

90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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. The Commission also requests and encourages interested persons to submit comments on the following specific questions:

- Unlike the Directed Order rules of other options exchanges, BX's proposed rule would not require that a Directed Market Maker be quoting at the NBBO at the time a Directed Order is received. Would the lack of the NBBO quoting requirement impact market makers' incentives to quote competitively? If so, how? If not, why? If other options exchanges eliminated the requirement that Directed Market Makers quote at the NBBO to receive Directed Orders as part of their Directed Order process, what, if any impact would there be on market maker quoting behavior, and more generally on the quality of quotations in the options markets?

- Under the proposed rule, a Directed Market Maker to whom an order is directed in an option subject to the exchange's Price/Time execution algorithm would receive a 40% allocation ahead of orders of other market participants, including customer orders that had time priority over the Directed Market Maker's quotation. What, if any, concerns does this raise for the options markets?

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2013-016 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-BX-2013-016. This file number should be included on the

subject line if email 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 Web site 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-BX-2013-016, and should be submitted on or before April 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-05543 Filed 3-8-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69039; File No. SR-NASDAQ-2013-031]

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend the Attestation Requirement of Rule 4780 To Allow a Retail Member Organization To Attest That "Substantially All" Orders Submitted to the Retail Price Improvement Program Will Qualify as "Retail Orders"**

March 5, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup>

<sup>25</sup> 17 CFR 200.30-3(a)(12).

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

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

notice is hereby given that on February 19, 2013, 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, II, and III 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 is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change amend the attestation requirement of NASDAQ Rule 4780 to allow a Retail Member Organization ("RMO") to attest that "substantially all" orders submitted to the Retail Price Improvement Program (the "Program") will qualify as "Retail Orders." NASDAQ Rule 4780(b)(2)(C) currently requires RMOs to attest that "any order" will so qualify, effectively preventing certain significant retail brokers from participating in the Program due to operational constraints.

The text of the proposed rule change is available from NASDAQ's Web site at <http://nasdaq.cchwallstreet.com/Filings/>, at NASDAQ's principal office, and at the Commission's Public Reference Room.

#### **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

The Exchange is proposing an amendment to NASDAQ Rule 4780(b)(2)(C) to provide that an RMO may attest that "substantially all" of the orders it submits to the Program are Retail Orders, as defined in NASDAQ Rule 4780(a)(2), replacing the requirement that the RMO must attest

that all submitted orders qualify as Retail Orders.<sup>3</sup>

Under current NASDAQ Rule 4780, a member organization wishing to become an RMO must submit: (A) An application form; (B) supporting documentation; and (C) an attestation that “any order” submitted as a Retail Order will qualify as such under NASDAQ Rule 4780.<sup>4</sup>

Accordingly, the Exchange is proposing a de minimis relaxation of the RMO attestation requirement in order to accommodate these system limitations and expand the access of retail customers to the benefits of the Program. Specifically, as proposed an RMO would be permitted to send de minimis quantities of agency orders to the Exchange as Retail Orders that cannot be explicitly attested to under existing definitions of the Program.

The Exchange will issue an Equity Trader Alert to make clear that the “substantially all” language is meant to permit the presence of only isolated and de minimis quantities of agency orders that do not qualify as Retail Orders that cannot be segregated from Retail Orders due to systems limitations. In this regard, an RMO would need to retain, in its books and records, adequate substantiation that substantially all orders sent to the Exchange as Retail Orders met the strict definition and that those orders not meeting the strict definition are agency orders that cannot be segregated from Retail Orders due to system limitations, and are de minimis in terms of the overall number of Retail Orders sent to the Exchange.<sup>5</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>6</sup> In particular, the Exchange believes the proposed change furthers the objectives

<sup>3</sup> See Securities Exchange Act Release No. 68747 (January 28, 2013) (SR-NYSE-2013-08) (substantially similar to the filing at hand).

<sup>4</sup> A Retail Order is defined in NASDAQ Rule 4780(a)(2), in part, as “an agency or riskless principal order that originates from a natural person and is submitted to NASDAQ by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price (except in the case that a market order is changed to a marketable limit order) or side of market and the order does not originate from a trading algorithm or any other computerized methodology.”

<sup>5</sup> The Financial Industry Regulatory Authority, Inc., on behalf of the Exchange, will review a member organization’s compliance with these requirements.

<sup>6</sup> 15 U.S.C. 78f(b).

of Section 6(b)(5) of the Act,<sup>7</sup> in that it 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because, while the proposed rule change represents a relaxation of the attestation requirements, the change is a de minimis relaxation that still requires the RMO applicant to attest that “substantially all” of its orders will qualify as Retail Orders. The slight relaxation will allow enough flexibility to accommodate system limitations while still ensuring that only a fractional amount of orders submitted to the Program would not qualify as Retail Orders.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade because it will ensure that similarly situated member organizations who have only slight differences in the capability of their systems will be able to equally benefit from the Program.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will allow member organizations, who are concerned about its system limitations not allowing 100% certification that submitted orders are Retail Orders, to still participate in the Program. By removing impediments to participation in the Program, the proposed change would permit expanded access of retail customers to the price improvement and transparency offered by the Program and thereby potentially stimulate further price competition for retail orders.

## 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. The Exchange believes that the amendment, by increasing the level of participation in the Program, will increase the level of competition around retail executions such that retail investors would receive

<sup>7</sup> 15 U.S.C. 78f(b)(5).

better prices than they currently do on the Exchange and potentially through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Price Improvement Program on an exchange market would result in better prices for retail investors, and benefits retail investors by expanding the capabilities of Exchanges to encompass practices currently allowed on non-Exchange venues.

## 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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-031 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-2013-031. This file number should be included on the subject line if email 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 Web site 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 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2013-031 and should be submitted on or before April 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69045; File No. SR-NYSE-2013-02]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Adopting Investigation, Disciplinary, Sanction, and Other Procedural Rules That Are Modeled on the Rules of the Financial Industry Regulatory Authority and To Make Certain Conforming and Technical Changes

March 5, 2013.

#### I. Introduction

On January 4, 2013, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4

thereunder,<sup>2</sup> a proposed rule change to adopt rules governing investigations, discipline of members, sanctions that can be imposed as a result of disciplinary proceedings, cease and desist authority, and other procedural rules that are modeled on the rules of the Financial Industry Regulatory Authority ("FINRA"). The proposed rule change was published for comment in the **Federal Register** on January 24, 2013.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposal

On July 30, 2007, the National Association of Securities Dealers, Inc. ("NASD"), the Exchange, and NYSE Regulation, Inc. ("NYSER") consolidated their member firm regulation operations into a combined organization, FINRA, and entered into a plan to allocate to FINRA regulatory responsibility for common rules and common members ("17d-2 Agreement").<sup>4</sup> The 17d-2 Agreement was entered into in accordance with the requirements of Rule 17d-2 under the Act,<sup>5</sup> which permits self-regulatory organizations ("SROs") to allocate regulatory responsibilities with respect to common members and common rules. In 2007, the parties also entered into a Regulatory Services Agreement ("RSA"), whereby FINRA was retained to perform certain regulatory services on behalf of NYSER for non-common rules. On June 14, 2010, the Exchange, NYSER, and FINRA amended the RSA and retained FINRA to perform the market surveillance and enforcement functions that had previously been performed by NYSER up to that point.<sup>6</sup> Accordingly, since June 14, 2010, FINRA has been performing all enforcement-related regulatory services on behalf of NYSER, including disciplinary proceedings relating to NYSE-only rules or against both dual members and non-FINRA members.

According to the Exchange, to facilitate FINRA's performance of these enforcement functions under the RSA and to further harmonize the rules of FINRA and NYSE generally, NYSE is

proposing to adopt the text of the FINRA Rule 8000 Series and Rule 9000 Series, which set forth rules for conducting investigations and enforcement actions. The Exchange proposes to adopt most of FINRA's rules that are set forth in FINRA Rule 8000 and 9000 Series with no modification or only with conforming and technical changes.<sup>7</sup> However, in certain key respects, the proposed NYSE rules would continue to differ from FINRA's rules. Specifically, as described in more detail below, NYSE proposes, in part, to (1) establish processes for settling disciplinary matters both before and after the issuance of a complaint that differ both from NYSE's current Stipulation and Consent process and FINRA's current settlement processes; (2) retain the NYSE selection process for Hearing Panelists, rather than use FINRA's Panelists; (3) retain the substance of NYSE's current appellate process; (4) have NYSE's Chief Regulatory Officer ("CRO") rather than FINRA's General Counsel make certain procedural decisions in the proposed rules; (5) have NYSE's CRO rather than FINRA's CEO authorize certain proceedings; (6) have FINRA's Chief Hearing Officer rather than FINRA's National Adjudicatory Council ("NAC") review certain decisions; (7) retain the current NYSE list of minor rule violations, with certain technical and conforming amendments, while adopting FINRA's minor rule violation fine levels and FINRA's process for imposing them; and (8) not allow proceeds from fines and other monetary sanctions to be used for general corporate purposes. The major differences from the FINRA rules are highlighted below.<sup>8</sup>

<sup>7</sup> The following proposed NYSE Rules would be identical to the text of their counterpart FINRA Rules: 9131-9134, 9136-9138, 9142, 9148, 9213-9215, 9222, 9233-9241, 9261, 9263-9266, and 9290. The Exchange also made only conforming and technical changes to certain FINRA rules, such as changing "member" and "associated person" to "member organization" and "covered person," respectively; changing cross-references to FINRA rules to cross-references to Exchange rules; and other non-substantive changes. The following proposed NYSE Rules include only such conforming and technical amendments to their counterpart FINRA rule text: 8110, 8120, 8210, 8211, 8311, 8330, 9110, 9143, 9145, 9252, 9262, 9267, 9521, 9527, 9620, and 9870. Proposed NYSE Rule 8130 would set forth retention of jurisdiction provisions modeled on Article IV, Section 6 and Article V, Section 4 of the FINRA Bylaws. The text of the proposed rule is substantially the same as the text in FINRA's Bylaws, except that in paragraph (d) it contains a provision establishing how the transition period from NYSE Rule 477 will work. NYSE also made certain conforming changes to cross-references outside the 8000 and 9000 series.

<sup>8</sup> A detailed description of NYSE's current rules and proposed changes can be found in the Notice. See *supra* note 3.

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 27 CFR 240.19b-4.

<sup>4</sup> Securities Exchange Act Release No. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) ("Notice").

<sup>5</sup> See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (File No. 4-544) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities).

<sup>6</sup> 17 CFR 240.17d-2.

<sup>7</sup> See Securities Exchange Act Release No. 62355 (June 22, 2010), 75 FR 36729 (June 28, 2010) (SR-NYSE-2010-46).