

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66153; File No. SR-NASDAQ-2012-009)

January 13, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rules 4613(a)(2)(F) and (G) to Allow Exchange Market Makers to opt out of the Automated Quote Management Service

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 January 11, 2012, The NASDAQ Stock Market LLC (the “Exchange” or “NASDAQ”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. 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 Rules 4613(a)(2)(F) and (G) to reflect changes to the Automated Quote Management service that will allow market makers to opt out of the service.

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

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4613. Market Maker Obligations

A member registered as a Market Maker shall engage in a course of dealings for its own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets in accordance with this Rule.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(a) Quotation Requirements and Obligations

(1) No change.

(2) Pricing Obligations. For NMS stocks (as defined in Rule 600 under Regulation NMS) a Market Maker shall adhere to the pricing obligations established by this Rule during Regular Trading Hours; provided, however, that such pricing obligations (i) shall not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) shall be suspended during a trading halt, suspension, or pause, and shall not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor

(A) – (E) No change.

(F) Quotation Creation and Adjustment. For each Issue in which a Market Maker is registered, the System shall, in the absence of a quotation that complies with this Rule entered by that Market Maker, automatically create a quotation for display to comply with this Rule. System-created compliant displayed quotations will thereafter be allowed to rest and not be further adjusted by the System unless the relationship between the quotation and its related National Best Bid or National Best Offer, as appropriate, shrinks to the greater of: (a) 4 percentage points, or, (b) one-quarter the applicable percentage necessary to trigger an individual stock trading pause as described in NASDAQ Rule 4120(a)(11), or expands to within that same percentage less 0.5%, whereupon the System will immediately re-adjust and display the Market Maker's quote to the appropriate Designated Percentage set forth in section (D) above. Quotations originally entered by Market Makers which have not been modified by the System upon entry or after resting

on the book shall be allowed to move freely towards the National Best Bid or National Best Offer, as appropriate, for potential execution. A Market Maker may opt out of this service at any time by informing Nasdaq of its desire to cease the service. Nasdaq will reinitiate service upon a Market Maker's request.

(G) Quotation Refresh After Execution. In the event of an execution against a System created compliant quotation, the Market Maker shall have its quote refreshed by the System on the executed side of the market at the applicable Designated Percentage away from the then National Best Bid (Offer) (or if no National Best Bid (Offer), the last reported sale). A Market Maker may opt out of this service at any time by informing Nasdaq of its desire to cease the service. Nasdaq will reinitiate service upon a Market Maker's request.

(H) – (K) No change.

(b) – (e) No change.

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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 [sic]

1. Purpose

NASDAQ proposes to amend Rules 4613(a)(2)(F) and (G) to allow Exchange market makers to opt out of the Automated Quote Management service.

Automated Quote Management

On November 5, 2010, the Commission approved all new Rule 4613, which included the Exchange's Automated Quote Management service provided under Rules 4613(a)(2)(F) and (G).³ The Automated Quote Management service assists market makers in meeting their enhanced quotation obligations. For each issue in which a market maker is registered, the Exchange automatically creates a quotation for display to comply with the quoting requirements of Rule 4613(a). Compliant displayed quotations are thereafter allowed to rest and not be further adjusted by the Exchange unless the relationship between the quotation and its related national best bid or national best offer, as appropriate, shrinks to the greater of: (a) 4 percentage points, or, (b) one-quarter the applicable percentage necessary to trigger an individual stock trading pause as described in Rule 4120(a)(11), or expands to within that same percentage less 0.5%, whereupon the Exchange will immediately re-adjust and display the market maker's quote to the appropriate designated percentage. Quotations originally entered by market makers are allowed to move freely towards the national best bid or national best offer, as appropriate, for potential execution.

³ See Securities Exchange Act Release No. 63255 (November 5, 2010), 75 FR 69484 (November 12, 2010) (SR-NASDAQ-2010-115, et al.).

In the event of an execution against an Exchange-created compliant quotation, the market maker has its quote refreshed by the Exchange on the executed side of the market at the applicable designated percentage away from the then national best bid (offer), or if no national best bid (offer), the last reported sale.

New Functionality

As initially adopted, the Automated Quote Management service is currently applied to all Exchange market makers, with no provision for such member firms to opt out of the service. The Exchange is proposing to make the Automated Quote Management service voluntary and is adding functionality to allow Exchange market makers to opt out of the service. An Exchange market maker must inform the Exchange of its desire to opt out of the Automated Quote Management service, otherwise the service will continue to apply to the market maker's quotes. An Exchange market maker that has opted out of the Automated Quote Management service may opt back into the service by likewise informing the Exchange. To provide notice to the Exchange, a market maker must inform the NASDAQ Trade Desk in writing via tradedesk@nasdaqomx.com of its desire to opt in or out of the service. The NASDAQ Trade Desk will process the request once received and confirm the market maker's change in Automated Quote Management service status. An Exchange market maker may request that the Exchange change its status intraday. The Exchange will process such requests as they are received and the processing time may vary based on factors such as the number requests received.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and

⁴ 15 U.S.C. 78f(b).

further the objectives of Section 6(b)(5),⁵ in particular, in that it 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Allowing Exchange market makers to opt out of AQR will provide such firms the option to control their quote in all instances. A market maker that opts out of Automated Quote Management service may develop its own system to manage its quote, individually tailored to the firm's operations and which may be superior to the Automated Quote Management service. Accordingly, the Exchange believes that the proposed changes to Rule 4613(a)(2) meet the requirements of Section 6(b)(5) of the Act⁶ in that they will allow Exchange market makers to develop individual solutions to their market making quoting obligations, potentially superior to that of the Automated Quote Management service.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and

⁵ 15 U.S.C. 78f(b)(5).

⁶ Id.

(iii) does not become operative for 30 days after the date of the 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 Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal only allows Exchange market makers to opt out of the Automated Quote Management service which will enable market makers to manage their own quotes if they so choose. Therefore, the Commission designates the proposed rule change to be operative upon filing with the Commission.⁹

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:

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission 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 satisfied this requirement.

⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2012-009 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-2012-009. 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 website (<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 website 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 Number SR-NASDAQ-2012-009 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Kevin M. O'Neill
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).