

or principal dollar amount of debt securities that the issuer has authorized to be outstanding. These mandatory requirements ensure accurate securityholder records and assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information.

There are approximately 413 registered transfer agents. We estimate that the average number of hours necessary for each transfer agent to comply with Rule 17Ad-10 is approximately 80 hours per year, which generates an industry-wide annual burden of 33,040 hours (413 times 80 hours). This burden is of a recordkeeping nature but also includes a small amount of third party disclosure and SEC reporting burdens. At an average staff cost of \$50 per hour, the industry-wide internal labor cost of compliance (a monetization of the burden hours) is approximately \$1,652,000 per year (33,040 × \$50).

In addition, we estimate that each transfer agent will incur an annual external cost burden of \$18,000 resulting from the collection of information. Therefore, the total annual external cost on the entire transfer agent industry is approximately \$7,434,000 (\$18,000 times 413). This cost primarily reflects ongoing computer operations and maintenance associated with generating, maintaining, and disclosing or providing certain information required by the rule.

The amount of time any particular transfer agent will devote to Rule 17Ad-10 compliance will vary according to the size and scope of the transfer agent's business activity. We note, however, that at least some of the records, processes, and communications required by Rule 17Ad-10 would likely be maintained, generated, and used for transfer agent business purposes even without the rule.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: ShaguftaAhmed@omb.eop.gov; and (ii) Pamela Dyson, Director/Chief Information

Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 30, 2016.

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78208; File No. SR-NASDAQ-2016-092]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide a Process for an Expedited Suspension Proceeding and Adopt a Rule To Prohibit Disruptive Quoting and Trading Activity

June 30, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 22, 2016, 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 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 a proposal to adopt a new NASDAQ Options Market LLC rule to clearly prohibit disruptive quoting and trading activity on the Exchange, as further described below.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is filing this proposal to adopt an options rule to clearly prohibit disruptive quoting and trading activity on the Exchange and to permit the Exchange to take prompt action to suspend Members or their clients that violate such rule pursuant to Rule 9400.

Background

As a national securities exchange registered pursuant to Section 6 of the Act, the Exchange is required to be organized and to have the capacity to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the Exchange's Rules. Further, the Exchange's Rules are required to 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."³ In fulfilling these requirements, the Exchange has developed a comprehensive regulatory program that includes automated surveillance of trading activity that is both operated directly by Exchange staff and by staff of the Financial Industry Regulatory Authority ("FINRA") pursuant to a Regulatory Services Agreement ("RSA"). When disruptive and potentially manipulative or improper quoting and trading activity is identified, the Exchange or FINRA (acting as an agent of the Exchange) conducts an investigation into the activity, requesting additional information from the Member or Members involved. To the extent violations of the Act, the rules and regulations thereunder, or Exchange Rules have been identified and confirmed, the Exchange or FINRA as its agent will commence the enforcement process, which might result in, among other things, a censure, a requirement to take certain remedial actions, one or more restrictions on future business

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f(b)(1).

activities, a monetary fine, or even a temporary or permanent ban from the securities industry.

The process described above, from the identification of disruptive and potentially manipulative or improper quoting and trading activity to a final resolution of the matter, can often take several years. The Exchange believes that this time period is generally necessary and appropriate to afford the subject Member adequate due process, particularly in complex cases. However, as described below, the Exchange believes that there are certain obvious and uncomplicated cases of disruptive and manipulative behavior or cases where the potential harm to investors is so large that the Exchange should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange.

In recent years, several cases have been brought and resolved by the Exchange and other SROs that involved allegations of wide-spread market manipulation, much of which was ultimately being conducted by foreign persons and entities using relatively rudimentary technology to access the markets and over which the Exchange and other SROs had no direct jurisdiction. In each case, the conduct involved a pattern of disruptive quoting and trading activity indicative of manipulative layering⁴ or spoofing.⁵ The Exchange and other SROs were able to identify the disruptive quoting and trading activity in real-time or near real-time; nonetheless, in accordance with Exchange Rules and the Act, the Members responsible for such conduct or responsible for their customers' conduct were allowed to continue the disruptive quoting and trading activity on the Exchange and other exchanges during the entirety of the subsequent lengthy investigation and enforcement process. The Exchange believes that it should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange if a Member is engaging in or facilitating disruptive

quoting and trading activity and the Member has received sufficient notice with an opportunity to respond, but such activity has not ceased.

The following two examples are instructive on the Exchange's rationale for the proposed rule change.

In July 2012, Biremis Corp. (formerly Swift Trade Securities USA, Inc.) (the "Firm") and its CEO were barred from the industry for, among other things, supervisory violations related to a failure by the Firm to detect and prevent disruptive and allegedly manipulative trading activities, including layering, short sale violations, and anti-money laundering violations.⁶ The Firm's sole business was to provide trade execution services via a proprietary day trading platform and order management system to day traders located in foreign jurisdictions. Thus, the disruptive and allegedly manipulative trading activity introduced by the Firm to U.S. markets originated directly or indirectly from foreign clients of the Firm. The pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and the Exchange, FINRA, and other SROs identified clear patterns of the behavior in 2007 and 2008. Although the Firm and its principals were on notice of the disruptive and allegedly manipulative quoting and trading activity that was occurring, the Firm took little to no action to attempt to supervise or prevent such quoting and trading activity until at least 2009. Even when it put some controls in place, they were deficient and the pattern of disruptive and allegedly manipulative trading activity continued to occur. As noted above, the final resolution of the enforcement action to bar the Firm and its CEO from the industry was not concluded until 2012, four years after the disruptive and allegedly manipulative trading activity was first identified.

In September of 2012, Hold Brothers On-Line Investment Services, Inc. (the "Firm") settled a regulatory action in connection with the Firm's provision of a trading platform, trade software and trade execution, support and clearing services for day traders.⁷ Many traders using the Firm's services were located in foreign jurisdictions. The Firm ultimately settled the action with FINRA and several exchanges, including the Exchange, for a total monetary fine of \$3.4 million. In a separate action, the

Firm settled with the Commission for a monetary fine of \$2.5 million.⁸ Among the alleged violations in the case were disruptive and allegedly manipulative quoting and trading activity, including spoofing, layering, wash trading, and pre-arranged trading. Through its conduct and insufficient procedures and controls, the Firm also allegedly committed anti-money laundering violations by failing to detect and report manipulative and suspicious trading activity. The Firm was alleged to have not only provided foreign traders with access to the U.S. markets to engage in such activities, but that its principals also owned and funded foreign subsidiaries that engaged in the disruptive and allegedly manipulative quoting and trading activity. Although the pattern of disruptive and allegedly manipulative quoting and trading activity was identified in 2009, as noted above, the enforcement action was not concluded until 2012. Thus, although disruptive and allegedly manipulative quoting and trading was promptly detected, it continued for several years.

The Exchange also notes the current criminal proceedings that have commenced against Navinder Singh Sarao. Mr. Sarao's allegedly manipulative trading activity, which included forms of layering and spoofing in the futures markets, has been linked as a contributing factor to the "Flash Crash" of 2010, and yet continued through 2015.

The Exchange believes that the activities described in the cases above provide justification for the proposed rule change, which is described below. In addition, while the examples provided are related to the equities market, the Exchange believes that this type of conduct should be prohibited for all Exchange members, equities and options. The Exchange believes that these patterns of disruptive and allegedly manipulative quoting and trading activity need to be addressed and the product should not limit the action taken by the Exchange. For this reason, the Exchange now proposes a corresponding options rule.

Rule 9400—Expedited Client Suspension Proceeding

The Exchange adopted Rule 9400 to set forth procedures for issuing suspension orders, immediately prohibiting a Member from conducting continued disruptive quoting and trading activity on the Exchange. Importantly, these procedures provide

⁴ "Layering" is a form of market manipulation in which multiple, non-bona fide limit orders are entered on one side of the market at various price levels in order to create the appearance of a change in the levels of supply and demand, thereby artificially moving the price of the security. An order is then executed on the opposite side of the market at the artificially created price, and the non-bona fide orders are cancelled.

⁵ "Spoofing" is a form of market manipulation that involves the market manipulator placing non-bona fide orders that are intended to trigger some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading bona fide orders.

⁶ See *Biremis Corp. and Peter Beck*, FINRA Letter of Acceptance, Waiver and Consent No. 2010021162202, July 30, 2012.

⁷ See *Hold Brothers On-Line Investment Services, LLC*, FINRA Letter of Acceptance, Waiver and Consent No. 20100237710001, September 25, 2012.

⁸ *In the Matter of Hold Brothers On-Line Investment Services, LLC*, Exchange Act Release No. 67924, September 25, 2012.

the Exchange the authority to order a Member to cease and desist from providing access to the Exchange to a client of the Member that is conducting disruptive quoting and trading activity in violation of Rule 2170. Paragraph (a) of Rule 9400, with the prior written authorization of the Chief Regulatory Officer (“CRO”) or such other senior officers as the CRO may designate, the Office of General Counsel or Regulatory Department of the Exchange (such departments generally referred to as the “Exchange” for purposes of Rule 9400) and may initiate an expedited suspension proceeding with respect to alleged violations of Rule 2170. Paragraph (a) also sets forth the requirements for notice and service of such notice pursuant to the Rule, including the required method of service and the content of notice.

Paragraph (b) of Rule 9400 governs the appointment of a Hearing Panel as well as potential disqualification or recusal of Hearing Officers. The Exchange’s Rules provide for a Hearing Officer to be recused in the event he or she has a conflict of interest or bias or other circumstances exist where his or her fairness might reasonably be questioned in accordance with Rules 9233(a). In addition to recusal initiated by such a Hearing Officer, a party to the proceeding will be permitted to file a motion to disqualify a Hearing Officer. However, due to the compressed schedule pursuant to which the process would operate under Rule 9400, the rule requires such motion to be filed no later than 5 days after the announcement of the Hearing Panel and the Exchange’s brief in opposition to such motion would be required to be filed no later than 5 days after service thereof. Pursuant to existing Rule 9233(c), a motion for disqualification of a Hearing Officer shall be decided by the Chief Hearing Officer based on a prompt investigation. The applicable Hearing Officer shall remove himself or herself and request the Chief Executive Officer to reassign the hearing to another Hearing Officer such that the Hearing Panel still meets the compositional requirements described in Rule 9231(b). If the Chief Hearing Officer determines that the Respondent’s grounds for disqualification are insufficient, it shall deny the Respondent’s motion for disqualification by setting forth the reasons for the denial in writing and the Hearing Panel will proceed with the hearing.

Under paragraph (c) of the Rule, the hearing would be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Chairman of

the Hearing Panel with the consent of the Parties for good cause shown. In the event of a recusal or disqualification of a Hearing Officer, the hearing shall be held not later than five days after a replacement Hearing Officer is appointed. Paragraph (c) also governs how the hearing is conducted, including the authority of Hearing Officers, witnesses, additional information that may be required by the Hearing Panel, the requirement that a transcript of the proceeding be created and details related to such transcript, and details regarding the creation and maintenance of the record of the proceeding. Paragraph (c) also states that if a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings. Finally, if the Exchange fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

Under paragraph (d) of the Rule, the Hearing Panel would be required to issue a written decision stating whether a suspension order would be imposed. The Hearing Panel would be required to issue the decision not later than 10 days after receipt of the hearing transcript, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. The Rule states that a suspension order shall be imposed if the Hearing Panel finds by a preponderance of the evidence that the alleged violation specified in the notice has occurred and that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

Paragraph (d) also describes the content, scope and form of a suspension order. A suspension order shall be limited to ordering a Respondent to cease and desist from violating Rule 2170 and/or to ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of Rule 2170. Under the rule, a suspension order shall also set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order. The order shall describe in reasonable detail the act or acts the Respondent is to take or refrain from taking, and suspend such Respondent unless and until such action is taken or refrained from. Finally, the order shall include the date and hour of its issuance. A suspension

order would remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to paragraph (e), as described below. Finally, paragraph (d) requires service of the Hearing Panel’s decision and any suspension order consistent with other portions of the rule related to service.

Paragraph (e) of Rule 9400 states that at any time after the Hearing Officers served the Respondent with a suspension order, a Party could apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. If any part of a suspension order is modified, set aside, limited, or revoked, paragraph (e) of Rule 9400 provides the Hearing Panel discretion to leave the cease and desist part of the order in place. For example, if a suspension order suspends Respondent unless and until Respondent ceases and desists providing access to the Exchange to a client of Respondent, and after the order is entered the Respondent complies, the Hearing Panel is permitted to modify the order to lift the suspension portion of the order while keeping in place the cease and desist portion of the order. With its broad modification powers, the Hearing Panel also maintains the discretion to impose conditions upon the removal of a suspension—for example, the Hearing Panel could modify an order to lift the suspension portion of the order in the event a Respondent complies with the cease and desist portion of the order but additionally order that the suspension will be re-imposed if Respondent violates the cease and desist provisions of the modified order in the future. The Hearing Panel generally would be required to respond to the request in writing within 10 days after receipt of the request. An application to modify, set aside, limit or revoke a suspension order would not stay the effectiveness of the suspension order.

Finally, paragraph (f) provides that sanctions issued under Rule 9400 would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, and that the right to have any action under the Rule reviewed by the Commission would be governed by Section 19 of the Act. The filing of an application for review would not stay the effectiveness of a suspension order unless the Commission otherwise ordered.

Rule 2170—Disruptive Quoting and Trading Activity Prohibited

The Exchange currently has authority to prohibit and take action against manipulative trading activity, including disruptive quoting and trading activity, pursuant to its general market

manipulation rules, including Rules 2110, 2111, 2120, and 2170. The Exchange proposes to adopt a new rule at Chapter III, Section 16, which would more specifically define and prohibit disruptive options quoting and trading activity on the Exchange. As noted above, the Exchange also proposes to apply the proposed suspension rules to Chapter III, Section 16.

Proposed Chapter III, Section 16 would prohibit Members from engaging in or facilitating disruptive options quoting and trading activity on the Exchange, as described in proposed Chapter III, Section 16(i) and (ii), including acting in concert with other persons to effect such activity. The Exchange believes that it is necessary to extend the prohibition to situations when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several brokers or customers. The Exchange believes, that with respect to persons acting in concert perpetrating an abusive scheme, it is important that the Exchange have authority to act against the parties perpetrating the abusive scheme, whether it is one person or multiple persons.

To provide proper context for the situations in which the Exchange proposes to utilize its authority, the Exchange believes it is necessary to describe the types of disruptive options quoting and trading activity that would cause the Exchange to use its authority. Accordingly, the Exchange proposes to adopt Chapter III, Section 16(i) and (ii) providing additional details regarding disruptive options quoting and trading activity. Proposed Chapter III, Section 16(i)(a) describes disruptive options quoting and trading activity containing many of the elements indicative of layering. It would describe disruptive options quoting and trading activity as a frequent pattern in which the following facts are present: (i) A party enters multiple limit orders on one side of the market at various price levels (the "Displayed Orders"); and (ii) following the entry of the Displayed Orders, the level of supply and demand for the security changes; and (iii) the party enters one or more orders on the opposite side of the market of the Displayed Orders (the "Contra-Side Orders") that are subsequently executed; and (iv) following the execution of the Contra-Side Orders, the party cancels the Displayed Orders. Proposed Chapter III, Section 16(i)(b) describes disruptive options quoting and trading activity containing many of the elements indicative of spoofing and would describe disruptive quoting and

trading activity as a frequent pattern in which the following facts are present: (i) A party narrows the spread for a security by placing an order inside the national best bid or offer; and (ii) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in proposed (b)(i) that narrowed the spread. The Exchange believes that the proposed descriptions of disruptive quoting and trading activity articulated in the rule are consistent with the activities that have been identified and described in the client access cases described above.⁹ The Exchange further believes that the proposed descriptions will provide Members with clear descriptions of disruptive options quoting and trading activity that will help them to avoid engaging in such activities or allowing their clients to engage in such activities.

The Exchange proposes to make clear in proposed Chapter III, Section 16(ii), unless otherwise indicated, the descriptions of disruptive options quoting and trading activity do not require the facts to occur in a specific order in order for the rule to apply. For instance, with respect to the pattern defined in proposed Chapter III, Section 16(i)(a) it is of no consequence whether a party first enters Displayed Orders and then Contra-side Orders or vice-versa. However, as proposed, supply and demand must change following the entry of the Displayed Orders. The Exchange also proposes to make clear that disruptive options quoting and trading activity includes a pattern or practice in which some portion of the disruptive options quoting and trading activity is conducted on the Exchange and the other portions of the disruptive options quoting and trading activity are conducted on one or more other exchanges. The Exchange believes that this authority is necessary to address market participants who would otherwise seek to avoid the prohibitions of the proposed Rule by spreading their activity amongst various execution venues. In sum, proposed Chapter III, Section 16 coupled with Rule 9400 would provide the Exchange with authority to promptly act to prevent

⁹ As previously noted herein, while the examples noted in the Purpose Section of this 19b4 [sic] are related to the equities market, the Exchange believes that this type of conduct should be prohibited for all Exchange members, equities and options. The Exchange believes that these patterns of disruptive and allegedly manipulative quoting and trading activity need to be addressed and the product should not limit the action taken by the Exchange. For this reason, the Exchange now proposes a corresponding options rule.

disruptive quoting and trading activity from continuing on the Exchange.

Below is an example of how the proposed rule would operate.

Assume that through its surveillance program, Exchange staff identifies a pattern of potentially disruptive options quoting and trading activity. After an initial investigation the Exchange would then contact the Member responsible for the orders that caused the activity to request an explanation of the activity as well as any additional relevant information, including the source of the activity. If the Exchange were to continue to see the same pattern from the same Member and the source of the activity is the same or has been previously identified as a frequent source of disruptive options quoting and trading activity then the Exchange could initiate an expedited suspension proceeding by serving notice on the Member that would include details regarding the alleged violations as well as the proposed sanction. In such a case the proposed sanction would likely be to order the Member to cease and desist providing access to the Exchange to the client that is responsible for the disruptive quoting and trading activity and to suspend such Member unless and until such action is taken.

The Member would have the opportunity to be heard in front of a Hearing Panel at a hearing to be conducted within 15 days of the notice. If the Hearing Panel determined that the violation alleged in the notice did not occur or that the conduct or its continuation would not have the potential to result in significant market disruption or other significant harm to investors, then the Hearing Panel would dismiss the suspension order proceeding.

If the Hearing Panel determined that the violation alleged in the notice did occur and that the conduct or its continuation is likely to result in significant market disruption or other significant harm to investors, then the Hearing Panel would issue the order including the proposed sanction, ordering the Member to cease providing access to the client at issue and suspending such Member unless and until such action is taken. If such Member wished for the suspension to be lifted because the client ultimately responsible for the activity no longer would be provided access to the Exchange, then such Member could apply to the Hearing Panel to have the order modified, set aside, limited or revoked. The Exchange notes that the issuance of a suspension order would not alter the Exchange's ability to further investigate the matter and/or

later sanction the Member pursuant to the Exchange's standard disciplinary process for supervisory violations or other violations of Exchange rules or the Act.

The Exchange reiterates that it already has broad authority to take action against a Member in the event that such Member is engaging in or facilitating disruptive or manipulative trading activity on the Exchange. For the reasons described above, and in light of recent cases like the client access cases described above, as well as other cases currently under investigation, the Exchange believes that it is equally important for the Exchange to have the authority to promptly initiate expedited suspension proceedings against any Member who has demonstrated a clear pattern or practice of disruptive options quoting and trading activity, as described above, and to take action including ordering such Member to terminate access to the Exchange to one or more of such Member's clients if such clients are responsible for the activity.

The Exchange recognizes that its authority to issue a suspension order is a powerful measure that should be used very cautiously. Consequently, the rules have been designed to ensure that the proceedings are used to address only the most clear and serious types of disruptive quoting and trading activity and that the interests of Respondents are protected. For example, to ensure that proceedings are used appropriately and that the decision to initiate a proceeding is made only at the highest staff levels, the rules require the CRO or another senior officer of the Exchange to issue written authorization before the Exchange can institute an expedited suspension proceeding. In addition, the rule by its terms is limited to violations of Chapter III, Section 16, when necessary to protect investors, other Members and the Exchange. The Exchange will initiate disciplinary action for violations of Chapter III, Section 16, pursuant to Rule 9400. Further, the Exchange believes that the expedited suspension provisions described above that provide the opportunity to respond as well as a Hearing Panel determination prior to taking action will ensure that the Exchange would not utilize its authority in the absence of a clear pattern or practice of disruptive options quoting and trading activity.

The Exchange also notes that that it may impose temporary restrictions upon the automated entry or updating of orders or quotes/orders as the Exchange may determine to be necessary to protect the integrity of the Exchange's

systems pursuant to Rule 4611(c).¹⁰ Also, pursuant to Rule 9555(a)(2)¹¹ if a member, associated person, or other person cannot continue to have access to services offered by the Exchange or a member thereof with safety to investors, creditors, members, or the Exchange, the Exchange's Regulation Department staff may provide written notice to such member or person limiting or prohibiting access to services offered by the Exchange or a member thereof. This ability to impose a temporary restriction upon Members assists the Exchange in maintaining the integrity of the market and protecting investors and the public interest.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(5) of the Act¹³ in particular, in that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, it is designed to promote just and equitable principles of trade, 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. Pursuant to the proposal, the Exchange will have a mechanism to promptly initiate expedited suspension proceedings in the event the Exchange believes that it has sufficient proof that a violation of Rule 2170 has occurred and is ongoing.

Further, the Exchange believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,¹⁴ which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. The Exchange also believes that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act because the proposal helps to strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other Members and

¹⁰ For example, such temporary restrictions may be necessary to address a system problem at a particular NOM Market Maker, NOM ECN or Order Entry Firm or at the Exchange, or an unexpected period of extremely high message traffic.

¹¹ See Rule 9555, entitled "Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services."

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

their customers. Also, the Exchange notes that if this type of conduct is allowed to continue on the Exchange, the Exchange's reputation could be harmed because it may appear to the public that the Exchange is not acting to address the behavior. The expedited process would enable the Exchange to address the behavior with greater speed.

As explained above, the Exchange notes that it has defined the prohibited disruptive quoting and trading activity by modifying the traditional definitions of layering and spoofing¹⁵ to eliminate an express intent element that would not be proven on an expedited basis and would instead require a thorough investigation into the activity. As noted throughout this filing, the Exchange believes it is necessary for the protection of investors to make such modifications in order to adopt an expedited process rather than allowing disruptive quoting and trading activity to occur for several years.

Through this proposal, the Exchange does not intend to modify the definitions of spoofing and layering that have generally been used by the Exchange and other regulators in connection with actions like those cited above. The Exchange believes that the pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and the Exchange, FINRA, and other SROs identified clear patterns of the behavior in 2007 and 2008 in the equities markets.¹⁶ The Exchange believes that this proposal will provide the Exchange with the necessary means to enforce against such behavior in an expedited manner while providing Members with the necessary due process. The Exchange believes that its proposal is consistent with the Act because it provides the Exchange with the ability 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 from such ongoing behavior.

Further, the Exchange believes that adopting a rule applicable to Options Participants is consistent with the Act because the Exchange believes that this type of behavior should be prohibited for all members, not just equities members. The type of product should not be the determining factor, rather the behavior which challenges the market structure is the primary concern for the Exchange. While this behavior may not be as prevalent on the options market

¹⁵ See *supra*, notes 4 and 5.

¹⁶ See Section 3 [sic] herein, the Purpose section, for examples of conduct referred to herein.

today, the Exchange does not believe that the possibility of such behavior in the future would not have the same market impact and thereby warrant an expedited process. The Exchange believes that treating all members, equities and options, in a uniform manner with respect to the type of disciplinary action that would be taken for violations of manipulative quoting and trading activity is consistent with the Act.

The Exchange further believes that the proposal is consistent with Section 6(b)(7) of the Act,¹⁷ which requires that the rules of an exchange “provide a fair procedure for the disciplining of members and persons associated with members . . . and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof.” Finally, the Exchange also believes the proposal is consistent with Sections 6(d)(1) and 6(d)(2) of the Act,¹⁸ which require that the rules of an exchange with respect to a disciplinary proceeding or proceeding that would limit or prohibit access to or membership in the exchange require the exchange to: Provide adequate and specific notice of the charges brought against a member or person associated with a member, provide an opportunity to defend against such charges, keep a record, and provide details regarding the findings and applicable sanctions in the event a determination to impose a disciplinary sanction is made. The Exchange believes that each of these requirements is addressed by the notice and due process provisions included within Rule 9400. Importantly, as noted above, the Exchange will use the authority only in clear and egregious cases when necessary to protect investors, other Members and the Exchange, and in such cases, the Respondent will be afforded due process in connection with the suspension proceedings.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that each self-regulatory organization should be empowered to regulate trading occurring on its market consistent with the Act and without regard to competitive issues. The Exchange is requesting authority to take appropriate

action if necessary for the protection of investors, other Members and the Exchange. The Exchange also believes that it is important for all exchanges to be able to take similar action to enforce their rules against manipulative conduct thereby leaving no exchange prey to such conduct.

The Exchange does not believe that the proposed rule change imposes an undue burden on competition, rather this process will provide the Exchange with the necessary means to enforce against violations of manipulative quoting and trading activity in an expedited manner, while providing Members with the necessary due process. The Exchange believes that adopting a rule applicable to Options Participants does not impose an undue burden on competition because this type of behavior should be prohibited for all members, not just equities members. The Exchange’s proposal would treat all members, equities and options, in a uniform manner with respect to the type of disciplinary action that would be taken for violations of manipulative quoting and trading activity.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or 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)(iii) of the Act¹⁹ and subparagraph (f)(6) of Rule 19b–4 thereunder.²⁰

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: (i) Necessary or appropriate in the public interest; (ii) for the protection

of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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. Please include File No. SR–NASDAQ–2016–092 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASDAQ–2016–092. 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 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 No. SR–NASDAQ–2016–092, and should be submitted on or before July 28, 2016.

¹⁷ 15 U.S.C. 78f(b)(7).

¹⁸ U.S.C. 78f(d)(1).

¹⁹ 15 U.S.C. 78s(b)(3)(a)(iii).

²⁰ 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 Exchange has satisfied this requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-16035 Filed 7-6-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78220; File No. SR-FINRA-2015-054]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Partial Amendment No. 2 to Proposed Rule Change To Adopt FINRA Capital Acquisition Broker Rules

July 1, 2016.

I. Introduction

On December 4, 2015, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”) proposed rule change SR-FINRA-2015-054, pursuant to which FINRA proposed to adopt a rule set that would apply exclusively to firms that meet the definition of “capital acquisition broker” (“CAB”) and that elect to be governed under this rule set (collectively, the “CAB Rules”).

The Commission published the proposed rule change for public comment in the *Federal Register* on December 23, 2015.¹ The Commission received 17 comments in response to the proposed rule change.² On March

23, 2016, the Commission published in the *Federal Register* an order to solicit comments on the proposed rule change and to institute proceedings pursuant to Section 19(b)(2)(B) of the Securities Exchange Act of 1934 (the “Exchange Act”) ³ to determine whether to approve or disapprove the proposed rule change.⁴ The Commission received one comment in response to the Order Instituting Proceedings.⁵

In response to comments on the Notice of Filing, on March 29, 2016, FINRA filed Partial Amendment No. 1, which amended proposed CAB Rule 016(c)(2) to clarify that the definition of “capital acquisition broker” does not include any broker or dealer that effects securities transactions that would require the broker or dealer to report the transaction under the FINRA Rules 6300 Series, 6400 Series, 6500 Series, 6600 Series, 6600 Series, 6700 Series, 7300 Series or 7400 Series. The Commission published Partial Amendment No. 1 for comment in the *Federal Register* on April 15, 2016.⁶ The Commission received one comment in response to the Partial Amendment No. 1.⁷

On June 28, 2016, FINRA filed Partial Amendment No. 2 to its proposed rule change in response to comments on the Notice of Filing. Partial Amendment No. 2 is described in Item II below, which has been prepared by FINRA. The Commission is publishing this notice to solicit comments on Partial Amendment No. 2 from interested persons.

II. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Amendment

In response to comments on the Notice of Filing, the Order Instituting Proceedings, and Partial Amendment No. 1, FINRA filed this Partial Amendment No. 2 to amend proposed CAB Rule 016(c)(1)(F) regarding a CAB’s authority to engage in qualifying, identifying, soliciting, or acting as a placement agent or finder in connection

Myott, Chief Compliance Officer, Thomas Capital Group, Inc., dated January 13, 2016; Judith M. Shaw, President, North American Securities Administrators Association, Inc., dated January 15, 2016; and Peter W. LaVigne, Esq., Chair, Securities Regulation Committee, Business Law Section, New York State Bar Association, dated January 22, 2016.

³ 15 U.S.C. 78s(b)(2)(B).

⁴ Securities Exchange Act Release No. 77391 (March 17, 2016), 81 FR 15588 (March 23, 2016) (Order Instituting Proceedings on File No. SR-FINRA-2015-054).

⁵ Letter from Howard Spindel, Senior Managing Director, and Cassandra E. Joseph, Managing Director, Integrated Solutions, dated April 8, 2016.

⁶ Securities Exchange Act Release No. 77581 (April 11, 2016), 81 FR 22333 (April 15, 2016) (Notice of Filing of Partial Amendment No. 1 to File No. SR-FINRA-2015-054).

⁷ Letter from Anonymous dated May 3, 2016.

with unregistered securities transactions. As revised by Partial Amendment No. 2, a CAB would be permitted to engage in:

qualifying, identifying, soliciting, or acting as a placement agent or finder (i) on behalf of an issuer in connection with a sale of newly-issued, unregistered securities to institutional investors or (ii) on behalf of an issuer or a control person in connection with a change of control of a privately-held company. For purposes of this subparagraph a “control person” is a person who has the power to direct the management or policies of a company through ownership of securities, by contract, or otherwise. Control will be presumed to exist if, before the transaction, the person has the right to vote or the power to sell or direct the sale of 25% or more of a class of voting securities or in the case of a partnership or limited liability company has the right to receive upon dissolution or has contributed 25% or more of the capital. For purposes of this subparagraph a “privately-held company” is a company that does not have any class of securities registered, or required to be registered, with the Securities and Exchange Commission under Section 12 of the Exchange Act or with respect to which the company files, or is required to file, periodic information, documents, or reports under Section 15(d) of the Exchange Act.

The purpose of this proposed rule change is to provide a rule set for member firms that advise companies on mergers and acquisitions, advise issuers on raising debt and equity capital in private placements with institutional investors, or provide advisory services on a consulting basis to companies that need assistance analyzing their strategic and financial alternatives. Consistent with this purpose, this amendment would narrow the range of activities that a CAB would be permitted to engage in with regard to securities transactions involving institutional investors. Previously proposed CAB Rule 016(c)(1)(F) would have permitted a CAB to engage in qualifying, identifying, soliciting, or acting as a placement agent or finder with respect to institutional investors in connection with purchases or sales of unregistered securities. This authority would have been limited by proposed CAB Rule 016(c)(2), which would have prohibited CABs from effecting securities transactions that would require the broker or dealer to report the transaction under the FINRA trade reporting rules.⁸

As amended, a CAB would be permitted to engage in qualifying, identifying, soliciting, or acting as a placement agent or finder (i) on behalf of an issuer in connection with a sale of

⁸ FINRA Rules 6300 Series, 6400 Series, 6500 Series, 6600 Series, 6700 Series, 7300 Series and 7400 Series.

²¹ 17 CFR 200.30-3(a)(12).

¹ Securities Exchange Act Release No. 76675 (December 17, 2015), 80 FR 79969 (December 23, 2015) (Notice of Filing File No. SR-FINRA-2015-054).

² Letters from Roger W. Mehle, Chairman and CEO, Archates Capital Advisors LLC, dated December 29, 2015; Daniel H. Kolber, President/CEO, Intellivest Securities, Inc., dated December 30, 2016; Arne Rovell, Coronado Investments, LLC, dated January 6, 2016; Donna DiMaria, Chairman of the Board of Directors, and Lisa Roth, Board of Directors, Third Party Marketers Association, dated January 12, 2016; Frank P. L. Minard, Managing Partner, XT Capital Partners, LLC, dated January 12, 2016; Timothy Cahill, President, Compass Securities Corporation, dated January 13, 2016; Mark Fairbanks, President, Foreside Distributors, dated January 13, 2016; Dan Glusker, Perkins Fund Marketing, LLC, dated January 13, 2016; Steven Jafarzadeh, CAIA, Managing Director, CCO Partner, Stonehaven, dated January 13, 2016; Richard A. Murphy, Manager, North Bridge Capital LLC, dated January 13, 2016; Ron Oldenkamp, President, Genesis Marketing Group, dated January 13, 2016; Michael S. Quinn, Member and CCO, Q Advisors LLC, dated January 13, 2016; Lisa Roth, President, Monahan & Roth, LLC, dated January 13, 2016; Howard Spindel, Senior Managing Director, and Cassandra E. Joseph, Managing Director, Integrated Management Solutions USA LLC, dated January 13, 2016; Sajan K. Thomas, President, and Stephen J.