that upon partial execution of a routable order at NASDAQ market participants often react to the order by cancelling their orders on other markets and entering new orders at inferior prices. This occurs because the current process directs the order to NASDAQ before attempting to access available liquidity at other markets and thereby allows market participants to react to the execution (an effect known as "market impact" or "information leakage"). As a consequence, the available shares at the away market are no longer available, resulting in a lower likelihood of successfully accessing liquidity on away markets (i.e., the "fill rate") and an increased likelihood of ultimately receiving an execution at an inferior price. As such, NASDAQ has proposed to address this by changing how the routing process will operate.

NASDAQ has proposed to execute routable orders against the NASDAQ book for available shares and to simultaneously route any remaining shares to additional markets. Specifically, under the proposed change a routable order would attempt to execute against the available shares at NASDAQ and, to the extent the order would not be filled by such available shares, NASDAQ would simultaneously route the remainder of the order to other venues, according to NASDAQ's System routing table, in a manner consistent with Regulation NMS (i.e., satisfying all displayed protected quotes). In the event that the amount of shares on other markets is insufficient to completely fill the order, or the order fails to completely execute, NASDAQ would then post the remaining shares on the NASDAQ book or cancel the remaining

⁵ The "System routing table" is the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. See Rule 4758(a)(1)(A).

shares per the routed order's instructions. NASDAQ believes that this simultaneous execution against NASDAQ available shares and routing to other venues' shares will avoid the deleterious effect of market impact discussed above and result in overall faster and better executions of its members' routable orders.

NASDAQ noted, in its proposal, that it is not changing the execution and routing sequence of all routable orders. The TFTY, SAVE, SOLV, and CART orders are designed to execute serially as part of their strategies, which is generally to reduce the blended fees associated with transacting on multiple markets. As such, simultaneous routing of such orders would not result in a better execution in terms of the goals of these routable order types.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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 proposed rule change meets these requirements in that it promotes efficiency in the market, and should, as represented by NASDAQ, increase the likelihood that a routable order will receive faster and better executions. As a result, the proposed rule change could improve

⁶ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

NASDAQ's ability to effectively process routable orders. For these reasons, the Commission believes that the proposed change is consistent with Section 6(b)(5) of the Act.⁸

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NASDAQ-2012-071) is approved.

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

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Deputy Secretary

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⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).