



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83115; File No. SR-NASDAQ-2018-030]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Certain Rules of the Rule 7000A Series to Make Conforming and Technical Changes

April 26, 2018

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 April 17, 2018, 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 amend certain rules of the Rule 7000A Series concerning the Order Audit Trail System to make conforming and technical changes.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange is proposing to make the following three changes to the Rule 7000A Order Audit Trail Series: (1) amend Rule 7410A(o)(1)(A) to harmonize the rule with FINRA Rule 7410(o)(1)(A); (2) correct rule citations in Rules 7430A and 7450A; and (3) delete the rule text under Rule 7470A, which lapsed in 2015.

The Exchange's Rule 7000A Series imposes an obligation on Exchange members to record in electronic form and report to FINRA on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members in Nasdaq-listed stocks. FINRA's Order Audit Trail System ("OATS") captures this order information and integrates it with quote and transaction information to create a time-sequenced record of orders, quotes, and transactions. This information is used by FINRA staff to conduct surveillance and investigations of members for potential violation of Exchange rules, federal securities laws, and FINRA rules.

The Exchange adopted the Rule 7000A Series to copy FINRA OATS rules, where appropriate. As a general principle, the Exchange endeavors to keep its rules corresponding to FINRA rules as closely worded and structured as possible to the FINRA rules on which they are based. In certain instances, such as FINRA Rule 7410(o)(2), which concerns an exception to the

definition of a Reporting Member relating to members operating on equities floors, the Exchange has not copied those inapplicable FINRA rules. Generally, the Exchange seeks to keep the Rule 7000 Series consistent with the applicable portions FINRA Rule 7040 Series. The proposed changes will harmonize Nasdaq rules with analogous FINRA rules, which have changed since the Exchange first adopted its rules.

First Change

The Exchange is proposing to amend Rule 7410A(o)(1)(A) to harmonize the rule with FINRA Rule 7410(o)(1)(A). Rule 7410A(o) provides the definition of “Reporting Member,” which means a member that receives or originates an order and has an obligation to record and report information under Rules 7440A and 7450A. Rule 7410A(o)(1) provides an exception to the general definition if the member meets four conditions. The first condition the member must meet is that the member engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member. On May 12, 2014, FINRA amended FINRA Rule 7410(o)(1)(A) to allow a member to route its orders to two receiving Reporting Members, if two conditions were met.³ First, the orders are routed by the member to each receiving Reporting Member on a pre-determined schedule approved by FINRA. Second, the FINRA member’s orders are routed to two receiving Reporting Members pursuant to the schedule for a time period not to exceed one year. The rule change permits FINRA members to continue to rely on the exception from the definition of Reporting Member if, for a limited time, the member routes orders to two different Reporting Members, provided the criteria are met. FINRA noted in adopting the change that the rule was intended to accommodate introducing firms that transition to a different clearing firm

³ See Securities Exchange Act Release No. 72191 (May 20, 2014), 79 FR 30219 (May 27, 2014) (SR-FINRA-2014-024).

over time and, during the transition, route their orders two different clearing firms, both of which report the introducing firm's information to OATS during the transition time.⁴ The Exchange believes that this additional limited exception is appropriate for its members, which likewise may encounter a transition to a clearing firm whereby it [sic] would no longer be eligible for the exception to the definition of Reporting Member. Accordingly, the Exchange is proposing to adopt the FINRA rule text under Rule 7410A(o)(1)(A)(ii).

Second Change

The Exchange is also proposing to correct rule citations in Rules 7430A and 7450A. Rule 7430A "Synchronization of Member Business Clocks" provides the requirements for synchronizing member business clocks, and states that Nasdaq members shall comply with FINRA Rule 7430 as if such Rule were part of Nasdaq's rules. There is no FINRA Rule 7430, but rather the appropriate FINRA rule to cite to is FINRA Rule 4590 "Synchronization of Member Business Clocks." Accordingly, the Exchange is correcting the erroneous citation in Rule 7430A.

Rule 7450A "Order Data Transmission Requirements" provides the requirements for order data transmission, and states that, except as provided in paragraph (b), Nasdaq members and persons associated with a member shall comply with FINRA Rule 7450A as if such Rule were part of Nasdaq's rules. There is no FINRA Rule 7450A and FINRA Rule 7450 "Order Data Transmission Requirements" is the appropriate FINRA rule to cite. Accordingly, the Exchange is deleting the erroneous "A" from the citation.

Third Change

⁴ Id. at 30220.

The Exchange is proposing to delete the rule text under Rule 7470A in its entirety, which lapsed in 2015, and to hold the rule [sic] in reserve. Rule 7470A provided an exemption from the order recording and data transmission requirements of Rules 7440A and 7450A OATS rules applicable to manual orders. To qualify for the exemption, a member must have met the following criteria: (1) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud; (2) the member has annual revenues of less than \$2 million; (3) the member does not conduct any market making activities in Nasdaq Stock Market equity securities; (4) the member does not execute principal transactions with its customers (with limited exception for principal transactions executed pursuant to error corrections); and (5) the member does not conduct clearing or carrying activities for other firms. The exemption was limited to a maximum time of two years although a member was able to request an additional exemption prior to the expiration of a grant of existing exemptive relief. The exemptive authority provided by the rule permitted the Exchange to grant relief to members that meet certain criteria in situations where, for example, the reporting of order information would be unduly burdensome for the member or where temporary relief from the OATS Rules, in the form of additional time to achieve compliance, would permit the members to avoid unnecessary expense or hardship. The exemption has not been requested by any Nasdaq member to date and the Exchange does not believe that Nasdaq members are likely to need the exemption, since the vast majority of such members to which the rule applies are electronic proprietary trading firms that would not qualify for the exemption. Thus, the Exchange is proposing to eliminate the rule text under Rule 7470A from its rule book, and to hold the rule [sic] in reserve.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁶ 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, by harmonizing the Exchange's OATS rules with those of FINRA, on which they are based. Consequently, the proposed changes will conform Exchange Rules to changes made to corresponding FINRA rules, thus promoting application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with the Exchange. With respect to the proposed amendment to Rule 7410A(o)(1)(A), the exemption will provide Exchange members the same flexibility to transition to a new clearing firm that FINRA members enjoy. The rule is intended to accommodate introducing firms that transition to a different clearing firm over time and, during the transition, route their orders to two different clearing firms, both of which report the introducing firm's information to OATS during the transition time. With respect to the proposed amendment to Rule 7470A to eliminate the expired exemption from the rule book, the Exchange believes that it is consistent with the Act because the exemption has never been requested by a Nasdaq member. Moreover, the Exchange does not believe that the vast majority of its members would qualify for the exemption, since such most Nasdaq members that are subject to the rule conduct an electronic proprietary trading business and the exemption applies to manual orders. Adopting the amended rule text under Rules 7410A will also align the Exchange rulebook with FINRA's, thereby eliminating complexity from FINRA's work under a regulatory services agreement with

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

the Exchange. With respect to the technical corrections to Rules 7430A and 7450A, the Exchange believes that these changes are consistent with the Act because they will prevent investor confusion that may be caused by incorrect rule citations in the Rules.

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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes align the Exchange's rules with those of FINRA, which will assist it in its oversight work done pursuant to a regulatory services agreement, and makes technical corrections to the rules. Consequently, the Exchange does not believe that the proposed changes implicate competition at all.

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 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)(iii) of the Act⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁸

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 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 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.

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.

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-2018-030 on the subject line.

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-2018-030. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2018-030, and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Eduardo A. Aleman,

Assistant Secretary.

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⁹ 17 CFR 200.30-3(a)(12).

