

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68389; File No. SR-NASDAQ-2012-122)

December 10, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend and Adopt Several NASDAQ Rules to Reflect Changes to Rules of the Financial Industry Regulatory Authority (“FINRA”)

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 November 26, 2012, The NASDAQ Stock Market LLC (the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 amend and adopt several NASDAQ rules to reflect changes to rules of the Financial Industry Regulatory Authority (“FINRA”). NASDAQ will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com>, at NASDAQ’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Many of NASDAQ's rules governing member conduct are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ has also been undertaking a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. To the extent possible, NASDAQ will designate a NASDAQ rule that is intended to parallel a FINRA rule with the suffix "A". For example, the NASDAQ rule paralleling FINRA Rule 2090 will be designated as Rule 2090A. This filing makes the following changes:

(1) NASDAQ is adopting Rule 5310A, which incorporates FINRA Rule 5310 (Best Execution and Interpositioning) by reference. The new rule takes the place of Rule 2320 (Best Execution and Interpositioning) and IM-2320 (Interpretive Guidance with Respect to Best

Execution Requirements).⁵ References in FINRA Rule 5310 to NASD Rule 2440 and IM-2440 will not be reflected in NASDAQ's rule, since NASDAQ has not adopted corresponding rules regulating the activities of NASDAQ Members with respect to commissions and mark-ups.

(2) NASDAQ is redesignating Rule 3060 (Influencing or Rewarding Employees of Others) as Rule 3220A and changing the incorporated rule from NASD Rule 3060 to FINRA Rule 3220.⁶

(3) NASDAQ is redesignating Rule 3090 (Transactions Involving Nasdaq Employees) as Rule 2070A.⁷

⁵ See Securities Exchange Act Release No. 65895 (December 5, 2011), 76 FR 77042 (December 9, 2011) (SR-FINRA-2011-052). NASDAQ Rule 2320 and IM-2320 had not previously incorporated NASD or FINRA rules by reference, but had closely tracked the language of the analogous NASD rules in effect at the time of their adoption. By incorporating FINRA Rule 5310 by reference, NASDAQ will be incorporating changes made by FINRA in the interim. Specifically, FINRA has moved portions of former NASD Rule 2320 and IM-2320 into a new section of Supplementary Material reflecting guidance with respect to (i) the definition of "market" for purposes of the rule, (ii) best execution and executing brokers, and (iii) use of a broker's broker, and has adopted new Supplementary Material providing guidance with respect to (i) execution of marketable customer orders, (ii) best execution and debt securities, (iii) orders involving securities with limited quotations or pricing information, (iv) orders involving foreign securities, (v) customer instructions regarding order handling, and (vi) regular and rigorous review of execution quality. In addition, FINRA modified its rule to make it clear that an interpositioning arrangement must be consistent with the overall rule governing best execution, rather than focusing exclusively on the cost of such an arrangement. FINRA also deleted language focused on the channeling of customers' orders through a broker's broker, again because such arrangements would be subject to the overall rule governing best execution. Specifically, the rule requires a broker to use reasonable diligence to ascertain the best market, based on a consideration of a range of factors enumerated in the rule. Through this rule filing, NASDAQ will be making all of the foregoing changes applicable to NASDAQ members in their capacities as NASDAQ members. NASDAQ notes that NASDAQ members with public customers are required to be members of FINRA by virtue of Section 15(b)(8) of the Act, 15 U.S.C. 78o(b)(8), and SEC Rule 15b9-1, 17 CFR 240.15b9-1. The change is designed to ensure that NASDAQ may enforce the rule against its members under the same parameters as FINRA enforces the rule against its members.

⁶ See Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008) (SR-FINRA-2008-027).

(4) NASDAQ is replacing Rule 2310 (Recommendations to Customers (Suitability)), IM-2310-1 (Reserved), IM-2310-2 (Fair Dealing with Customers), and IM-2310-3 (Suitability Obligations to Institutional Customers) with Rule 2111A (Suitability), which incorporates FINRA Rule 2111, and Rule 2090A (Know Your Customer), which incorporates FINRA Rule 2090.⁸ However, references in FINRA Rule 2111 to NASD IM-2210-6 will not be reflected in NASDAQ's rule, since NASDAQ has not adopted a corresponding rule regulating the activities of NASDAQ Members in connection with investment analysis tools.

NASDAQ notes that in some instances, the amended rules reference rules that are being adopted or renumbered by contemporaneous NASDAQ rule filings that have been filed on an immediately effective basis.⁹

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁰ in general, and with Section 6(b)(5) of the Act,¹¹ 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. The

⁷ Id.

⁸ See Securities Exchange Act Release No. 63325 (November 17, 2010), 75 FR 71479 (November 23, 2010) (SR-FINRA-2010-039).

⁹ See Securities Exchange Act Release Nos. 68123 (October 31, 2012), 77 FR 66658 (November 6, 2012) (SR-NASDAQ-2012-123); 68153 (November 5, 2012), 77 FR 67409 (November 9, 2012) (SR-NASDAQ-2012-124).

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

proposed changes will conform various NASDAQ Rules to changes made to corresponding FINRA rules, thus promoting application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with NASDAQ.

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

The Exchange 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.

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 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, provided that the self-regulatory organization has given 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

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-2012-122 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-2012-122. 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 such 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-2012-122 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 C.F.R. 200.30-3(a)(12).