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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76874; File No. SR-NASDAQ-2015-167)

January 12, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section (a)(6) of Rule 1120, Continuing Education Requirements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that, on December 30, 2015, 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 and II 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 amend section (a)(6) of Rule 1120 (Continuing Education Requirements) to provide for web-based delivery of the Exchange’s continuing education (“CE”) program. The proposed rule change would phase out the current option of completing the Regulatory Element in a test center, and eliminate the current option for in-house delivery of the Regulatory Element of the CE program. The amendments will delete the current text of Rule 1120(a)(6) (In-Firm Delivery of the Regulatory Element). The Exchange’s proposal is materially similar to a recent FINRA filing to amend FINRA Rule 1250, which was recently

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

approved by the Securities and Exchange Commission.³ The proposed rule change will become operative January 4, 2016.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, 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, 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

The CE requirements under Rule 1120 consist of a Regulatory Element⁴ and a Firm Element.⁵ The Regulatory Element applies to all registered persons⁶ and consists of periodic

³ See Securities Exchange Act Release No. 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (Order Approving a Proposed Rule Change to Provide a Web-based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements) (SR-FINRA-2015-015). See also Securities Exchange Act Release No. 76107 (October 8, 2015), 80 FR 62139 (October 15, 2015) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Delivery of the Regulatory Element of the Exchange's Continuing Education Program) (SR-CBOE-2015-084).

⁴ See Rule 1120(a) (Regulatory Element).

⁵ See Rule 1120(b) (Firm Element).

computer-based training on regulatory, compliance, ethical, and supervisory subjects and sales practice standards, which must be completed within prescribed timeframes.⁷ In addition, a registered person is required to retake the Regulatory Element in the event that such person (A) is subject to any statutory disqualification as defined in Section 3(a)(39) of the Act; (B) is subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or (C) is ordered as a sanction in a disciplinary action to retake the Regulatory Element by any securities governmental agency or self-regulatory organization. Rule 1120(a)(1) provides that the following Regulatory Elements administered by FINRA shall be required: the S201 Supervisor Program for registered principals and supervisors, the S501 Series 56 Proprietary Trader continuing education program for Series 56 registered persons, and the S101 General Program for Series 7 and all other registered persons. Currently, the Regulatory Element may be administered in a test center or in-firm subject to specified procedures.⁸

⁶ For purposes of the Regulatory Element, a “registered person” means any person registered with Nasdaq as a representative, principal, or assistant representative pursuant to the Rule 1020, 1030, 1040, and 1110 Series. See Rule 1120(a)(5).

⁷ Pursuant to Rule 1120(a)(1), each registered person shall complete the Regulatory Element of the continuing education program beginning with the occurrence of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by the Exchange. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the “base date,” shall establish the cycle of anniversary dates for purposes of the Rule. The content of the Regulatory Element of the program shall be determined by Nasdaq and shall be appropriate to either the registered representative or principal status of the person subject to the Rule.

⁸ Pursuant to Rule 1120(a)(6), Nasdaq Members that are also FINRA members are currently permitted to administer the continuing education Regulatory Element program to their registered persons by instituting an in-firm program to the extent such program

The Firm Element consists of annual, member-developed and administered training programs for covered registered persons,⁹ which must be appropriate for the business of the member and, at a minimum, must cover the following matters concerning securities products, services and strategies offered by the member: (i) general investment features and associated risk factors; (ii) suitability and sales practice considerations; and (iii) applicable regulatory requirements.

Today, most registered persons complete the Regulatory Element in a test center rather than in-firm. Given the advances in Web-based technology, the Exchange believes that there is diminishing utility in the test center and in-firm delivery methods. Moreover, according to FINRA,¹⁰ registered persons have raised concerns with the test center delivery method because of the travel involved, the limited time currently available to complete a Regulatory Element session¹¹ and the use of rigorous security measures at test centers, which are appropriate for

has been deemed acceptable to FINRA in accordance with NASD Rule 1120(a)(6). (The Exchange notes that NASD Rule 1120 has previously been superseded by FINRA Rule 1250 which FINRA has amended, as discussed above, to delete the in-firm CE option on a phased basis.) Nasdaq and FINRA are parties to the Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of Nasdaq. Therefore, Nasdaq members are complying with Nasdaq Rule 1120(a)(6) by complying with NASD Rule 1250. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Nasdaq Rule 1120(a)(6) are being performed by FINRA on behalf of Nasdaq. Nasdaq Members that are not FINRA members are not permitted to institute in-firm delivery of the Regulatory Element program.

⁹ Under Rule 1120(b)(1) (Persons Subject to the Firm Element), a “covered registered person” means any person registered with a member who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, and to the immediate supervisors of such persons.

¹⁰ FINRA is currently responsible for the operation of the test centers used for test center delivery method of the Regulatory Element.

¹¹ The current session time is three-and-a-half hours.

taking qualification examinations but onerous for a CE program.¹² Also, according to FINRA, the test center is expensive to operate.¹³

In response to the issues noted above, FINRA engaged in extensive outreach with the industry and completed a pilot of a Web-based delivery system for administering the Regulatory Element.¹⁴ According to FINRA, the proposed Web-based system performed well during the pilot in terms of both performance and accessibility.¹⁵ FINRA also received positive feedback from firms and the individual pilot participants.¹⁶ FINRA noted that among other things, pilot participants appreciated the expanded time to focus on the provided learning materials without the pressure of a timed session and the ability to resume or complete their session from where they left off.¹⁷

Proposal

Based on the recent amendments to FINRA Rule 1250¹⁸, the Exchange proposes to amend Rule 1120(a)(6) to provide for a Web-based delivery method for completing the Regulatory Element. Specifically, the Exchange proposes to amend Rule 1120(a)(6) to provide

¹² See Securities Exchange Act Release No. 75154 (June 11, 2015), 80 F.R. 34777 (June 17, 2015) (Notice of Filing of a Proposed Rule Change To Provide a Web-Based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements) (SR-FINRA-2015-015).

¹³ Id. at 34779.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ See FINRA Rule 1250 (Continuing Education Requirements). See also Securities Exchange Act Release No. 75581 (July 31, 2015) 80 FR 47018 (August 6, 2015) (Order Approving a Proposed Rule Change to Provide a Web-based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements) (SR-FINRA-2015-015).

that the continuing education Regulatory Element set forth in paragraph (a) of Rule 1120(a) will be administered through Web-based delivery or such other technological manner and format as specified by the Exchange. Should the Exchange determine to administer the Regulatory Element through a delivery mechanism other than Web-based delivery, however, the Exchange would notify the Commission and would need to file a further rule change with the Commission.

The first phase of the Web-based delivery system was launched October 1, 2015 and includes the Regulatory Element of the S201 Supervisor Program for registered principals and supervisors. The second phase of the Web-based delivery system will be launched January 4, 2016 and include the Regulatory Element of the S101 General Program for Series 7 and all other registered persons, including, but not limited to Securities Traders.

The Exchange is proposing to phase out test-center delivery by no later than six months after January 4, 2016. Registered persons will continue to have the option of completing the Regulatory Element in a test center, but they will be required to use the Web-based system after the test-center delivery is phased out.¹⁹

Further, the Exchange is proposing to eliminate the current option for in-firm delivery and is deleting the current language in Rule 1120(a)(6) relating to in-firm delivery of the CE Regulatory Element. The proposed Web-based delivery method will provide registered persons the flexibility to complete the Regulatory Element at a location of their choosing, including their

¹⁹ The Exchange intends to amend Rule 7003, Registration and Processing Fees, to reduce the cost for Web-delivery of the Regulatory Element from \$100 to \$55 if administered by Web-delivery. Fees for completing the CE Regulatory Element at a test center will remain \$100.

private residence, at any time during their 120-day window for completion of the Regulatory Element.²⁰

The Exchange notes that the Web-based format will include safeguards to authenticate the identity of the CE candidate. For instance, prior to commencing a Web-based session, the candidate will be asked to provide a portion of their [sic] SSN (either first five or last four digits) and their [sic] date of birth. This information will only be used for matching data in FINRA's Web-CRD system. The Web CE system will discard this information after the matching process. Further, before commencing a Web-based session, each candidate will be required to agree to the Rules of Conduct for Web-based delivery. Among other things, the Rules of Conduct will require each candidate to attest that he or she is in fact the person who is taking the Web-based session. The Rules of Conduct will also require that each candidate agree that the Regulatory Element content is intellectual property and that the content cannot be copied or redistributed by any means. If the Exchange discovers that a candidate has violated the Rules of Conduct, the candidate will forfeit the results of the Web-based session and may be subject to disciplinary action by the Exchange. Violation of the Rules of Conduct will be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2010A (Standards of Commercial Honor and Principles of Trade). The Exchange is not proposing any changes to the Firm Element requirements under Rule 1120(b).

²⁰ Although the proposed rule change provides flexibility, firms may choose to impose their own conditions based on their supervisory and compliance needs. For instance, a firm that wishes to have registered persons complete CE on the firm's premises can do so by having the registered person access Web-based CE from a firm device and location. Moreover, firms would have to update their written policies and procedures regarding the Regulatory Element to reflect the transition to Web-based CE and communicate the update to registered persons.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²² in particular, in that it is designed 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers and Section 6(c)(3)²⁴ of the Act, which authorizes the Exchange to, among other things, prescribe standards of financial responsibility or operational capability and standards of training, experience, and competence for its members and persons associated with members.

In particular, the Exchange believes that the proposed rule change will improve members' compliance efforts and will allow registered persons to spend a greater amount of time on the review of CE materials and potentially achieve better learning outcomes, which will in turn enhance investor protection. Further, while the proposed rule change will provide more flexibility to members and registered persons, it will maintain the integrity of the Regulatory Element of the CE program and the CE program in general.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78f(c)(3).

Exchange notes that the proposed rule change is specifically intended to reduce the burden on firms while preserving the integrity of the CE program. As described above, the Web-based delivery method will provide registered persons the flexibility to complete the Regulatory Element at any location that they choose. Further, Web-based delivery is efficient and offers significant cost savings over test-center and in-firm deliveries. With respect to the authentication process for Web-based delivery, the CE candidate's personal identifying information will be masked and will be submitted to FINRA through a secure, encrypted, network. The personal identifying information submitted via the Web-based system will be used for authentication purposes only – the information will not be stored in the Web-based system.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁵ and Rule 19b-4(f)(6) thereunder.²⁶

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative on January 4, 2016. The Exchange states the Exchange believes

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

that the proposed rule change will improve members' compliance efforts and will allow registered persons to spend more time on the review of CE materials and potentially achieve better learning outcomes, which will in turn enhance investor protection. In addition, waiving the operative delay will make NASDAQ's rules consistent with those of the other exchanges. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative on January 4, 2016.²⁷

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-2015-167 on the subject line.

²⁷ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper Comments:

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

All submissions should refer to File Number SR-NASDAQ-2015-167. 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 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 available publicly. All submissions should refer

to File Number SR-NASDAQ-2015-167 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.²⁸

Robert W. Errett,
Deputy Secretary.

²⁸ 17 CFR 200.30-3(a)(12).

