

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50372; File No. SR-NASD-2004-074)

September 14, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. to Clarify and Modify Market Maker Quote Re-Entry Obligations

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 April 28, 2004, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), 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 Nasdaq. On August 31, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes certain changes to Rule 4620 to clarify and modify market makers’ quote re-entry obligations when a quote is withdrawn by Nasdaq’s systems because of a dividend application or a trading halt.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (“Division”), Commission, dated August 30, 2004 (“Amendment No. 1”). In Amendment No. 1, Nasdaq replaced the rule text in the original proposal with a new version to reflect changes to NASD rules effected by SR-NASD-2004-076. See Securities Exchange Act Release No. 50074 (July 23, 2004), 69 FR 45866 (July 30, 2004).

The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

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4620. Voluntary Termination of Registration

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its [Quote] two-sided quotation from the Nasdaq Market Center. A market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days. Withdrawal from participation as a market maker in a Nasdaq-listed security in the Nasdaq Market Center shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the trade reporting service of the Nasdaq Market Center and thereby terminates its registration as a market maker in Nasdaq-listed issues may register as a market maker at any time after a clearing arrangement has been reestablished and the market maker has complied with Nasdaq Market Center participant requirements contained in Rule 6100.

(b) and (c) No change

(d) For purposes of paragraph (a) of this Rule, a market maker shall not be deemed to have voluntarily terminated its registration in a security by voluntarily withdrawing its two-sided quotation from the Nasdaq Market Center if the market maker's two-sided quotation in the subject security is withdrawn by Nasdaq's systems due to issuer corporate action related to a dividend, payment or distribution, or due to a trading halt, and one of the following conditions is satisfied:

(1) the market maker enters a new two-sided quotation prior to the close of the regular market session on the same day when Nasdaq's systems withdrew such a quotation;

(2) the market maker enters a new two-sided quotation on the day when trading resumes following a trading halt, or, if the resumption of trading occurs when the market is not in regular session, the market maker enters a new two-sided quotation prior to the opening of the next regular market session; or

(3) upon request from the market maker, Nasdaq MarketWatch authorizes the market maker to enter a new two-sided quotation, provided that Nasdaq MarketWatch receives the market maker's request prior to the close of the regular market session on the next regular trading day after the day on which the market maker became eligible to re-enter a quotation pursuant to subparagraph (d)(1) or (d)(2) hereof and determines that the market maker was not attempting to avoid its market making obligations by failing to re-enter such a quotation earlier.

[(d)](e) The Market Operations Review Committee shall have jurisdiction over proceedings brought by [Market Makers] market makers seeking review of their denial of a reinstatement pursuant to [paragraph (b) above] paragraphs (b) or (d) of this Rule.

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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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change seeks to clarify the existing practice with respect to market maker quote reinstatement following a Nasdaq system-initiated withdrawal of the quote and to give market makers an additional trading day within which to request such a reinstatement. Nasdaq systems withdraw all market maker quotes in a security when certain corporate actions occur (e.g., a dividend is applied) and in the event of a trading halt. After such Nasdaq system-initiated quote withdrawal, a market maker is expected to reinstate its quote within a reasonable period of time in order to avoid being deemed as having voluntarily terminated its registration in the particular security.

Currently, a market maker is expected to re-enter its quote by the close of the regular market session on the day that the corporate action occurred or regular trading resumed. If trading resumes in the extended hours session, the market maker has until market open on the next regular trading day to re-enter a quote. The proposed rule change would codify this policy.

The proposed rule change would also permit market makers who inadvertently failed to re-enter their quotes within the time frames described above to contact Nasdaq's MarketWatch department by the close of regular trading on the next trading day after the date of the corporate action or trading resumption and to seek to enter a quote. Nasdaq states that Nasdaq MarketWatch would monitor market maker reactivation requests for any pattern of delays that might indicate that a market maker was attempting to avoid its obligations and in such cases would deny immediate reactivation and deem the market maker's registration in the security as

having been voluntarily terminated. Market makers would be able to seek a review by the Market Operations Review Committee of a denial of reinstatement under Rule 4620(d).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁴ including Section 15A(b)(6) of the Act,⁵ which requires that the rules of the NASD be designed 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. Nasdaq believes that the proposed rule change would make the existing policy concerning quote reinstatements following system-initiated withdrawals more transparent and contribute to the quality of the market and benefit investors. Nasdaq also believes that, by extending the amount of time available to submit a new quote following system-initiated withdrawals, the proposed rule change would also further encourage the desired re-infusion of liquidity and yield corresponding additional benefits to the market and investors.

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

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds

⁴ 15 U.S.C. 78o-3.

⁵ 15 U.S.C. 78o-3(b)(6).

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-NASD-2004-074 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-074. 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 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 inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Nasdaq. 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-NASD-2004-074 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).