

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58721; File No. SR-NASDAQ-2008-079)

October 2, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Order Routing

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 29, 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 prepared by NASDAQ. NASDAQ filed the proposed rule change as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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 modify Rule 4758, Order Routing, to require that orders routed to the New York Stock Exchange LLC (“NYSE”) or the American Stock Exchange LLC (“AMEX”) through NASDAQ’s DOT routing strategy check the NASDAQ book prior to routing, except in the case of orders directed for participation in the NYSE or AMEX opening or closing processes.

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

NASDAQ proposes to make the change operative on October 1, 2008. The text of the proposed rule amendment is as follows, with deletions in [brackets] and additions italicized:

4758. Order Routing

(a) Order Routing Process

(1) The Order Routing Process shall be available to Participants from 7:00 a.m. until 8:00 p.m. Eastern Time, and shall route orders as described below: All routing of orders shall comply with Rule 611 of Regulation NMS under the Exchange Act.

(A) The System provides three routing options. Of these three, DOT is only available for orders ultimately sought to be directed to either the New York Stock Exchange ("NYSE") or the American Stock Exchange ("AMEX"). The System will consider the quotations only of accessible markets. The three System routing options are:

(i) DOT ("DOT")—under this option, after checking the System for available shares [if so instructed by the entering firm], orders are sent to other available market centers for potential execution, per entering firm's instructions, before being sent to the destination exchange, so long as the price at such market centers would not violate the Order Protection Rule. Any un-executed portion will thereafter be sent to the NYSE or AMEX, as appropriate, at the order's original limit order price. This option may only be used for orders with time-in-force parameters of either SDAY, SIOC, MDAY, MIOC, GTMC or market-on-open/close.

Notwithstanding the foregoing, orders designated for participation in the

NYSE or AMEX opening or closing processes will not check the System for available shares prior to routing.

(ii) – (iii) No change.

(B) No change.

(b) 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

NASDAQ is amending Rule 4758 to make its procedures for routing orders to NYSE and AMEX more consistent with its procedures for routing to other trading venues. Currently, a NASDAQ member seeking to route orders that are eligible for posting on the NYSE or AMEX books has the option of instructing NASDAQ Execution Services, the routing broker for NASDAQ, to bypass the NASDAQ book altogether and route the order directly to the destination exchange. By contrast, members seeking to bypass the NASDAQ book to reach venues other than NYSE and AMEX may do so only for the purpose of removing liquidity from the other venue through the use of “directed orders.” As NYSE’s and AMEX’s share of trading

in U.S. cash equities decreases, less volume is being routed through this specialized routing option. Accordingly, NASDAQ proposes to eliminate the functionality that allows members to post liquidity on the NYSE or AMEX books without first checking the NASDAQ book, while continuing to allow members to post on NYSE or AMEX after checking the NASDAQ book, or to route directed orders to NYSE or AMEX that remove liquidity without first checking the NASDAQ book.

Members seeking to use NASDAQ to route to NYSE and AMEX will continue to have the following options: (i) access available liquidity on NASDAQ and then route for posting at the away market;<sup>5</sup> (ii) access available liquidity, route to the away market to access available liquidity, and then return to NASDAQ for posting;<sup>6</sup> (iii) access only displayed liquidity on NASDAQ and other venues (including NYSE and/or AMEX) prior to cancelling or returning to NASDAQ for posting;<sup>7</sup> or (iv) route directed orders to NYSE or AMEX without checking the NASDAQ book, but on an immediate-or-cancel (IOC) basis only.<sup>8</sup> In addition, members seeking to route orders to NYSE or AMEX for purposes of participating in opening or closing processes will continue to have the option of bypassing the NASDAQ book.<sup>9</sup>

## 2. Statutory Basis

NASDAQ believes the proposed rule change is consistent with the provisions of Section

---

<sup>5</sup> See NASDAQ Rule 4758(a)(1)(A)(i) (including proposed amendments).

<sup>6</sup> See NASDAQ Rule 4758(a)(1)(A)(ii) and (iii). Orders that return for posting may, in turn, be designated as eligible either for routing again if they subsequently become executable (“STGY”) or designated to remain on the NASDAQ book after posting (“SCAN”).

<sup>7</sup> Id. Both SCAN and STGY allow market participants to instruct whether the order should access all available liquidity or only displayed liquidity.

<sup>8</sup> See NASDAQ Rule 4751(f)(9).

<sup>9</sup> See NASDAQ Rule 4758(a)(1)(A)(i) (including proposed amendments).

6 of the Act,<sup>10</sup> in general, and with Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative 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. The change will eliminate functionality that allows members to post liquidity on the NYSE or AMEX books without first checking the NASDAQ book, in accordance with decreasing use of this functionality. Following the change, members will continue to have numerous options for routing to NYSE and AMEX, including the use of directed IOC orders that bypass the NASDAQ book, and orders that are eligible for posting at NYSE or AMEX after checking the NASDAQ book.

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

NASDAQ 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.

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

No written comments were solicited or received with respect to the proposed rule change.

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

---

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>14</sup> However, Rule 19b-4(f)(6)(iii)<sup>15</sup> 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 Exchange states that waiver of the 30-day operative delay will allow NASDAQ to make its processes for routing to various exchanges consistent at the beginning of October 2008. Because the current functionality for routing and posting to NYSE and AMEX without checking the NASDAQ book has a particular fee associated with it, elimination of this option will affect the calculation of NASDAQ's bills to members, which are prepared on a monthly basis. Therefore, making the proposed change effective at the beginning of the month will promote efficiency and clarity in NASDAQ's billing processes.

---

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 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. NASDAQ has complied with this requirement.

<sup>15</sup> Id.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby grants the Exchange's request and designates the proposal as operative beginning on October 1, 2008.<sup>16</sup>

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](mailto:rule-comments@sec.gov). Please include File No. SR-NASDAQ-2008-079 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-2008-079. 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

---

<sup>16</sup> 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).

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-2008-079 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.<sup>17</sup>

Florence E. Harmon  
Acting Secretary

---

<sup>17</sup> 17 CFR 200.30-3(a)(12).