

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66780; File No. SR-NASDAQ-2012-049)

April 11, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4751

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 5, 2012, The NASDAQ Stock Market LLC (“NASDAQ” or the “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 NASDAQ. 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 is filing this proposed rule change to amend the definition of “Directed Orders” in Rule 4751(f)(9).

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.³

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4751. Definitions

(a) – (e) No change.

(f) The term “Order Type” shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://nasdaqomx.cchwallstreet.com>.

(1) - (8) No change.

(9) “Directed Orders” are orders that are directed to an exchange other than Nasdaq as directed by the entering party without checking the Nasdaq book. If unexecuted, the order (or unexecuted portion thereof) shall be returned to the entering party. [This option may only be used for orders with time-in-force parameters of IOC.]

Directed Orders may be designated as intermarket sweep orders by the entering party to execute against the full displayed size of any protected bid or offer (as defined in Rule 600(b) of Regulation NMS under the Act). A broker-dealer that designates an order as an intermarket sweep order has the responsibility of complying with Rules 610 and 611 of Regulation NMS. Directed Orders marked as intermarket sweep may only be used with time-in-force parameters of IOC.

Directed Orders may not be directed to a facility of an exchange that is an affiliate of Nasdaq except for Directed Orders directed to the NASDAQ OMX BX Equities Market or to the NASDAQ OMX PSX facility of NASDAQ OMX PHLX.

(10) - (13) No change.

(g) – (i) No change.

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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 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

Rule 4751(f)(9) defines a “Directed Order” as an order that is directed to an exchange other than NASDAQ as directed by the entering party without checking the NASDAQ book and, if unexecuted, the order (or unexecuted portion thereof) must be returned to the entering party. Currently, however, this option is only available for Directed Orders with time-in-force (“Time-in-Force”)⁴ parameters of immediate or cancel (“IOC”).

NASDAQ proposes to modify Rule 4751(f)(9) by removing the above restriction. The elimination of this restriction would then allow the Nasdaq Market Center (“System”) via its broker-dealer, NASDAQ Execution Services (“NES”), to direct customer orders that would post liquidity to particular away markets. This would further enable members to specify the maximum length of time to allow these orders to remain booked in accordance with any applicable rules of the away market. The proposed rule change would enhance order execution opportunities for market participants by increasing the mobility of liquidity, augmenting liquidity at less liquid venues and generally increasing the interconnectedness of the exchanges.

Additionally, Rule 4751(f)(9) would be clarified to specifically state that a Directed Order that is marked as an intermarket sweep order must be marked as IOC. By making this clarification, NASDAQ will prevent its routing broker from locking or crossing an away market because of customer instructions.

⁴ Time-in-Force denotes the period of time that the Nasdaq Market Center will hold an order for potential execution. See NASDAQ Rule 4751(h).

The proposed rule change, in essence, makes the Exchange's Directed Order similar to the BATS Exchange's "Modified Destination Specific Order."⁵ The remaining difference between the two order types is that for the BATS Modified Destination Specific Order, orders that are not executed in full are returned to the exchange, while for NASDAQ Directed Orders, orders that are not executed in full would be returned to the customer.

The only reason initially for the inclusion of this restrictive clause in Rule 4751(f)(9) was to accurately reflect the configuration of the Directed Order router. Since NASDAQ now intends to provide all Directed Orders with the option of being directed to away markets to post liquidity, the configuration of the System must be similarly updated to reflect this change.

The elimination of this restriction also serves to increase investor choice. Specifically, Directed Order types that do not include an IOC instruction would now provide investors with an additional method of connecting to another exchange for the purpose of providing liquidity. Users of NASDAQ's router would be able to, for example, post two-sided quotes on any exchange without having to establish connectivity to these exchanges separately. The proposed rule change also would improve the competitive landscape by creating a means by which NASDAQ customers could post liquidity at away markets and, thereby, remove barriers to participation on these markets.

Finally, NASDAQ already permits order types that allow for the posting of liquidity at away markets. In particular, the DOTI strategy has the ability to post to the New York Stock Exchange ("NYSE").⁶ DOTI is a routing option for orders that the entering firm wishes to direct to the NYSE or NYSE Amex without returning to the System. DOTI orders check the System

⁵ See Securities Exchange Act Release No. 58546 (September 15, 2008), 73 FR 54440 (September 19, 2008) (SR-BATS-2008-003). See BATS Rule 11.9(c)(13).

⁶ See NASDAQ Rule 4758(a)(1)(A).

for available shares and then are sent to destinations on the System routing table before being sent to NYSE or NYSE Amex, as appropriate. DOTI orders do not return to the System book after routing. The entering firm may alternatively elect to have DOTI orders check the System for available shares and thereafter be directly sent to NYSE or NYSE Amex as appropriate.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and with Section 6(b)(5) of the Act,⁸ 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.

Specifically, by eliminating the restriction which permits only Directed Orders with Time-in-Force parameters of IOC, as well as by clarifying that a Directed Order that is marked as an intermarket sweep order must also be marked as IOC, NASDAQ believes that the proposed rule change will enhance the interconnectedness of the national market system, increase investor choice, and improve order execution opportunities for market participants by increasing the mobility of liquidity, removing barriers to participation, and augmenting liquidity at less liquid venues. Thus, the proposed rule change will directly foster cooperation and will remove impediments to and perfect the mechanism of a free and open market, and is fully consistent with the protection of investors and the public interest.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

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. NASDAQ believes that the proposed rule change will serve to increase the interconnectedness of the national market system and also serves to increase investor choice by allowing the System via NES to direct customer orders that would post liquidity to particular away markets. The changes will also enhance NASDAQ's competitive stance vis-à-vis the Modified Destination Specific Order of the BATS Exchange.

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, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

Commission shall institute proceedings to determine whether the proposed rule change 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-2012-049 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2012-049. 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 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 will also be available for inspection and copying at the Exchange's principal office. 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2012-049 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.¹¹

Kevin M. O'Neill
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).