

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, Washington, DC 20549-0213.

Extension:

Rule 22c-2. SEC File No. 270-541, OMB Control No. 3235-0620.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 22c-2 (17 CFR 270.22c-2) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Investment Company Act" or "Act") requires the board of directors (including a majority of independent directors) of most registered open-end investment companies ("funds") to either approve a redemption fee of up to two percent or determine that imposition of a redemption fee is not necessary or appropriate for the fund. Rule 22c-2 also requires a fund to enter into written agreements with their financial intermediaries (such as broker-dealers and retirement plan administrators) under which the fund, upon request, can obtain certain shareholder identity and trading information from the intermediaries. The written agreement must also allow the fund to direct the intermediary to prohibit further purchases or exchanges by specific shareholders that the fund has identified as being engaged in transactions that violate the fund's market timing policies. These requirements enable funds to obtain the information that they need to monitor the frequency of short-term trading in omnibus accounts and enforce their market timing policies.

The rule includes three "collections of information" within the meaning of the Paperwork Reduction Act of 1995 ("PRA").¹ First, the rule requires boards to either approve a redemption fee of up to two percent or determine that imposition of a redemption fee is not necessary or appropriate for the fund. Second, funds must enter into information sharing agreements with all

of their "financial intermediaries"² and maintain a copy of the written information sharing agreement with each intermediary in an easily accessible place for six years. Third, pursuant to the information sharing agreements, funds must have systems that enable them to request frequent trading information upon demand from their intermediaries, and to enforce any restrictions on trading required by funds under the rule.

The collections of information created by rule 22c-2 are necessary for funds to effectively assess redemption fees, enforce their policies in frequent trading, and monitor short-term trading, including market timing, in omnibus accounts. These collections of information are mandatory for funds that redeem shares within seven days of purchase. The collections of information also are necessary to allow Commission staff to fulfill its examination and oversight responsibilities.

Rule 22c-2(a)(1) requires the board of directors of all registered investment companies and series thereof (except for money market funds, ETFs, or funds that affirmatively permit short-term trading of its securities) to approve a redemption fee for the fund, or instead make a determination that a redemption fee is either not necessary or appropriate for the fund. Commission staff understands that the boards of all funds currently in operation have undertaken this process for the funds they currently oversee, and the rule does not require boards to review this determination periodically once it has been made. Accordingly, we expect that only boards of newly registered funds or newly created series thereof would undertake this determination. Commission staff estimates that approximately 117 funds or series thereof (excluding money market funds and ETFs) are newly formed each year and would need to make this determination.

² The rule defines a Financial Intermediary as: (i) Any broker, dealer, bank, or other person that holds securities issued by the fund in nominee name; (ii) a unit investment trust or fund that invests in the fund in reliance on section 12(d)(1)(E) of the Act; and (iii) in the case of a participant directed employee benefit plan that owns the securities issued by the fund, a retirement plan's administrator under section 316(A) of the Employee Retirement Security Act of 1974 (29 U.S.C. 1002(16)(A)) or any person that maintains the plans' participant records. Financial Intermediary does not include any person that the fund treats as an individual investor with respect to the fund's policies established for the purpose of eliminating or reducing any dilution of the value of the outstanding securities issued by the fund. Rule 22c-2(c)(1).

Based on conversations with fund representatives,³ Commission staff estimates that it takes 2 hours of the board's time, as a whole, (at a rate of \$4000 per hour)⁴ to approve a redemption fee or make the required determination on behalf of all series of the fund. In addition, Commission staff estimates that it takes compliance personnel of the fund (at a rate of \$64 per hour)⁵ 8 hours to prepare trading, compliance, and other information regarding the fund's operations to enable the board to make its determination, and takes internal compliance counsel of the fund (at a rate of \$334 per hour) 3 hours to review this information and present its recommendations to the board. Therefore, for each fund board that undertakes this determination process, Commission staff estimates it expends 13 hours⁶ at a cost of \$9514.⁷ As a result, Commission staff estimates that the total time spent for all funds on this process is 884 hours at a cost of \$646,952.⁸

B. Information Sharing Agreements

Rule 22c-2(a)(2) requires a fund to enter into information-sharing agreements with each of its financial intermediaries. Commission staff understands that all currently registered funds have already entered into such agreements with their intermediaries. Funds enter into new relationships with intermediaries from time to time, however, which requires them to enter into new information sharing agreements. Commission staff understands that, in general, funds enter into information-sharing agreement when they initially establish a relationship with an intermediary, which is typically executed as an addendum to the distribution

³ Unless otherwise stated, estimates throughout this analysis are derived from a survey of funds and conversations with fund representatives.

⁴ The estimate of \$4000 per hour for the board's time as a whole is based on conversations with representatives of funds and their legal counsel.

⁵ Unless otherwise stated, all cost estimates for personnel time are derived from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

⁶ This calculation is based on the following estimates: (2 hours of board time + 3 hours of internal compliance counsel time + 8 hours of compliance clerk time = 13 hours).

⁷ This calculation is based on the following estimates: (\$8000 (\$4000 board time × 2 hours = \$8000) + \$512 (\$64 compliance time × 8 hours = \$512) + \$1002 (\$334 × 3 hours attorney time = \$1002) = \$9514).

⁸ This calculation is based on the following estimates: (13 hours × 68 funds = 884 hours); (\$9514 × 68 funds = \$646,952).

¹ 44 U.S.C. 3501-3520.

agreement. The Commission staff understands that most shareholder information agreements are entered into by the fund group (a group of funds with a common investment adviser), and estimates that there are currently 801 currently active fund groups.⁹ Commission staff estimates that, on average, each active fund group enters into relationships with 3 new intermediaries each year. Commission staff understands that funds generally use a standard information sharing agreement, drafted by the fund or an outside entity, and modifies that agreement according to the requirements of each intermediary. Commission staff estimates that negotiating the terms and entering into an information sharing agreement takes a total of 4 hours of attorney time (at a rate of \$380) per intermediary (representing 2.5 hours of fund attorney time and 1.5 hours of intermediary attorney time). Accordingly, Commission staff estimates that it takes 12 hours at a cost of \$4560 each year¹⁰ to enter into new information sharing agreements, and all existing market participants incur a total of 9612 hours at a cost of \$3,652,560.¹¹

In addition, newly created funds advised by new entrants (effectively new fund groups) must enter into information sharing agreements with all of their financial intermediaries. Commission staff estimates that there are 58 new fund groups that form each year that will have to enter into information sharing agreements with each of their intermediaries.¹² Commission staff estimates that fund groups formed by new advisers typically have relationships with significantly fewer intermediaries than existing fund groups, and estimates that new fund groups will typically enter into 100 information sharing agreements with their intermediaries when they begin operations.¹³ As discussed previously, Commission staff estimates that it takes 4 hours of attorney time (at a rate of \$380) per intermediary to enter into information sharing agreements.

⁹ICI, 2014 INVESTMENT COMPANY FACT BOOK at Fig 1.7 (2014) (http://www.ici.org/pdf/2014_factbook.pdf).

¹⁰This estimate is based on the following calculations: (4 hours × 3 new intermediaries = 12 hours); (12 hours × \$380 = \$4560).

¹¹This estimate is based on the following calculations: (12 hours × 801 fund groups = 9612 hours); (9612 hours × \$380 = \$3,652,560).

¹²ICI, 2014 INVESTMENT COMPANY FACT BOOK at Fig 1.7 (2014) (http://www.ici.org/pdf/2014_factbook.pdf).

¹³Commission staff understands that funds generally use a standard information sharing agreement, drafted by the fund or an outside entity, and then modifies that agreement according to the requirements of each intermediary.

Therefore, Commission staff estimates that each newly formed fund group will incur 400 hours of attorney time at a cost of \$152,000,¹⁴ and all newly formed fund groups will incur a total of 23,200 hours at a cost of \$8,816,000 to enter into information sharing agreements with their intermediaries.¹⁵

Rule 22c-2(a)(3) requires funds to maintain records of all information-sharing agreements for 6 years in an easily accessible place. Commission staff understands that most shareholder information agreements are stored at the fund group level and estimates that there are currently 801 fund groups.¹⁶ Commission staff understands that information-sharing agreements are generally included as addendums to distribution agreements between funds and their intermediaries, and that these agreements would be stored as required by the rule as a matter of ordinary business practice. Therefore, Commission staff estimates that maintaining records of information-sharing agreements requires 10 minutes of time spent by a general clerk (at a rate of \$57)¹⁷ per fund, each year. Accordingly, Commission staff estimates that all funds will incur 133.50 hours at a cost of \$7609.50¹⁸ in complying with the recordkeeping requirement of rule 22c-2(a)(3).

Therefore, Commission staff estimates that to comply with the information sharing agreement requirements of rule 22c-2(a)(2) and (3), it requires a total of 32,945.5 hours at a cost of \$12,476,169.50.¹⁹

The Commission staff estimates that on average, each fund group requests shareholder information once a week, and gives instructions regarding the restriction of shareholder trades every day, for a total of 417 responses related to information sharing systems per fund group each year, and a total 334,017 responses for all fund groups

¹⁴This estimate is based on the following calculations: (4 hours × 100 intermediaries = 400 hours); (400 hours × \$380 = \$152,000).

¹⁵This estimate is based on the following calculations: (58 fund groups × 400 hours = 23,200 hours) (\$380 × 23,200 = \$8,816,000).

¹⁶ICI, 2014 INVESTMENT COMPANY FACT BOOK at Fig 1.7 (2014) (http://www.ici.org/pdf/2014_factbook.pdf).

¹⁷\$57 hour figure for a general clerk is derived from SIFMA's Office Salaries in the Securities Industry 2013 modified to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

¹⁸This estimate is based on the following calculations: (10 minutes × 801 fund groups = 8010 minutes); (8010 minutes/60 = 133.5 hours); (133.5 hours × \$57 = \$7609.50).

¹⁹This estimate is based on the following calculations: (9612 hours + 23,200 hours + 133.5 hours = 32,945.5 hours); (\$3,652,560 + \$8,816,000 + \$7609.50 = \$12,476,169.50).

annually.²⁰ In addition, as described above, the staff estimates that funds make 68 responses related to board determinations, 2403 responses related to new intermediaries of existing fund groups, 5800 responses related to new fund group information sharing agreements, and 801 responses related to recordkeeping, for a total of 9072 responses related to the other requirements of rule 22c-2. Therefore, the Commission staff estimates that the total number of responses is 343,164 (334,017 + 9147 = 343,164).

The Commission staff estimates that the total hour burden for rule 22c-2 is 33,829.5 hours at a cost of \$13,123,121.50.²¹

Responses provided to the Commission will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program. Responses provided in the context of the Commission's examination and oversight program are generally kept confidential. Complying with the information collections of rule 22c-2 is mandatory for funds that redeem their shares within 7 days of purchase. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC

²⁰This estimate is based on the following calculations: (52 + 365 = 417); (417 × 801 fund groups = 334,017).

²¹This estimate is based on the following calculations: (884 hours (board determination) + 32,945.5 hours (information sharing agreements) = 33,829.5 total hours); (\$12,476,169.50 + \$646,952 = \$13,123,121.50).

20549; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: September 22, 2014.

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73182; File No. SR-NASDAQ-2014-094]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Period for the Retail Price Improvement Program Until December 31, 2014

September 23, 2014.

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 September 11, 2014, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 extend the pilot period for the Exchange’s Retail Price Improvement (“RPI”) Program, which is set to expire on September 30, 2014, for three months, to expire on December 31, 2014.

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.

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 self-regulatory organization 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 those statements may be examined at the places specified in Item III below.

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the pilot period of the RPI Program,³ currently scheduled to expire on September 30, 2014, for three months, to expire on December 31, 2014.

Background

In February 2013, the Commission approved the RPI Program on a pilot basis.⁴ Initially the pilot period of the RPI Program was set to expire on March 28, 2014, however, the pilot period was extended for six months and is scheduled to expire on September 30, 2014.⁵ The Program is designed to attract retail order flow to the Exchange, and allow such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than \$1.00 per share. Under the Program, a new class of market participant called a Retail Member Organization (“RMO”) is eligible to submit certain retail order flow (“Retail Orders”)⁶ to the Exchange. NASDAQ members (“Members”) are permitted to provide potential price improvement for Retail Orders in the form of non-displayed interest that is priced more aggressively than the Protected National Best Bid or Offer (“Protected NBBO”).⁷

³ Securities Exchange Act Release No. 68937 (February 15, 2013), 78 FR 12397 (February 22, 2013) (“RPI Approval Order”) (SR-NASDAQ-2012-129).

⁴ See *id.*

⁵ Securities Exchange Act Release No. 71826 (March 28, 2014), 79 FR 18597 (April 2, 2014) (SR-NASDAQ-2014-030).

⁶ 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.”

⁷ The term Protected Quotation is defined in Chapter XII, Sec. 1(19) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The Protected NBBO is the best-priced protected bid and offer. Generally, the Protected NBBO and the national best bid and offer (“NBBO”) will be the same. However, a market center is not required to route to the NBBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBBO is otherwise not available for an automatic execution. In such case, the Protected NBBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

The Program was approved by the Commission on a pilot basis running one-year from the date of implementation.⁸ The Commission approved the Program on February 15, 2013.⁹ The Exchange implemented the Program on March 28, 2013.¹⁰ The Commission extended the pilot for an additional six months at the conclusion of the initial pilot period.¹¹ Thus, the pilot period for the Program is scheduled to end on September 30, 2014.

Proposal To Extend the Operation of the Program

The Exchange established the RPI Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit Retail Price Improvement Orders (“RPI Orders”)¹² to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide.¹³ As such, the Exchange believes that it is appropriate to extend the current operation of the Program.¹⁴ Through this filing, the Exchange seeks to extend the current pilot period of the Program until December 31, 2014.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁵ in

⁸ See RPI Approval Order, *supra* note 3 at 12397.

⁹ *Id.*

¹⁰ Securities Exchange Act Release No. 69308 (April 4, 2013), 78 FR 21663 (April 11, 2013) (SR-NASDAQ-2013-057).

¹¹ *Supra* note 5.

¹² A Retail Price Improvement Order is defined in NASDAQ Rule 4780(a)(3), in part, as consisting of “non-displayed liquidity on NASDAQ that is priced better than the Protected NBBO by at least \$0.001 and that is identified as such.”

¹³ See RPI Approval Order, *supra* note 3 at 12401.

¹⁴ Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the RPI orders in sub-penny increments. See Letter from John Yetter, Deputy General Counsel, The NASDAQ Stock Market LLC to Elizabeth M. Murphy[sic], Secretary, Securities and Exchange Commission dated March 24, 2014[sic].

¹⁵ 15 U.S.C. 78f.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.