

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55550; File No. SR-NASDAQ-2007-010)

March 28, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 2 Thereto to Amend Rule 4611 Relating to Sponsored Access

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 February 16, 2007, 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 Nasdaq. On February 23, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change but subsequently withdrew it. On February 23, 2007, Nasdaq filed Amendment No. 2 to the proposed rule change. The Exchange has filed the proposal 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 it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend the Nasdaq Rule 4611 to update and codify the requirements applicable to Nasdaq members that provide sponsored access to other firms and customers to the

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).

Nasdaq execution system. The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and www.nasdaq.com.

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 proposes to amend the Nasdaq Rule 4611 to update and codify the requirements applicable to Nasdaq members that provide sponsored access to other firms and customers to the Nasdaq execution system. Currently, Nasdaq members provide sponsored access consistent with guidance set forth in NASD Notice to Members 98-66 as updated by the NASD in Notice to Members 04-66.⁵ Consistent with its status as an independent self-regulatory organization and the need to establish rules governing the use of its systems, Nasdaq proposes to adopt a sponsored access rule in the Nasdaq Rule Manual.

In recognition of the fact that Nasdaq members are members of other exchanges, that they use other exchanges' systems, and that they provide or receive sponsored access on other

⁵ Nasdaq established Rule 4611(d) in order to codify the requirements set forth in the aforementioned NASD Notices to Members. See Securities Exchange Act Release No. 55061 (January 8, 2007), 72 FR 2052 (January 17, 2007) (SR-NASDAQ-2006-061). Nasdaq is amending Rule 4611(d) in order to match the regulatory requirements imposed by another exchange and, thereby, to promote uniform regulation of sponsored access relationships.

exchanges in the same manner as on Nasdaq, Nasdaq is proposing to adopt a sponsored access rule that is identical to that of another exchange, specifically NYSE Arca, Inc. (“NYSE Arca”). The NYSE Arca sponsored access rule has, by virtue of Commission approval, been determined to be consistent with the Act, including being consistent with the public interest and the protection of investors.

The proper usage of Nasdaq’s systems and the protection of investors will be achieved in several ways. Sponsored participants must enter into and maintain customer agreements with one or more sponsoring members establishing proper relationships and accounts through which the sponsored participant may trade on the Nasdaq Market Center. In such customer agreements sponsored participant and its sponsoring member must agree in writing to “Sponsorship Provisions” that (1) obligates the sponsoring member and sponsored participant to enter into a contractual relationship with Nasdaq; (2) ensures that orders and trades are honored; (3) holds the sponsoring member responsible for the conduct of sponsored participants; (4) obligates sponsored participants to comply with all applicable Nasdaq rules; (5) restricts access to Nasdaq systems to a limited group of known and educated users, (6) requires sponsoring members to have procedures to monitor its employees, agents, and customers in their access to and use of Nasdaq systems; and (7) ensures full payment of all applicable Nasdaq fees.

The proposed rule change is intended to codify practices currently in use in existing sponsored access relationships.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of

Section 6 of the Act,⁶ in general, and with Section 6(b)(5) of the Act,⁷ 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.

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.

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 forgoing 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 Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

to 30 days after the date of filing.¹⁰ However, Rule 19b-4(f)(6)(iii)¹¹ 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 consistent with the protection of investors and the public interest because such waiver would permit Nasdaq to immediately implement the proposed rule change. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.¹²

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:

¹⁰ 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. Nasdaq has satisfied the five-day pre-filing notice requirement.

¹¹ Id.

¹² 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).

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-2007-010 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2007-010. 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. Copies of the 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-2007-010 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).