

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65915; File No. SR-NASDAQ-2011-166)

December 8, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4613(a)(2)(D) to Clarify that the Designated Percentage for Rights and Warrants is Thirty Percent

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 November 29, 2011, The NASDAQ Stock Market LLC (“NASDAQ”), 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 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

NASDAQ proposes to amend Rule 4613(a)(2)(D) to clarify that the Designated Percentage for rights and warrants, which are no longer subject to Rule 4120(a)(11), is 30 percent.

The text of the proposed rule change is below. Proposed new language is italicized.

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.

(a) Quotation Requirements and Obligations

(1) No change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(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) – (C) No change.

(D) For purposes of this Rule, the “Designated Percentage” shall be 8% for securities subject to Rule 4120(a)(11)(A), 28% for securities subject to Rule 4120(a)(11)(B), and 30% for securities subject to Rule 4120(a)(11)(C), except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Designated Percentage shall be 20% for securities subject to Rule 4120(a)(11)(A), 28% for securities subject to Rule 4120(a)(11)(B), and 30% for securities subject to Rule 4120(a)(11)(C). The Designated Percentage for rights and warrants shall be 30%.

(E) – (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, NASDAQ 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. NASDAQ 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

NASDAQ proposes to amend Rule 4613(a)(2)(D) to clarify that the Designated Percentage for rights and warrants, which are not subject to Rule 4120(a)(11), is 30 percent.

On June 23, 2011, the Commission approved a proposed rule change of NASDAQ, together with the analogous rule changes of other equity exchanges and FINRA to amend their respective rules, to expand Rule 4120(a)(11) to include all remaining NMS stocks, which included rights and warrants.³ In expanding the coverage of Rule 4120(a)(11), NASDAQ also amended Rule 4613(a)(2)(D) to state specific Designated Percentages for the securities covered under new Rules 4120(a)(11)(A) – (C). Prior to the expansion, all NMS stocks not covered by Rule 4120(a)(11), including rights and warrants, had a Designated Percentage of 30 percent. Given that rights and warrants are once again excluded from the Rule 4120(a)(11) trading pause,⁴ NASDAQ is making a clarifying change to Rule 4613(a)(2)(D) to state that rights and warrants shall have a Designated Percentage of 30 percent.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and

³ See Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR-NASDAQ-2011-067, et al.).

⁴ See Securities Exchange Act Release No. 65814 (November 23, 2011) (SR-NASDAQ-2011-154).

⁵ 15 U.S.C. 78f(b).

further the objectives of Section 6(b)(5),⁶ 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)⁷ of the Act in that it seeks to ensure fair competition among brokers and dealers and among exchange markets. NASDAQ believes that the proposed rule meets these requirements because it makes a clarifying change to a rule that is currently silent on how it is applied to certain securities. NASDAQ is applying the same Designated Percentage to rights and warrants, which are no longer covered by the trading pause under Rule 4120(a)(11), as it had prior to recent changes to the rule.

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

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

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ Because the proposed rule change does not: (i)

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78k-1(a)(1).

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, 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 Act¹⁰ and Rule 19b-4(f)(6)(iii) thereunder.¹¹

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)¹³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Specifying 30% as the Designated Percentage for rights and warrants in Rule 4613(a)(2)(D) would restore the Market Maker quoting obligations that existed prior to the recent inclusion and subsequent exclusion of rights and warrants from the single-stock circuit breaker pilot program. Allowing the change to be operative upon filing should minimize investor confusion on how Rule 4613(a)(2)(D) will operate for rights and warrants in light of the recent exclusion of rights and warrants from Rule 4120(a)(11). For this

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 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.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

reason, the Commission designates the proposed rule change as operative upon filing with the Commission.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-NASDAQ-2011-166 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 No. SR-NASDAQ-2011-166. 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

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 such 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-2011-166 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).