SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64430; File No. SR–NASDAQ–2011–059]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Midpoint Peg Post-Only Order

May 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on April 28, 2011 The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("SEC" or "Commission") the 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 is filing this proposed rule change to establish the Midpoint Peg Post-Only Order as a new order type. NASDAQ proposes to implement the rule change on May 9, 2011 or as soon thereafter as practicable. The text of the proposed rule change is available at *http://www.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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

In order to provide enhanced functionality, NASDAQ proposes to adopt an additional order type known as the Midpoint Peg Post-Only Order. Like a regular Midpoint Peg Order, a Midpoint Peg Post-Only Order is a non-displayed order that is priced at the midpoint between the national best bid and best offer ("NBBO") (as determined using the consolidated tape). However, like a Post-Only Order, the Midpoint Peg Post-Only Order does not remove liquidity from the System upon entry if it would lock a non-displayed order on the NASDAQ Market Center system (the "System"). Rather, the Midpoint Peg Post-Only Order will post and lock the pre-existing order, but will remain undisplayed.[3] For example, if the NBBO is $1.10 bid and $1.11 offer, and there is a non-displayed Midpoint Peg Order to buy on the book at $1.105, an incoming Midpoint Peg Post-Only Order to sell will also post to the book at $1.105 and will not execute. By contrast, a regular Midpoint Peg Order would execute against the posted order at $1.105. If the Midpoint Peg Post-Only Order would cross a pre-existing order, however, the crossing orders will execute.

Midpoint Peg Post-Only Orders that post to the book and lock a pre-existing non-displayed order will execute against an incoming order only if the price of the incoming buy (sell) order is higher (lower) than the price of the pre-existing order. This restriction ensures that the non-displayed Midpoint Peg Post-Only Order will not execute before an order already on the book unless the incoming order against which it executes has price priority over the already posted order. For example, if the NBBO is $1.10 bid and $1.11 offer, and there is a non-displayed Midpoint Peg Order to buy on the book at $1.105, an incoming Midpoint Peg Post-Only Order to sell will also post to the book at $1.105 and will not execute. If another Midpoint Peg Order to buy is entered, it would also post to the book, rather than executing against the Midpoint Peg Post-Only Order. On the other hand, an order to buy at $1.11 would execute against the Midpoint Peg Post-Only Order, receiving $0.005 price improvement. Thus, the order provides a means by which a market participant may offer price improvement in exchange for receiving greater certainty with respect to its trading costs.

If, on the other hand, a Midpoint Peg Order and a Midpoint Peg Post-Only Order are locked, and a Midpoint Peg Order is entered on the same side of the market as the Midpoint Peg Post-Only Order, the new order will execute against the original Midpoint Peg Order. Thus, in the above example, if a Midpoint Peg Order to buy at $1.105 is locked by a Midpoint Peg Post-Only Order to sell at $1.105, a subsequent Midpoint Peg Order to sell at $1.105 would execute against the original buy order. This is the case because the market participant entering the Midpoint Peg Post-Only Order has expressed its intention not to execute against posted liquidity, and therefore cedes execution priority to the new order.

A Midpoint Peg Post-Only Order will only be posted to the book at a price of more than $1. Accordingly, if the midpoint between the NBBO for a particular stock is $1 or less, all Midpoint Peg Post-Only Orders for that stock will be rejected or cancelled, as applicable. This limitation reflects the fact that the difference between the inside market and the midpoint for stocks at this price level is likely to be extremely small, and therefore the price improvement opportunities associated with the order in such stock are unlikely to justify making the order available. NASDAQ's opening cross (Rule 4752), halt and imbalance cross (Rule 4753), and closing cross (Rule 4754) require various ongoing calculations of the best bid and offer within NASDAQ. For purposes of these calculations, a Midpoint Peg Post-Only Order to buy (sell) that is locking another non-displayed order shall be deemed to have a price equal to the price of the highest sell order (lowest buy order) that would be eligible to execute against the Midpoint Peg Post-Only Order in such circumstances.[4]

The proposed order is virtually identical to functionality previously introduced by the National Stock Exchange ("NSX").[5] NSX's Zero Display

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] SEC Rule 610(d) under Regulation NMS, 17 CFR 242.610(d), restricts displayed quotations that lock or cross protected quotations in NMS Stocks, but does not apply to non-displayed trading interest.

[4] In addition to amending Rule 4751 to add a description of the Midpoint Peg Post-Only Order's functionality, NASDAQ is also amending the list of order types in Rule 4755 to add a reference both to the new order type and also the existing Post-Only Order, which had been inadvertently omitted from that rule when the Post-Only Order was introduced.

[5] *See* Securities Exchange Act Release No. 57311 (February 12, 2008), 73 FR 9148 (February 19, 2008) (SR–NSX–2008–03) (amending NSX Rule 11.14 to adopt a Zero Display Reserve Order, which includes both a pegging option and a post-only option).

Order can be pegged to the midpoint between the national best bid and offer ("NBBO") and can also be designated as a Post Only Order. "If a Zero Display Order is designated as a Post Only Order and is immediately marketable, the order will not be executed, but will be posted to the NSX Book, unless the contra-side order with which it would interact is a Zero Display Order that has not been designated as Post Only, in which case the order will be executed." [6] In that case, however, the incoming Zero Display Order that has been designated as Post Only is deemed to provide liquidity for purposes of NSX's fees and rebates, while "the non-Post Only Zero Display Order will be considered liquidity taking by the Exchange, regardless of which order arrives at NSX first." [7] Because all orders priced at the midpoint between the NBBO must be non-displayed (since they would otherwise establish a new NBBO), NSX's Zero Display Order functionality allows conditions under which an incoming Post Only Zero Display order, pegged to the midpoint and designated as Post Only, locks an identical order on the other side of the market and both orders post to the book. As NSX noted, however, "[t]his will not result in a locking or crossing quote, because the Zero Display Order will not be displayed and therefore will not be a quote."

NASDAQ believes that such orders serve a valid purpose in the current market environment. Although Rule 610 limits access fees, market participants remain focused on their trading costs, and in a pricing environment characterized by fees on one side of a trade being used to fund rebates on the other side,[8] it is entirely understandable that some market participants may wish to structure their trading activity in a manner that is more likely to avoid a fee and earn a rebate. In this respect, the order is conceptually similar to a limit order: just as a limit order allows market participants to control the price that they will pay or receive for a stock, the proposed new order will allow market participants to exercise greater control over the fees associated with order execution. Moreover, the order type will operate in a manner calculated to require members posting the order generally to provide price improvement in order to justify the ability to earn a rebate. Thus, as long as a Midpoint Peg Post-Only Order is locking a pre-existing Midpoint Order, the order can execute only if it offers price improvement. By means of price improvement, the market participant effectively shares a portion of its rebate with the counterparty with whom it is matched, thereby reducing its trading costs as well.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Section 6(b)(5) of the Act,[10] 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, the Midpoint Peg Post-Only Order is designed to provide market participants with better control over their execution costs and to provide a means to offer price improvement opportunities.

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. The Midpoint Peg Post-Only Order will enhance the functionality offered by NASDAQ to its members, thereby promoting its competitiveness with other exchanges and non-exchange trading 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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

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:

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–2011–059 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–2011–059. 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

[6] *Id.*

[7] *Id.*

[8] It should be noted that some markets, such as NASDAQ OMX BX, the BATS–Y Exchange, the EDGA Exchange, and CBSX, feature fees for liquidity providers and rebates for liquidity takers, while all other cash equities markets now have a taker fee/maker rebate structure.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of 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 fulfilled this requirement.

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 a.m. and 3 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–2011–059 and should be submitted on or before June 2, 2011.

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

Elizabeth M. Murphy,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64432; File No. SR–EDGA–2011–15]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend EDGA Rules 11.13 and 11.14

May 6, 2011.

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 4, 2011, EDGA Exchange, Inc. ("EDGA" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by EDGA. 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 EDGA Rules 11.13 and 11.14 to include additional securities in the pilot by which such rule operates. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

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 self-regulatory organization 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 proposes to amend EDGA Rules 11.13 and 11.14 to include additional securities in the pilot by which such rule operates.

Background

EDGA Rule 11.14 allows the Exchange to provide for uniform market-wide trading pause standards for individual securities in the S&P 500 Index, securities included in the Russell 1000® Index ("Russell 1000"), and specified Exchange Traded Products ("ETP") that experience rapid price movement (collectively known as "Circuit Breaker Securities"). Pursuant to Rule 11.14, the Exchange is allowed to pause trading in any Circuit Breaker Securities when the primary listing market for such stock issues a trading pause in any Circuit Breaker Securities.

EDGA Rule 11.14 was approved by the Commission on June 10, 2010 on a pilot basis to end on December 10, 2010.[3] The pilot was subsequently extended until April 11, 2011.[4] It was further extended then through the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[5]

As the Exchange noted in its filing to adopt EDGA Rule 11.14, during the pilot period, the Exchange would continue to assess whether additional securities need to be added and whether the parameters of the rule would need to be modified to accommodate trading characteristics of different securities. The original pilot list of securities was all securities included in the S&P 500® Index ("S&P 500"). As noted in comment letters to the original filing to adopt EDGA Rule 11.14, concerns were raised that including only securities in the S&P 500 in the pilot rule was too narrow. In particular, commenters noted that securities that experienced volatility on May 6, 2010, including ETFs, should be included in the pilot.

In response to these concerns, various exchanges and national securities associations collectively determined to expand the list of pilot securities to include securities in the Russell 1000 ("Russell 1000") and specified ETPs to the pilot beginning in September 2010.[6] The Exchange believed that adding these securities would address concerns that the scope of the pilot may be too narrow, while at the same time recognizing that during the pilot period, the markets will continue to review whether and when to add additional securities to the pilot and whether the parameters of the rule should be adjusted for different securities.

As noted above, during the pilot, the Exchange continued to re-assess, in consultation with other markets whether: (i) Specific ETPs should be added or removed from the pilot list; (ii) the parameters for invoking a trading pause continue to be the appropriate standard; and (iii) the parameters should be modified.

The Exchange has continued to assess whether additional securities need to be added to the pilot and whether the parameters of Rule 11.14 need to be modified to accommodate trading characteristics of different securities. In consultation with other markets and the staff of the Commission, the Exchange proposes to include all NMS stocks within the pilot that are not already included therein. In particular, the proposed additional stocks are those not currently included in the S&P 500 Index, Russell 1000 Index, or specified ETPs, and therefore are more likely to be less liquid securities or securities with lower trading volumes. As a result, the Exchange notes that the primary listing markets will also apply a wider Trading Pause Trigger Price, as defined in Rule 11.13(c)(4), to the newly added

[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. 62252 (June 10, 2010) (SR–EDGA–2010–01), 75 FR 34186 (June 16, 2010).

[4] *See* Securities Exchange Act Release No. 63514 (December 9, 2010) (SR–EDGA–2010–23), 75 FR 78783 (December 16, 2010).

[5] *See* Securities Exchange Act Release No. 64204 (April 6, 2011) (SR–EDGA–2011–11), 76 FR 20394 (April 12, 2011).

[6] *See* Securities Exchange Act Release No. 62884 (September 10, 2010) (SR–EDGA–2010–05), 75 FR 56618 (September 16, 2010).