



8011-01p

SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-75375; File No. SR-NASDAQ-2015-066]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Definition of Designated Retail Order in Nasdaq Rule 7018

July 7, 2015.

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 June 24, 2015, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in in Items I and II 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 proposes to amend the definition of “Designated Retail Order” in Nasdaq Rule 7018.

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at Nasdaq’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

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

1. Purpose

The Exchange proposes to amend the definition of “Designated Retail Order” (“DRO”) in Nasdaq Rule 7018 in order to clarify it and make it more consistent with the definition of “Retail Order” as previously set forth in Nasdaq Rule 4780(a)(2) (eliminated by the recently approved SR-NASDAQ-2015-024), BATS Y-Exchange, Inc. (“BATS”) Rule 11.24(a)(2)³ and NYSE Arca, Inc. (“NYSE Arca”) Rule 7.44(a)(3)⁴, as well as how it is defined in within the BATS Retail Member Organization Application Form (“BATS Form”).⁵ The Exchange will also update its Designated Retail Order Attestation form⁶ (“Attestation Form”) to be consistent with the proposed rule change. Pursuant to previous approvals, any and all members are required to submit a retail order attestation form to the specific exchange before submitting a retail order to that exchange.⁷

³ See BATS Rule 11.24(a)(2).

⁴ See NYSE Arca Rule 7.44(a)(3).

⁵ See http://cdn.batstrading.com/resources/membership/BYX_Retail_Member_Organization_Application.pdf.

⁶ See http://www.nasdaqtrader.com/content/AdministrationSupport/AgreementsTrading/dro_eligibility_form.pdf.

⁷ See e.g., Securities Exchange Act Release No. 69719 (June 7, 2013), 78 FR 35656 (June 13, 2014) (SR-NASDAQ-2013-031); Securities Exchange Act Release No. 69643 (May

As mentioned above, the proposed changes to the DRO definition in Nasdaq Rule 7018, as well as the corresponding changes to Nasdaq's Attestation Form, will be consistent with the recently eliminated Nasdaq Rule 4780 and in line with the revisions made by BATS to the BATS Form. Specifically, BATS updated its BATS Form to include three key elements⁸: (1) to ensure that the order is a riskless principal order that meets the criteria of FINRA Rule 5320.03⁹; (2) to state that an order from a "natural person" can include orders on behalf of accounts that are held in a corporate legal form, such as an Individual Retirement Account ("IRA"), Corporation, or a Limited Liability Company ("LLC") that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual; and (3) to include the standard that members have implemented policies and procedures that are reasonably designed to ensure that "substantially all" orders (rather than the previous standard that "every order") that are designated by the member as retail orders comply with these requirements. Nasdaq believes that inclusion in the DRO definition of an individual making the decision even if the account is held in corporate legal form qualifies as a "non-controversial" rule change under Rule 19b-4(f)(6) and is not a significant change from existing rules on other exchanges.

Consequently, Nasdaq will amend Nasdaq Rule 7018 to reflect the changes to the definition of DRO discussed above and amend its Attestation Form accordingly.

28, 2013), 78 FR 33136 (June 3, 2014) (SR-BYX-2013-008); and Securities Exchange Act Release No. 69513 (May 3, 2013), 78 FR 27261 (May 9, 2014) (SR-NYSE-2013-08).

⁸ Supra note 5.

⁹ See FINRA Rule 5320.03 (the riskless principal exception to the "Prohibition Against Trading Ahead of Customer Orders" FINRA rule).

2. Statutory Basis

Nasdaq believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.¹⁰ In particular, the Exchange believes the proposed change furthers the objectives of Section 6(b)(5) of the Act,¹¹ in that it 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange also believes that the proposed rule change to amend and clarify the definition of DRO in Nasdaq Rule 7018 is consistent with these principles because it would remove impediments to and perfects the mechanism of a free and open market and a national market system, as well as increases competition among execution venues and encourages additional liquidity. Specifically, the amended DRO definition is consistent with Nasdaq Rule 4780(a)(2) (eliminated by the recently approved SR-NASDAQ-2015-024), NYSE Arca Rule 7.44(a)(3) and BATS Rule 11.24(a)(2), and as defined in the BATS Form.¹² As BATS has done with its BATS Form, the Exchange's proposed rule change amending the DRO definition will be more inclusive and benefits the individual investor who places his or her money into accounts that are held in a corporate legal form (e.g., an IRA, Corporation, or an LLC that has been established for the benefit of an individual or group of related family members), provided that the order has been submitted by an individual. As a result, the price discovery is enhanced as

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² Supra note 5.

more retail investors will have the opportunity to avail themselves of DROs. Under the current rule and attestation, only a small segment of the retail market is included. The proposed rule change widens the net and affords more retail investors and their broker-dealers that route these orders greater opportunities.

Further, although the change from “every order” to “substantially all orders” slightly reduces the monitoring risk placed on broker-dealers, the Exchange believes that this slightly lower burden will encourage and provide reasonable incentives for retail-focused broker-dealers to route retail orders to the Exchange for the benefit of the price discovery process and for all market participants with enhanced retail liquidity and trading opportunities.

The Exchange believes that the amended DRO definition increases competition among execution venues and encourages additional liquidity by incentivizing more DROs to be routed to the Exchange, which will bring additional liquidity onto the Exchange. Additionally, the proposed rule change will improve the markets and create a more competitive environment, as well as bring more order flow, which, in turn, enhances the price discovery process on the Exchange. The Exchange believes that the transparency and competitiveness of the proposed rule change will result in better prices for retail investors.

The Exchange also believes that the proposed rule change is consistent with these principles in that it creates a financial incentive to bring more than just retail order flow from individual or joint ownership accounts to the public market. The proposed rule change also encourages retail order flow that is in other forms of account registration employed by retail investors (as is the case with an IRA), which broadens it beyond just basic retail order flow. It also includes order flow from members that use other forms of account registration for tax reasons, retirement or pension savings, for families and other related retail investors.

Nasdaq also believes that the proposed rule change to the definition of DRO in Nasdaq Rule 7018 qualifies as a “non-controversial” rule change under Rule 19b-4(f)(6) because it is not novel and serves to put the Exchange on equal footing with BATS. It simply recognizes that an order from a “natural person” may include orders based on an individual making the decision (rather than an algorithm), even if the account is held in an IRA, Corporation, or an LLC that has been established for the benefit of an individual or group of related family members. Nasdaq further believes that inclusion in the DRO definition of an individual making the decision even if the account is held in corporate legal form qualifies as a “non-controversial” rule change under Rule 19b-4(f)(6) and is not a significant change from existing rules on other exchanges. The Exchange believes that this proposed rule change and the proposed rule change to modify the standard that members have implemented policies and procedures that are reasonably designed to ensure that “substantially all” rather than “every” order are minor enough changes to qualify the filing as non-controversial, which is consistent with previous approvals.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.¹³

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. The Exchange believes that competition improves by incentivizing more DROs to be routed to the Exchange, which will bring additional liquidity onto the Exchange as well. The definition of DRO, as amended, will improve the markets and create a more competitive environment, as well

¹³ 15 U.S.C. 78f(b)(5).

as bring more order flow and, therefore, more market makers onto the Exchange to provide liquidity and compete with robust competitive markets.

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 Act¹⁴ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁵

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved. 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.

¹⁴ 15 U.S.C. 78s(b)(3)(a)(ii).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give 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, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2015-066 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2015-066. 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-2015-066 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.¹⁶

Brent J. Fields,
Secretary.

[FR Doc. 2015-16976 Filed: 7/10/2015 08:45 am; Publication Date: 7/13/2015]

¹⁶ 17 CFR 200.30-3(a)(12).