

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63530; File No. SR-NASDAQ-2010-164)

December 10, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Provide an Exemption from the Thirty-Day Written Notice Requirement of Rule 7018(i)(3)

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 December 9, 2010, 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 the Substance of the Proposed Rule Change

NASDAQ is proposing to modify the thirty-day written notice requirement applicable to a member firm seeking to withdraw as Designated Liquidity Provider.

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

7018. Nasdaq Market Center Order Execution and Routing

(a) – (h) No change.

(i) Notwithstanding the foregoing, the following charges shall apply to transactions in a Qualified Security by one of its Designated Liquidity Providers:

Charge to Designated Liquidity Provider entering Order that executes in the Nasdaq Market Center or attempts to execute in the Nasdaq Market Center prior to routing:	\$0.003 per share executed for securities priced at \$1 or more per share (For securities priced at less than \$1 per share, the normal execution fee under 7018(a) will apply)
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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Credit to Designated Liquidity Provider providing displayed liquidity through the Nasdaq Market Center:	\$0.004 per share executed (or \$0, in the case of executions against Quotes/Orders in the Nasdaq Market Center at less than \$1.00 per share), up to 10 million shares average daily volume Normal credits under 7018(a) apply to shares greater than 10 million average daily volume and nondisplayed liquidity
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For purposes of this paragraph:

(1) – (2) No change.

(3) If a DLP does not meet the performance measurements for a given month, fees and credits will revert to the normal schedule under 7018(a). If a DLP does not meet the stated performance measurements for 3 out of the past 4 months, the DLP is subject to forfeit of DLP status for that instrument, at NASDAQ's discretion. A DLP must provide 30 days written notice if it wishes to withdraw its registration in a Qualified Security, unless it is also withdrawing as a market maker in the Qualified Security.

(j) 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to modify the thirty-day written notice requirement applicable to a member firm seeking to withdraw as Designated Liquidity Provider (“DLP”) in a Qualified Security³ to exempt member firms that are also withdrawing as a market maker in the Qualified Security. NASDAQ recently amended Rule 7018(i) to include new subparagraph (3), discussing DLP performance requirements and adopting a 30 day written notice requirement of a member firm’s desire to withdraw as a DLP in a Qualified Security.⁴ Specifically, NASDAQ described the consequences of failing to meet the DLP minimum performance criteria described in Rule 7018(i)(2) and adopted a thirty-day prior notice obligation on DLPs seeking to withdraw registration in a Qualified Security. The thirty-day notice requirement was adopted to ensure that NASDAQ has adequate time to assign a new DLP, thus avoiding any disruption in market quality that may be caused by the absence of an assigned DLP.

NASDAQ is proposing an exemption to the thirty-day written notice requirement limited to member firms seeking to withdraw both as a DLP and market maker in a Qualified Security. NASDAQ rules do not specify or require a minimum time of prior notice of a member firm’s desire to withdraw as a market maker in a particular security.⁵ As such, a member firm may withdraw from any given security the same day as notice is provided to NASDAQ. A member firm is, however, restricted from making a market in any security that it has withdrawn from for

³ To be designated as a “Qualified Security,” Rule 7018(i)(1) requires that the security is an exchange-traded fund or index-linked security listed on Nasdaq pursuant to Nasdaq Rules 5705, 5710, or 5720, and that it has at least one Designated Liquidity Provider.

⁴ Securities Exchange Act Release No. 63040 (October 5, 2010), 75 FR 63238 (October 14, 2010) (SR-NASDAQ-2010-128).

⁵ Rule 4620(a).

20 days.⁶ To be a DLP, a member firm must be a registered market maker in the Qualified Security.⁷ Therefore, if a member firm withdraws its registration as a market maker in a Qualified Security, it is not eligible to act as a DLP.

NASDAQ adopted the thirty-day written notice of withdrawal requirement so that it would have adequate time to assign a new DLP as a replacement of the withdrawing member firm. Typically, a member firm would continue as a market maker in the security that it was withdrawing its DLP designation, and thus was able to avail itself of the benefits of making a market in the Qualified Security. NASDAQ believes that, in cases of complete withdrawal from market making in a Qualified Security, the thirty-day written notice of withdrawal requirement should not apply, since the member firm is not seeking to continue availing itself of the benefit of making a market in the security, but rather is completely withdrawing from making a market in the security. Such member firms have no intent to make markets in the security and are precluded from becoming a market maker in the security for 20 days. Accordingly, NASDAQ does not believe that compelling a member firm to participate as a market maker and DLP in a security during the thirty-day notice period is beneficial to the member firm or the quality of the market in the Qualified Security.

2. Statutory Basis

NASDAQ believes the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general and with Section 6(b)(5) of the Act,⁹ in particular, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices,

⁶ Id.

⁷ Rule 7018(i)(2).

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. NASDAQ believes that the proposed rule change is consistent with these requirements because exempting member firms that are entirely withdrawing as a market maker in a Qualified Security from the thirty-day written notice requirement of Rule 7018(i)(3) eliminates an inconsistency in the current rules concerning the notice a market maker is required to provide NASDAQ when it determines to withdraw from making a market in Qualified Securities. NASDAQ believes a member firm should be able to withdraw from making a market in any security under the terms of Rule 4620(a) and not be subject to an additional notice requirement that was designed to apply to member firms that would continue to participate as a registered market maker in the security. Further, NASDAQ does not believe that compelling a member firm wishing to withdraw as a market maker in a Qualified Security to participate as a market maker and DLP in that security during the thirty-day notice period is beneficial to the member firm or the quality of the market in the Qualified Security.

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

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)¹⁰ of the Act and Rule 19b-4(f)(6) thereunder.¹¹ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily 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.

NASDAQ has asked that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii).¹² NASDAQ has requested such waiver to quickly cure an unintended inconsistency in the notice requirements for withdrawing as a market maker in certain securities. Based on NASDAQ's representations that the proposed rule change is non-controversial and that no novel issues are presented in this proposed rule change, the Commission sees no reason to delay implementation of the proposed rule change. The Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.¹³

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2010-164 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-2010-164. 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 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-2010-164, 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.¹⁴

Florence E. Harmon
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).