

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69830; File No. SR-NASDAQ-2013-083)

June 21, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate an Erroneous Reference to the Retired Automatic Quotation Refresh Functionality under Rule 4751(d)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on June 13, 2013, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate an erroneous reference to the retired automatic quotation refresh functionality in Rule 4751(d). NASDAQ will implement the change at the earliest time possible, but in no event later than the 30<sup>th</sup> day following the date of the filing. The text of the proposed rule change is below. Proposed deletions are in brackets; proposed additions are underlined.

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4751. Definitions

The following definitions apply to the Rule 4600 and 4750 Series for the trading of securities listed on Nasdaq or a national securities exchange other than Nasdaq.

(a) – (c) No change.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

(d) With respect to System-provided quotation functionality:

(1) The term “Quote” shall mean a single bid or offer quotation submitted to the System and designated for display (price and size) next to the Participant's MPID by a Participant that is eligible to submit such quotations.

(2) Reserved.[The term “Automatic Quote Refresh” shall mean the default price increment away from the executed price and the size to which a Participant’s Quote will be refreshed if the Participant elects to utilize this functionality. If the Participant does not designate an Automatic Quote Refresh size, which must be at least one normal unit of trading, the default Automatic Quote Refresh size shall be 100 shares and the default Automatic Quote Refresh price increment shall be \$0.25.]

(3) The term “Reserve Size” shall mean the System-provided functionality that permits a Participant to display in its Displayed Quote part of the full size of a proprietary or agency order, with the remainder held in reserve on an undisplayed basis. Both the displayed and non-displayed portions are available for potential execution against incoming orders. If the Displayed Quote is reduced to less than a normal unit of trading, the System will replenish the display portion from reserve up to at least a single round-lot amount. A new timestamp is created for the replenished portion of the order each time it is replenished from reserve, while the reserve portion retains the time-stamp of its original entry.

(e) – (i) 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 14, 2013, the Exchange filed an immediately effective rule change to retire the automated quotation refresh functionality (“AQR”) provided to Exchange market makers under Rules 4613(a)(2)(F) and (G), and to make conforming changes to Rule 4751(f)(15), which became effective February 25, 2013.<sup>3</sup> AQR assisted market makers in meeting their enhanced quotation obligations adopted after May 6, 2010, and avoid execution of market maker “stub quotes” in instances of aberrant trading. AQR was ultimately replaced by NASDAQ’s Market Maker Peg Order, which was approved by the Commission on August 2, 2012.<sup>4</sup>

NASDAQ recently became aware that a reference to the retired AQR functionality remains in the NASDAQ rule book. Specifically, Rule 4751 provides definitions applicable to the Rule 4600 and 4750 Series, relating to the trading of securities listed on NASDAQ or a national securities exchange other than NASDAQ. Rule 4751(d) provides definitions of terms used in the routing of orders and subparagraph (2) of the rule provides a definition of the term “Automatic Quote Refresh,” which references the AQR functionality that was retired.

Accordingly, NASDAQ is proposing to eliminate the current Rule 4751(d)(2) text in its entirety, holding the rule number in reserve.

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<sup>3</sup> Securities Exchange Act Release No. 68654 (January 15, 2013), 78 FR 4536 (January 22, 2013) (SR-NASDAQ-2013-007); see also Securities Exchange Act Release No. 68528 (December 21, 2012), 77 FR 77165 (December 31, 2012) (SR-NASDAQ-2012-140).

<sup>4</sup> Securities Exchange Act Release No. 67584 (August 2, 2012), 77 FR 47472 (August 8, 2012) (SR-NASDAQ-2012-066).

## 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,<sup>5</sup> which requires the rules of an exchange 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. The Exchange believes that the proposed rule meets these requirements in that it eliminates language from the rule book that references the now-retired AQR functionality. NASDAQ believes that leaving the language in the rule book may be confusing to investors and it was NASDAQ's intent when it retired AQR to remove all references to AQR from the rule book. Accordingly, NASDAQ believes that it is consistent with the Act to remove this now defunct reference.

### 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. The proposed change will remove rule text from NASDAQ's rule book that references a retired functionality and which now has no effect or purpose. As such, NASDAQ believes that the proposed rule change will have no effect whatsoever on competition.

### 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 does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such

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<sup>5</sup> 15 U.S.C. 78f(b)(5).

shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal will allow NASDAQ to make the deletion operative in the quickest time possible to avoid potential market participant confusion. Therefore, the Commission designates the proposal operative upon filing.<sup>8</sup>

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. 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 proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

<sup>8</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-083 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-2013-083. 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-2013-083 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.<sup>9</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).