

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69454; File No. SR-NASDAQ-2013-068)

April 25, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify NASDAQ's Rule Governing Modification of Orders in the Event of an Issuer Corporate Action Related to a Dividend, Payment or Distribution, and to Make Related Clarifications to Rule Text

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on April 17, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or 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 self-regulatory organization. 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 NASDAQ's rule governing modification of orders in the event of an issuer corporate action related to a dividend, payment or distribution, and to make related clarifications to rule text. The Exchange has designated the proposed changes as immediately effective, and proposes to implement the changes on or shortly after the 30th day after the date of the filing. The text of the proposed rule change is available on the Exchange's website at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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. 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

NASDAQ Rule 4761 addresses the treatment of quotes/orders in securities that are the subject of issuer corporate actions related to a dividend, payment or distribution (a "corporate action"). The rule applies to any trading interest that is carried on the Nasdaq Market Center book overnight.⁴ The rule contemplates a range of possible adjustments that, depending on the nature of the corporate action, might result in the cancellation of the order or an adjustment to its price and/or size to reflect the expected impact of the corporate action, effective on the ex-date of the corporate action. NASDAQ believes that the rule, as currently written, is excessively complex, since the rule contemplates that quotes/orders receive different adjustments depending on the nature and magnitude of the corporate action, whether the trading interest is a quote or order, and whether the trading interest is on the buy or sell side.⁵ Moreover, the current rule contemplates active management of quotes/orders by NASDAQ, thereby causing it to assume

⁴ NASDAQ notes that the use of such good-'till-cancelled trading interest is not prevalent, and that the majority of quotes/orders expire by their terms at the end of regular market hours.

⁵ NASDAQ also notes that it has determined that several non-material discrepancies exist between the current rule text and the manner in which certain open quotes/orders are currently processed by the Nasdaq Market Center system. This filing and the system changes to implement it will eliminate these discrepancies.

responsibilities that may be borne more appropriately by its members. Accordingly, NASDAQ proposes to amend the rule to provide that in the event of any corporate action, NASDAQ will cancel open quote/orders on the ex-date of the action, thereby imposing on the member that entered the order the responsibility for determining whether it wishes to reenter the order and if so, at what price and size.⁶ The cancellation would occur immediately prior to the opening of trading at 4 a.m. on the ex-date of the corporate action, and the member would receive a cancellation notice, so that it could, if it desired, reenter the order at the commencement of trading on the ex-date.

In addition, NASDAQ is proposing to make conforming changes to Rule 4756, which currently references the fact that open orders may be adjusted under Rule 4761 without such orders losing time priority. Since under the proposed rule change, all such orders will be cancelled, the cross-reference to Rule 4761 needs to be removed. Finally, NASDAQ is proposing to address several issues with the language of Rule 4756(b) to make it clear that quotes do not necessarily remain open overnight. First, the rule is being amended to delete an obsolete reference to NASDAQ's Automatic Quote Refresh functionality, which was

⁶ In making this change, NASDAQ is reversing a change made in 2006, in which NASDAQ replaced a rule to purge open orders with the current rule. Securities Exchange Act Release No. 54613 (October 17, 2006), 71 FR 62325 (October 17, 2006) (SR-NASDAQ-2006-043). At the time, NASDAQ stated that many members had not programmed their systems to adjust orders themselves and therefore preferred to have NASDAQ perform the function. NASDAQ believes that the intervening evolution in the sophistication of trading systems, as well as the importance of active risk management by broker/dealers, justifies the reversion to the prior rule. NASDAQ further notes that the prior rule provided that NASDAQ would not purge orders in the event of a corporate distribution of less than \$0.01. NASDAQ is not now proposing to retain this carve-out because NASDAQ believes that it would increase the complexity of order processing without any identifiable benefit.

discontinued on February 25, 2013.⁷ Second, NASDAQ is modifying a description of open quotes, the original intent of which is unclear and that accordingly may result in confusion. The sentence in question appears to reflect the idea that an open quote (i.e., a quote designated to remain open at the end of the trading day) would be processed in the same manner as a System Hours GTC Order. While accurate, this statement does not reflect the fact that a quote may also accurately be described as an Attributable Order entered by a NASDAQ Market Maker or NASDAQ ECN (i.e., trading interest that is identified as having been entered by a particular market participant). Moreover, although an Attributable Order may be entered with a time-in-force of good-'till-cancelled and thereby remain open overnight, such orders are exceedingly rare, such that almost all quotes/orders of NASDAQ Market Makers expire at the end of regular market hours. Accordingly, NASDAQ believes that the focus of the current sentence on orders remaining open might imply that all quotes remain open overnight, when as a factual matter this is almost never the case because the good-'till-cancelled time-in-force is almost never used by market participants. NASDAQ proposes to amend the sentence to provide that "Quotes will be processed as Attributable Orders, with such time-in-force designation as the Nasdaq Market Maker or Nasdaq ECN may assign." Finally, NASDAQ proposes to correct a typographical error in the rule.⁸

2. Statutory Basis

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

⁷ Securities Exchange Act Release No. 68528 (December 21, 2012), 77 FR 77165 (December 31, 2012) (SR-NASDAQ-2012-140).

⁸ NASDAQ notes that NASDAQ OMX BX, Inc. ("BX") is filing a similar proposed rule change to adopt a rule comparable to proposed NASDAQ Rule 4761 and to make amendments to BX Rule 4756 similar to those proposed with respect to NASDAQ Rule 4756. SR-BX-2013-031 (April 17, 2013).

Section 6 of the Act,⁹ in general, and with Section 6(b)(5) of the Act¹⁰ 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, NASDAQ believes that the change will simplify NASDAQ's rule governing adjustment of open quotes/orders in the event of corporate actions by making it clear that all such quotes/orders will be cancelled, thereby ensuring that market participants have appropriate notice of the possibility that they may either deem it advisable not to reenter such quotes/orders, or to reenter them with such adjustments to price and/or size as the market participant deems advisable to reflect the corporate action. Thus, the change will facilitate transactions in securities and perfect the mechanism of a free and open market by providing additional assurance that market participants carefully manage the trading interest that they enter into NASDAQ. In addition, the proposed changes to Rule 4756 are designed to make conforming changes and to improve the clarity of that rule.

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. Specifically, NASDAQ believes that the rule change does not affect the availability or pricing of goods or services offered by the Exchange, and therefore does not impact competition between the Exchange and others. Rather, the change is designed to simplify and clarify existing

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

rules in a manner that does not restrict the ability of members to enter and update trading interest in NASDAQ.

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

No written comments were either solicited or 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder.

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.

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:

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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 satisfied this requirement.

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-2013-068 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-2013-068. 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 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-2013-068 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.¹³

Kevin M. O'Neill
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).