

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57910; File No. SR-NASDAQ-2008-049)

June 3, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the Processing of Price to Comply Orders

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 May 30, 2008, 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 and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. 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 the processing of Price to Comply orders contained in Nasdaq Rule 4751(f)(7). The Exchange proposes to implement the proposed rule change on June 2, 2008. The text of the proposed rule change is available at Nasdaq, the Commission’s Public Reference Room, and www.nasdaq.com.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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. 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 proposes to modify the rule language pertaining to “Price to Comply Order” as set forth in Rule 4751(f)(7) of the Nasdaq Rules. Price to Comply Orders were originally conceived and approved when Nasdaq integrated its three execution systems into the Nasdaq Single Book in 2007.⁵

Price to Comply Orders were designed to allow members to quote aggressively and still comply with the locked and crossed markets provisions of Regulation NMS.⁶ Specifically, Price to Comply Orders are orders that, if, at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing the protected quote of an external market or would cause an Order Protection Rule violation,⁷ the order will be converted by the System to a Non-Displayed Order and re-priced to the current low offer (for bids) or to the current best bid (for offers). Such Non-Displayed Orders are cancelled by the System if the market moves through the price of the order after the order is accepted.

⁵ See Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR-NASDAQ-2006-001).

⁶ See 17 CFR 242.610(d).

⁷ See 17 CFR 242.611.

In order to increase transparency and efficiency, Nasdaq is proposing to modify the display of Price to Comply Orders, while maintaining the current processing logic.

Nasdaq will continue the current practice of posting Price to Comply orders using the current logic, buy orders are priced at the inside offer and sell orders are priced at the inside bid. Rather than convert a locking or crossing order to Non-Displayed, Nasdaq will display the order at the most aggressive price possible, one minimum price increment worse than the locking price.

With the change, orders will now be displayed at a price which is either alone or will join the National Best Bid and Offer (“NBBO”).

An example of how this will apply to orders is below: The National market is \$9.97 x \$10.00. A firm enters a Price to Comply order to buy at \$10.01.

- Today, the order will reside on the Nasdaq book as non-displayed for \$10.00.
- With the proposed rule change, the order will reside on the Nasdaq book non-displayed for \$10.00 and will also be displayed at \$9.99. If a seller comes to Nasdaq at \$9.99, the order will execute at \$10.00.

As noted in the proposed rule, Price to Comply Orders that would lock or cross the market will be displayed at the best price possible consistent with the provisions of Regulation NMS. The displayed and undisplayed price of an individual order may be priced one or more times depending upon the manner of order entry into the System. Specifically, if a member chooses to enter a Price to Comply Order via Nasdaq’s RASH protocol, the order is priced upon entry and may be adjusted multiple times in response to changes in the prevailing 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. Each time the displayed price is adjusted, the order will receive a new timestamp for purposes of determining its price/time priority according

to Nasdaq's existing processing rules. If a Price to Comply Order is entered via Nasdaq's OUCH protocol, the order will be repriced only upon entry. The order is not repriced in the event the prevailing NBBO changes.

Nasdaq believes that the implementation of the aforementioned rule change modifying Nasdaq order display will enhance transparency and order execution opportunities on Nasdaq. Currently, all Price to Comply orders are non-displayed. In the new environment, since the order is displayed, it will be more transparent and better able to promote order interaction.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and with Section 6(b)(5) of the Act,⁹ 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 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 Act and specifically Rule 610 of Regulation NMS.

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

Nasdaq 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, as amended. To the contrary, Nasdaq believes that its processing of Price to Comply Orders is designed to compete with orders already approved and in use at other national securities exchanges, enhancing competition between the exchanges.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

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 rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹² However, Rule 19b-4(f)(6)(iii)¹³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to 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 notice requirement.

¹³ Id.

consistent with the protection of investors and the public interest. The Commission designates the proposed rule change to be operative upon filing with the Commission.¹⁴

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate 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.

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-2008-049 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-2008-049. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies

¹⁴ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10:00 am and 3:00 pm. 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-2008-049 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.¹⁵

Florence E. Harmon
Acting Secretary

¹⁵ 17 CFR 200.30-3(a)(12).