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–BYX–2011–006 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8848 Filed 4–12–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64226; File No. SR–FINRA–2011–005]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Promissory Note Proceedings

April 7, 2011.

I. Introduction

On February 4, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), 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 Rule 13806 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") to provide that FINRA will appoint a chair-qualified public arbitrator also qualified to resolve statutory discrimination cases. The proposed rule change was published for comment in the **Federal Register** on February 22, 2011.[3] The Commission did not receive any comments on the proposal. This order approves the proposed change.

II. Description of the Proposal

In 2009, FINRA implemented new procedures to expedite the administration of cases that solely involve a broker-dealer's claim that an associated person failed to pay money owed on a promissory note.[4] Under these procedures, FINRA appoints a single chair-qualified public arbitrator from the roster of arbitrators approved to hear statutory discrimination claims (a statutory discrimination qualified arbitrator)[5] to resolve the dispute.[6] These specially qualified arbitrators are public chair-qualified arbitrators who also are attorneys familiar with employment law and have at least ten years of legal experience. In addition, they may not have represented primarily the views of employers or of employees within the last five years. FINRA proposed using statutory discrimination qualified arbitrators because of the depth of their experience and their familiarity with employment law. At the time that FINRA filed the proposed rule change, these arbitrators were underutilized at the forum.

Since implementing the new procedures, FINRA has found that promissory note cases do not require extensive experience or depth of knowledge (or the limitation on representation of employers or of employees within the last five years). In a majority of completed cases, arbitrators decided the case on the pleadings and the respondent broker did not appear.[7] Experience with the new procedures led FINRA to propose amending the Industry Code to provide that FINRA will appoint a chair-qualified public arbitrator to a panel resolving a promissory note dispute instead of appointing a statutory discrimination qualified arbitrator. Chair-qualified arbitrators have completed chair training and are attorneys who have served through award on at least two cases, or, if not attorneys, are arbitrators who have served through award on at least three cases.[8]

In addition, the number of promissory note cases has more than doubled in the past two years. As a result of this substantial increase, it is becoming more difficult to appoint panels solely with statutory discrimination qualified arbitrators to these cases. Under the proposed rule change, the number of arbitrators available for appointment in promissory note cases would increase significantly. The proposed rule change would ensure that FINRA has a sufficient number of qualified arbitrators readily available to resolve these matters.

As explained in the Notice, FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the provisions of the Act noted above because it would ensure that FINRA has a sufficient number of qualified arbitrators readily available to resolve promissory note cases.

III. Discussion of Comment Letters

The Commission did not receive any comment letters regarding the proposed rule change.

IV. Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. More specifically, the Commission finds that the proposed rule change to allow chair-qualified arbitrators to hear promissory note cases would help to ensure that there are sufficient number of qualified arbitrators readily available to resolve such cases.

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[10] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities and Exchange Act Release No. 63909 (February 15, 2011), 76 FR 9838 (February 22, 2011) ("Notice").

[4] *See* Securities Exchange Act Rel. No. 60132 (June 17, 2009), 74 FR 30191 (June 24, 2009) (File No. SR–FINRA–2009–015). FINRA announced implementation of New Rule 13806 (Promissory Note Proceedings) in Regulatory Notice 09–48 (August 2009). The effective date was September 14, 2009.

[5] *See* Rule 13802(c)(3).

[6] Under Rule 13806, if an associated person does not file an answer, or files an answer but does not assert any counterclaims or third party claims, regardless of the amount in dispute, a single statutory discrimination qualified arbitrator decides the case. If an associated person files a counterclaim or third party claim, FINRA bases panel composition on the amount of the counterclaim or third party claim. For counterclaims and third party claims that are not more than $100,000, FINRA appoints a single statutory discrimination qualified arbitrator. For counterclaims and third party claims of more than $100,000, FINRA appoints a three-arbitrator panel comprised of a statutory discrimination qualified arbitrator, a public arbitrator, and a non-public arbitrator.

[7] Of the first 175 promissory note cases completed, arbitrators decided the case on the pleadings 76 percent of the time (unless the case concluded by settlement or some other means).

[8] *See* Rule 12400(c).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78*o*–3(b)(6).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–FINRA–2011–005), be, and hereby is, approved.

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

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8897 Filed 4–12–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64268; File No. SR–NASDAQ–2011–051]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Effective Hours of Rule 4753(c)

April 8, 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 April 7, 2011, 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 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 the Substance of the Proposed Rule Change

NASDAQ is proposing to amend Rule 4753(c) to change the effective time of the rule from 9:30 a.m. to 4 p.m., to 9:45 a.m. to 3:35 p.m.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

4753. Nasdaq Halt and Imbalance Crosses

(a)–(b) No change.

(c) For a pilot period ending six months after the date of Commission approval of SR–NASDAQ–2010–074, between 9:*45*[30] a.m. and *3:35*[4:00] p.m. EST, the System will automatically monitor System executions to determine whether the market is trading in an orderly fashion and whether to conduct an Imbalance Cross in order to restore an orderly market in a single Nasdaq Security.

(1) An Imbalance Cross shall occur if the System executes a transaction in a Nasdaq Security at a price that is beyond the Threshold Range away from the Triggering Price for that security. The Triggering Price for each Nasdaq Security shall be the price of any execution by the System in that security within the prior 30 seconds. The Threshold Range shall be determined as follows:

Execution price	Threshold range away from triggering price (percent)
$1.75 and under	15
Over $1.75 and up to $25	10
Over $25 and up to $50	5
Over $50	3

(2) If the System determines pursuant to subsection (1) above to conduct an Imbalance Cross in a Nasdaq Security, the System shall automatically cease executing trades in that security for a 60-second Display Only Period. During that 60-second Display Only Period, the System shall:

(A) maintain all current quotes and orders and continue to accept quotes and orders in that System Security; and

(B) Disseminate by electronic means an Order Imbalance Indicator every 5 seconds.

(3) At the conclusion of the 60-second Display Only Period, the System shall re-open the market by executing the Nasdaq Halt Cross as set forth in subsection (b)(2)–(4) above.

(4) If the opening price established by the Nasdaq Halt Cross pursuant to subsection (b)(2)(A)–(D) above is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Halt Cross will occur at the price within the threshold amounts that best satisfies the conditions of subparagraphs (b)(2)(A) through (D) above. Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.

(d) 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, 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

NASDAQ is proposing to amend Rule 4753(c) to change the effective time of the rule from 9:30 a.m. to 4 p.m., to 9:45 a.m. to 3:35 p.m. On March 11, 2011, the Commission approved Rule 4753(c) (the "Volatility Guard"), a volatility-based pause in trading in individual NASDAQ-listed securities traded on NASDAQ ("NASDAQ Securities"), as a six month pilot applied to the NASDAQ 100 Index securities.[3] The Volatility Guard automatically suspends trading in individual NASDAQ Securities that are the subject of abrupt and significant intraday price movements between 9:30 a.m. and 4 p.m. Eastern Standard Time ("EST"). Volatility Guard is triggered automatically when the execution price of a pilot security moves more than a fixed amount away from a pre-established "triggering price" for that security. The triggering price for each pilot security is the price of any execution by the system in that security within the previous 30 seconds. For each pilot security, the system continually compares the price of each execution in the system against the prices of all system executions in that security over the 30 seconds. Once triggered, NASDAQ institutes a formal trading halt during which time NASDAQ systems are prohibited from executing orders. Members, however, may continue to enter quotes and orders, which are queued during a 60-second Display Only Period. At the conclusion of the Display Only Period, the queued orders are executed at a single price, pursuant to NASDAQ's Halt Cross mechanism.[4]

NASDAQ is preparing to implement the Volatility Guard in the second quarter of 2011, and through these preparations NASDAQ identified a possible concern with the effective time

[12] 15 U.S.C. 78s(b)(2).

[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. 64071 (March 11, 2011), 76 FR 14699 (March 17, 2011) (SR–NASDAQ–2010–074). Amendment 1 to SR–NASDAQ–2010–074 designated the NASDAQ 100 Index as the 100 pilot securities.

[4] The Nasdaq Halt Cross is "the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest." *See* Nasdaq Rule 4753(a)(3).