

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59392; File No. SR-NASDAQ-2009-006)

February 11, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish a Post-Only Order

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 28, 2009, 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 prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it 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

Nasdaq proposes to establish a Post-Only Order. The text of the proposed rule change is below. Proposed new language is underlined.⁵

* * * * *

4751. Definitions

(a) – (e) No change.

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).

⁵ Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaq.cchwallstreet.com>.

(f) No change.

(1) – (9) No change.

(10) "Post-Only Orders" are orders that if, at the time of entry, would lock an order on the System, the order will be re-priced and displayed by the System to one minimum price increment (i.e., \$0.01 or \$0.0001) below the current low offer (for bids) or above the current best bid (for offers).

(g) – (i) No change.

* * * * *

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 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. Nasdaq 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

In order to provide enhanced functionality, Nasdaq proposes to adopt an additional order type known as the Post-Only Order. A Post-Only Order is an order that does not remove liquidity from the System upon entry if it would lock an order on Nasdaq's system for trading cash equities (the "System"). If, at the time of entry, a Post-Only Order would lock an order on the System it will be re-priced and displayed by the System to one minimum price increment (i.e., \$0.01 or \$0.0001) below the current low offer (for bids) or above the current best bid (for

offers). In the case of a Post-Only Order locking an order, the Post-Only Order will be repriced only once upon entry into the System. Post-Only Orders will not be routed away to other trading centers.

An example of how the price sliding mechanism will work if the Post-Only Order locks an order on the System is as follows:

- The System is displaying a \$10.15 offer.
- A firm enters a Post-Only Order to buy at \$10.15.
- The incoming Post-Only Order will go on the book and display at \$10.14.

If the Post-Only Order would lock or cross a protected quote of another market center the post-only logic is not applicable and the order will be processed in the same manner as a Price to Comply Post Order.

- Another market center is displaying a \$10.15 offer.
- A firm enters a Post-Only Order to buy at \$10.15.
- The incoming Post-Only Order will be accepted and display at \$10.14.

If the Post-Only Order would cross another order already on the System and the price improvement for executing the order is greater than the liquidity taker fee and higher than the rebate for being a liquidity provider, then the post-only logic is not applicable and the order will be processed and execute in the same manner as an order with a time-in-force of Immediate or Cancel (IOC).

- The System is displaying a \$10.15 offer.
- A firm enters a Post-Only Order to buy at \$10.16.
- The incoming Post-Only Order will execute at \$10.15.

Nasdaq believes that the Post-Only Order type will increase the ability of market participants to control their provision or taking of market liquidity and thus better anticipate their trading costs. Nasdaq notes that orders similar to the proposed Post-Only Order type are already in use by other market centers.⁶ In addition, the process for re-pricing Post-Only Orders is comparable to the existing re-pricing mechanism approved for use for Price to Comply Post Orders.⁷

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5),⁹ in particular, 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Post-Only Order is designed to encourage displayed liquidity and to offer Nasdaq users greater discretion and flexibility to post liquidity on Nasdaq.

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

⁶ See Rule 4751(f)(9) of NASDAQ OMX BX, Rule 11.9(c)(5) of the BATS Exchange and Rule 7.31 of NYSE Arca. The proposed Post-Only Order would operate in the same manner as the Post-Only Order adopted by NASDAQ OMX BX and have functionalities similar to the NYSE Arca Adding Liquidity Only Order and the BATS Post Only Order.

⁷ See Rule 4751(f)(8).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, Nasdaq believes that the Post-Only Order is designed to compete with orders already approved and in use at other national securities exchanges, thereby enhancing competition between the exchanges.

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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 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

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). In addition, Rule 19b-4(f)(6)(iii) 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 complied with this requirement.

¹³ Id.

30-day operative delay and designate the proposed rule change operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that other self-regulatory organizations have similar order types¹⁴ and that this filing raises no new regulatory issues. Therefore, the Commission designates the proposal operative upon filing.¹⁵

At any time within 60 days of the filing of the 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 No. SR-NASDAQ-2009-006 on the subject line.

Paper comments:

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

¹⁴ See BATS Exchange, Inc. Rule 11.9(c)(5) and NASDAQ OMX BX, Inc. Rule 4751(f)(9).

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

All submissions should refer to File Number SR-NASDAQ-2009-006. 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 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 a.m. and 3:00 p.m. Copies of such 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-2009-006 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).