

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69611; File No. SR-NASDAQ-2013-077)

May 20, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4751(f)(15)

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 May 10, 2013, The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a 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

NASDAQ proposes to amend Rule 4751(f)(15). The text of the proposed rule change is below. Proposed deletions are in brackets; new language is 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) - (e) No change.

(f) The term “Order Type” shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(1) - (14) No change.

(15) “Market Maker Peg Order” is a limit order that, upon entry, the bid or offer is automatically priced by the System at the Designated Percentage away from the then current National Best Bid and National Best Offer, or if no National Best Bid or National Best Offer, at the Designated Percentage away from the last reported sale from the responsible single plan processor in order to comply with the quotation requirements for Market Makers set forth in Rule 4613(a)(2). Upon reaching the Defined Limit, the price of a Market Maker Peg Order bid or offer will be adjusted by the System to the Designated Percentage away from the then current National Best Bid and National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. If a Market Maker Peg Order bid or offer moves away from the Designated Percentage towards the then current National Best Bid or National Best Offer, as appropriate, by [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%], the price of such bid or offer will be adjusted to the Designated Percentage away from the then current National Best Bid and National Best Offer, or if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. In the absence of a National Best Bid or National Best Offer and if no last reported sale, the order will be cancelled or rejected. If, after entry, the Market Maker Peg Order is priced based on the consolidated last sale and such Market Maker Peg Order is established as the National Best Bid or National Best Offer, the Market Maker Peg Order will not be subsequently adjusted in accordance with this rule until either there is a new consolidated last

sale, or a new National Best Bid or new National Best Offer is established by either a national securities exchange or NASDAQ. Market Maker Peg Orders are not eligible for routing pursuant to Rule 4758 and are always displayed on NASDAQ. Notwithstanding the availability of Market Maker Peg Order functionality, a Market Maker remains responsible for entering, monitoring, and resubmitting, as applicable, quotations that meet the requirements of Rule 4613. A new timestamp is created for the order each time that it is automatically adjusted. For purposes of this paragraph, NASDAQ will apply the Designated Percentage and Defined Limit as set forth in Rule 4613, subject to the following exception. Nothing in this rule shall preclude a Market Maker from designating a more aggressive offset from the National Best Bid or National Best Offer than the given Designated Percentage for any individual Market Maker Peg Order. If a Market Maker designates a more aggressive offset from the National Best Bid or National Best Offer, the price of a Market Maker Peg Order bid or offer will be adjusted by the System to maintain the Market Maker-designated offset from the National Best Bid or National Best Offer, or if no National Best Bid or National Best Offer, the order will be cancelled or rejected.

(g) - (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, 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 those 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 parts 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 simplify the calculation of the price adjustment trigger of the Market Maker Peg Order (“MMPO”) under Rule 4751(f)(15). The MMPO is an order type available only to Exchange market makers that provides a means by which a market maker may comply with its market making obligations under Rule 4613(a), but also maintain an order price a certain percentage from the National Best Bid or National Best Offer. The MMPO was adopted as a replacement to the Exchange’s automated quotation functionality, which was retired in February 2013.³ When NASDAQ adopted the MMPO, it applied the same triggering percentages used by AQR to initiate a repricing of the market maker’s quote. Specifically, MMPO price adjustment occurs if upon entry and at any time the order exceeds either the Defined Limit⁴, as described in Rule 4613(a)(2)(E), or moves away from the Designated Percentage⁵ towards the then current National Best Bid or National Best Offer, as appropriate, by

³ The automated quotation functionality was previously under Rules 4613(a)(2)(F) and (G). See Securities Exchange Act Release No. 68528 (December 21, 2012), 77 FR 77165 (December 31, 2012) (SR-NASDAQ-2012-140).

⁴ The term Defined Limit is defined by Rule 4613(a)(2)(E) as 9.5% for securities subject to Rule 4120(a)(11)(A), 29.5% for securities subject to Rule 4120(a)(11)(B), and 31.5% 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 Defined Limit shall be 21.5% for securities subject to Rule 4120(a)(11)(A), 29.5% for securities subject to Rule 4120(a)(11)(B), and 31.5% for securities subject to Rule 4120(a)(11)(C).

⁵ The Designated Percentage is the individual stock pause trigger percentage under Rule 4120(a)(11) less two (2) percentage points and is defined by Rule 4613(a)(2)(D) as 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

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 percent. Once price adjustment is triggered, the MMPO is priced by the Exchange at the Designated Percentage away from the then current National Best Bid and National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. In the absence of a National Best Bid or National Best Offer and last reported sale, the order will be cancelled or rejected. Adjustment to the Designated Percentage is designed to avoid an execution against a MMPO that would initiate a single stock circuit breaker.

In an effort to simplify the calculation of the price adjustment trigger of the MMPO when it moves toward the National Best Bid or National Best Offer, NASDAQ is proposing to eliminate the trigger based on a one quarter of the applicable percentage necessary to trigger an individual stock trading pause. As currently written, once a market maker enters a MMPO Rule 4751(f)(15) requires NASDAQ to constantly compare the 4 percent threshold to 1/4 of the applicable Rule 4120(a)(11) percentage in order to determine whether repricing to the Designated Percentage must occur. For example, if a market maker enters a bid MMPO at 11am in a security subject to Rule 4120(a)(11)(A) when the market is \$10 x \$10.01, it would initially be priced at \$9.20 (the Designated Percentage for such securities is 8%). If the NBB moves within 4% of the MMPO to \$9.57 (4% is greater than 1/4 of the 10% Rule 4120(a)(11)(A) trigger, which is 2.5%) the MMPO should reprice to the Designated Percentage away from the then current NBB, which in this case would result in the MMPO repricing to \$8.80 (\$9.57 x 92%). If, instead, the security was subject to Rule 4120(a)(11)(B), it would be initially priced at

30% for securities subject to Rule 4120(a)(11)(C). The Designated Percentage for rights and warrants shall be 30%.

\$7.20 (the Designated Percentage for such securities is 28%). If the NBB moves within 7.5% of the MMPO to \$7.74 (1/4 of the 30% Rule 4120(a)(11)(B) trigger is 7.5%, which is greater than 4%) the MMPO should reprice to the Designated Percentage away from the then current NBB, which in this case would result in the MMPO repricing to \$5.57 (\$7.74 x 72%). Under the proposed language, the MMPO in this last example would not reprice when the NBB reaches \$7.74, but rather reprice when the NBB reached \$7.49, which is within 4% of the MMPO. In this example, the MMPO would then reprice to \$5.39, which is the Designated Percentage from the NBB of \$7.49.

NASDAQ believes that applying a 4 percent threshold to all securities is a better method because it reduces complexity in calculating the repricing trigger price by repricing only when the NBB or NBO moves to within 4% of the MMPO price.⁶ NASDAQ notes that the MMPO will operate unchanged for the larger, more liquid securities covered by Rule 4120(a)(11)(A). Securities subject to Rule 4120(a)(11)(A) are always subject to the 4 percent threshold, since 1/4 of the Rule 4120(a)(11)(A) threshold of 10 percent equals 2.5 percent. Securities covered by Rules 4120(a)(11)(B) and (C) are less liquid and, in the case of securities covered by subparagraph (C), are below a dollar. Rules 4120(a)(11)(B) and (C) apply 30 and 50 percent thresholds, respectfully, in triggering a single stock circuit breaker. Therefore, the MMPO threshold for such securities, is 1/4 of 30 and 50 percent, or 7.5 and 12.5 percent, respectively. As a consequence, under the proposed change, the MMPO will not reprice to the Designated Percentage until the price move percentage is closer to the National Best Bid or National Best Offer than is currently the case (*i.e.*, 4 percent as compared to 7.5 or 12.5 percent). NASDAQ

⁶ NASDAQ notes that the MMPO currently operates in the manner proposed by this rule change. As such, the proposed change will align the rule text with the current operation of the MMPO.

does not believe that this will in any way negatively affect trading in these securities. A MMPO is not typically executed against and NASDAQ does not believe that applying a 4 percent threshold to all securities will materially increase the likelihood of an MMPO being executed. NASDAQ will continue to adjust the price of a MMPO that reaches the Defined Limit.

NASDAQ is also proposing to eliminate language from the rule text that is duplicative of other descriptive language. Specifically, NASDAQ is deleting the language that follows subparagraph (b) of the rule, which states “or expands to within that same percentage less 0.5%.” This language summarizes the repricing of the MMPO upon reaching the Defined Limit, which is described in the preceding sentence. Accordingly, the proposed deletion does not change how the MMPO operates, but rather deletes text that is redundant and could be confusing.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,⁷ 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 reduces complexity in making the determination to adjust the price of a MMPO. The Exchange notes that the calculation that it is proposing will have no effect on securities subject to Rule 4120(a)(11)(A), but will result in securities covered by Rules 4120(a)(11)(B) and (C) to reprice to the Designated Percentage at a point closer to the National Best Bid or National Best Offer. NASDAQ does not believe that repricing at 4 percent for all securities will result in a material increase in executions of MMPOs. Accordingly, removing the price adjustment threshold based on a calculation of 1/4 of the

⁷ 15 U.S.C. 78f(b)(5).

percentages under Rules 4120(a)(11)(B) and (C) will reduce the complexity of calculations under the rule without reducing the effectiveness of the order. Last, NASDAQ believes that removing duplicative, and possibly confusing, language from the rule will promote the public interest by clarifying the operation of the MMPO.

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 is designed to reduce the complexity of the price adjustment triggers under the rule while continuing to maintain a market maker's quote so that it meets its market making obligations. Moreover, the proposed change will align the rule text with the current operation of the order type. As such, the Exchange does not believe that the rule will impact competition in any way.

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: (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)(ii) of the Act⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁹

⁸ 15 U.S.C. 78s(b)(3)(a)(ii).

⁹ 17 CFR 240.19b-4(f)(6).

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:

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-2013-077 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-2013-077. 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 such filing also will be available for inspection and copying at the principal offices 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-2013-077, 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).