

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69108; File No. SR-NASDAQ-2013-037)

March 11, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Clarify the Maximum Time Afforded to a Market Maker to Meet its Market Making Obligations Upon Rejoining the Market After an Excused Withdrawal Under Rule 4619

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on February 25, 2013, The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 clarify what is the maximum time afforded to a market maker to rejoin the market after an excused withdrawal under Rule 4619 [sic]. The Exchange will implement the proposed changes as soon as the rule change is operative.

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

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4619. Withdrawal of Quotations and Passive Market Making

(a) – (f) No change.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

(g) A Nasdaq Market Maker that wishes to reinstate its quotations in a security after an excused withdrawal pursuant to Rule 4619 shall contact Nasdaq to notify Nasdaq of its intention to be reinstated. Upon confirmation by Nasdaq that the market maker is reinstated, the market maker will have no longer than ten minutes to meet its market making obligations under Rule 4613.

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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

NASDAQ is proposing to amend Rule 4619 to clarify the maximum permissible time afforded an Exchange market maker in which to resume making a market in a security after an excused withdrawal under the rule. When a NASDAQ market maker is ready to resume market making after an excused withdrawal, it informs NASDAQ of its intent to resume. NASDAQ in turn confirms receipt of such notice and updates the market maker's registration status in the relevant security or securities.⁴ If the market maker uses NASDAQ's automated quotation

⁴ A request to reinstate market making after an excused withdrawal may be submitted to NASDAQ by phone, e-mail, or facsimile.

refresh functionality (“AQR”)⁵, NASDAQ will, concurrent with the receipt of notice, commence automated quoting thereby satisfying the member firm’s market making obligations [sic]. A market maker not using AQR is responsible for reentering the market upon providing notice to NASDAQ of its intent to do so. Until November 2012, nearly all NASDAQ market makers used AQR and the majority of NASDAQ market makers continue to use AQR at this time.

NASDAQ is retiring AQR effective February 25, 2013⁶, and is requiring market makers to either use the Market Maker Peg Order⁷ or develop an alternative means to meet their market making obligations. As a consequence, market makers have begun to opt out of AQR and NASDAQ anticipates many more will do so as the AQR sunset date approaches. For the handful of market makers that do not use AQR currently, NASDAQ provides a reasonable time for the market maker to rejoin the market after providing notice of its intent to do so. NASDAQ monitors this timeframe and in no case has a market maker taken longer than ten minutes to rejoin the market after providing notice.

A consequence of AQR’s retirement is that, thereafter, all NASDAQ market makers will no longer automatically resume market making concurrent with notice to the Exchange of their intent to do so after an excused withdrawal under Rule 4619. Accordingly, the Exchange is proposing to amend Rule 4619 to provide Exchange market makers with up to ten minutes to

⁵ Rules 4613(a)(2)(F) and (G). NASDAQ adopted AQR as part of an effort to address issues uncovered by the aberrant trading that occurred on May 6, 2010. AQR is designed to help Exchange market makers meet their market making obligations for each stock in which they are registered to continuously maintain a two-sided quotation within a designated percentage of the National Best Bid and National Best Offer, as appropriate. See Securities Exchange Act Release No. 63255 (November 5, 2010), 75 FR 69484 (November 12, 2010) (SR-NASDAQ-2010-115, et al.).

⁶ Securities Exchange Act Release No. 68654 (January 15, 2013), 78 FR 4536 (January 22, 2013) (SR-NASDAQ-2013-007).

⁷ Rule 4751(f)(15).

rejoin the market after NASDAQ confirms that the market maker is reinstated in the security or securities subject to an excused withdrawal under Rule 4619 [sic]. After expiration of the ten-minute period, a market maker's obligations under Rule 4613 will apply [sic]. NASDAQ believes that ten minutes is a reasonable amount of time for a market maker to rejoin the market, and that it provides a definite time after which a market maker's obligations under Rule 4613 begin. NASDAQ notes that, for some market makers, the ten minute time-frame proposed herein may be more than adequate to allow them to rejoin the market after receiving confirmation from NASDAQ. NASDAQ believes that small market makers may not have as efficient and automated processes to rejoin the market as compared to larger market making firms. Consequently, the proposed ten minute timeframe is reasonably adequate for such small market makers, but not excessive. Moreover, in light of the fact that AQR was widely-adopted by NASDAQ market makers and its imminent retirement, the process proposed herein will be new to the vast majority of Exchange market makers.

NASDAQ stresses that the proposed timeframe sets a maximum time allowable for a market maker to reenter the market, and that it expects member firms to reenter at the earliest time possible after receiving confirmation from NASDAQ that it is reinstated. Once the market maker reenters the market its obligations under Rule 4613 begin, even if the time is less than ten minutes from receiving notice from NASDAQ. The Exchange will monitor use of this timeframe and may adjust the length of time if it appears to be excessive.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,⁸ which requires the rules of an exchange to promote just and equitable principles of trade, to remove

⁸ 15 U.S.C. 78f(b)(5).

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 provides Exchange market makers with clarity on the maximum permissible time for a market maker reenter the market after receiving confirmation of its re-registration from the Exchange. With this information, Exchange market makers are aware of when their obligations under Rule 4613 begin and thus can avoid inadvertent violation of Exchange rules.

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, as amended. To the contrary, the proposed rule change will promote competition by providing further clarity to Exchange market making obligations, thus allowing market makers to make more informed market making decisions and ensuring all Exchange market makers are aware of when their Rule 4613 obligations begin. Moreover, by placing an express limit on the time afforded to market makers to rejoin the market, market makers will be incentivized to adopt procedures to timely rejoin the market.

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 after the date of the filing, or such shorter time as the

Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6)¹⁰ thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay.¹¹ The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Such waiver would allow the proposed rules to become operative at the same time as NASDAQ retires its AQR functionality. Without waiving the operative 30-day operative delay, Exchange market makers may not be able to automatically resume market making concurrent with its notice to NASDAQ of its intent to do so. Accordingly, the Commission designates the proposal operative upon filing.¹²

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:

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² 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).

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-2013-037 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-2013-037. 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-2013-037 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.¹³

Kevin M. O'Neill
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).