

public interest. Nasdaq notes that similar functionality has already been found to be consistent with the Act by the Commission.⁶

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.

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 Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act⁹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq requests that the Commission waive the 30-day operative delay because the Exchange expects to have technologies in place to support the proposed rule change, as amended, on or about June 8, 2009, and believes that the expected benefits to Nasdaq market participants from the proposed rule change, as amended, should not be delayed. The Commission believes that waiving the 30-day operative delay¹¹ is

⁶ Securities Exchange Act Release No. 54422 (September 11, 2006), 71 FR 54537 (September 15, 2006) (SR-CBOE-2004-21); Securities Exchange Act Release No. 59359 (February 4, 2009), 74 FR 6927 (February 11, 2009) (SR-CBOE-2008-123).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 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 Commission has determined to waive the five-day pre-filing period in this case.

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ For purposes only of waiving the 30-day operative delay, the Commission has considered the

consistent with the protection of investors and the public interest and designates the proposal operative on June 8, 2009.

At any time within 60 days of the filing of the 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.¹²

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-2009-050 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-2009-050. 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

proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 2, 2009, the date on which Nasdaq submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2009-050 and should be submitted on or before June 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60037; File No. SR-NASDAQ-2009-048]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1, Thereto To Establish a New Voluntary Flash and Cancel Order

June 3, 2009.

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 May 20, 2009, 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 and II below, which Items have been prepared by Nasdaq. On May 29, 2009, Nasdaq filed Amendment No. 1 to the proposed rule change. Nasdaq has designated the proposed rule change, as amended, as constituting a rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal, as amended, 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.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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

Nasdaq proposes a rule change to establish a new voluntary Flash and Cancel Order. The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

4751. Definitions

The following definitions apply to the Rule 4600 and 4750 Series for the trading of securities listed on Nasdaq or a national securities exchange other than Nasdaq.

(a) through (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)–(10) No Change.

(11) "*Flash and Cancel Orders*" are market or marketable limit orders which are to be executed in whole or in part immediately upon receipt by the System with any unfilled balance being displayed to Nasdaq market participants (and market data vendors) for potential execution for a period of time not to exceed one-half of one second. If any unfilled balance remains after such display, such marketable unfilled balance shall be cancelled back to the entering party, and such nonmarketable unfilled balance shall be retained by the System for potential execution. The System will provide an electronic method to distinguish the Flash Order during the flash period from the System's protected quote under Regulation NMS.

(g) through (i) No Change.

* * * * *

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 is proposing to establish a new voluntary Flash and Cancel Order

type. A Flash and Cancel Order will provide an optional pre-cancellation display period for market and marketable limit orders so designated. Under the proposal, market and marketable limit orders designated as Flash and Cancel Orders will, after first executing to the maximum extent possible in Nasdaq's book, have their unexecuted portions displayed for potential execution at the NBBO such that a trade-through will not occur, to Nasdaq market participants and market data vendors for a period of time determined by Nasdaq which will not exceed one-half of one second. If any unfilled balance remains after such display, such marketable unfilled balance shall be cancelled back to the entering party, and such non-marketable unfilled balance shall be placed on the book for potential execution. As with other Nasdaq order types, the attributes of the Flash and Cancel Order may be combined with all Nasdaq non-routable order types. Nasdaq will provide an electronic method to distinguish the Flash Order during the flash period from the System's protected quote under Regulation NMS.

Nasdaq notes that flash and cancel order functionality has already been approved by the Commission for use by the CBOE Stock Exchange and that such functionality can be expected to provide Nasdaq system users with greater control over their trading. Except for the behavior of the Flash and Cancel Order described here, nothing in the proposal will modify or alter any existing rule or process related to order priority, order execution, trade-through protection or locked or crossed markets.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Sections 6(b)(5) of the Act,⁵ 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. Nasdaq notes that similar functionality has already been

found to be consistent with the Act by the Commission.⁶

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.

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 Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act⁹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq requests that the Commission waive the 30-day operative delay because the Exchange expects to have technologies in place to support the proposed rule change, as amended, on or about June 5, 2009, and believes that the expected benefits to Nasdaq market participants from the proposed rule change, as amended, should not be delayed. The Commission believes that waiving the 30-day operative delay¹¹ is consistent with the protection of

⁶ Securities Exchange Act Release No. 54422 (September 11, 2006), 71 FR 54537 (September 15, 2006) (SR-CBOE-2004-21); Securities Exchange Act Release No. 59359 (February 4, 2009), 74 FR 6927 (February 11, 2009) (SR-CBOE-2008-123).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 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. Nasdaq has satisfied this requirement.

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ For 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).

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

investors and the public interest and designates the proposal operative on June 5, 2009.

At any time within 60 days of the filing of the 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.¹²

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-2009-048 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-2009-048. 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, 100 F Street, NE., Washington, DC 20549, on official business days

¹² For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 29, 2009, the date on which the Nasdaq submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

between the hours of 10 a.m. and 3 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2009-048 and should be submitted on or before June 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60033, File No. SR-MSRB-2009-04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to the Voluntary Submission of Continuing Disclosure Documents to Its Upcoming Continuing Disclosure Service of the Electronic Municipal Market Access System (EMMA)⁸

June 3, 2009.

On April 14, 2009, the Municipal Securities Rulemaking Board ("MSRB"), filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the continuing disclosure service of the MSRB's Electronic Municipal Market Access system ("EMMA") to accept, and to make publicly available on the Internet, voluntary electronic submissions by issuers, obligated persons and their agents of continuing disclosure documents provided other than in connection with Exchange Act Rule 15c2-12. The proposed rule change was published for comment in the **Federal Register** on April 29, 2009.³ The Commission received three comment letters about the proposed rule

change.⁴ On May 8, 2009, May 18, 2009, and June 1, 2009, the MSRB filed responses to the comment letters.⁵ This order approves the proposed rule change.

The Commission has previously approved the establishment of the continuing disclosure service of EMMA, which will commence operation on July 1, 2009.⁶ The EMMA continuing disclosure service will receive electronic submissions of, and will make publicly available on the Internet through the EMMA web portal,⁷ continuing disclosure documents and related information from issuers, obligated persons and their agents pursuant to continuing disclosure undertakings entered into consistent with Exchange Act Rule 15c2-12. As approved, the EMMA continuing disclosure service will accept submissions of (i) continuing disclosure documents as described in Rule 15c2-12,⁸ and (ii) other disclosure documents

⁴ See letters from Douglas Adamson, Executive Vice President, Technical Services Division, American Bankers Association ("ABA"), dated April 24, 2009; letter from Heather Traeger, Associate Counsel, Investment Company Institute ("ICI"), dated May 20, 2009; and letter from Vickie A. Tillman, Executive Vice President, Standard & Poor's Ratings Services ("S&P"), dated May 29, 2009.

⁵ See letters from Ernesto A. Lanza, General Counsel, MSRB, to Elizabeth M. Murphy, Secretary, SEC, dated May 8, 2009 ("Response Letter I"), May 18, 2009 ("Response Letter II"), and June 1, 2009 ("Response Letter III").

⁶ See Securities Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR-MSRB-2008-05) (approving the continuing disclosure service of EMMA with an effective date of July 1, 2009) (the "EMMA continuing disclosure service approval"). The EMMA continuing disclosure service is designed to commence operation simultaneously with the effectiveness of certain amendments to Exchange Act Rule 15c2-12 adopted by the Commission. See Securities Exchange Act Release No. 59062 (December 5, 2008), 73 FR 76104 (December 15, 2008) (adopting amendments to Exchange Act Rule 15c2-12). Approval of the proposed rule change on or prior to July 1, 2009 would allow the permanent EMMA continuing disclosure service to accept such voluntary disclosures upon commencement of operations.

⁷ The EMMA web portal is accessible at <http://emma.msrb.org>.

⁸ Such items consist of: (A) Annual financial information concerning obligated persons; (B) audited financial statements for obligated persons if available and if not included in the annual financial information; (C) notices of the following events, if material: principal and interest payment delinquencies, non-payment related defaults, unscheduled draws on debt service reserves reflecting financial difficulties, unscheduled draws on credit enhancements reflecting financial difficulties, substitution of credit or liquidity providers or their failure to perform, adverse tax opinions or events affecting the tax-exempt status of the security, modifications to rights of security holders, bond calls, defeasances, release/substitution/sale of property securing repayment of the securities, and rating changes; and (D) notices of failures to provide annual financial information

Continued

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59814 (Apr. 23, 2009), 74 FR 19612 (Apr. 29, 2009) ("Commission's Notice").