

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56586; File No. SR-NASDAQ-2007-069)

October 1, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Eliminate Its Rule Governing the Relation of a Nasdaq Market Maker's Quotations to the Prevailing Market

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 August 1, 2007, The NASDAQ Stock Market LLC ("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 substantially prepared by Nasdaq. On September 19, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change, which replaced the text of the original filing in its entirety. 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 Substance of the Proposed Rule Change

Nasdaq proposes to amend Nasdaq Rule 4613(c) to eliminate a requirement governing the relation of a Nasdaq market maker's quotations to the prevailing market.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.³

* * * * *

4613. Character of Quotations

(a) – (b) No change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Changes are marked to the rule text that appears in the electronic NASDAQ Manual found at www.nasdaqtrader.com.

(c) Impaired Ability to Enter or Update Quotations [Quotations Reasonably Related to the Market]

[A Nasdaq Market Maker shall enter and maintain quotations that are reasonably related to the prevailing market. Should it appear that a market maker's quotations are no longer reasonably related to the prevailing market, Nasdaq may require the market maker to re-enter its quotations. If a Nasdaq Market Maker whose quotations are no longer reasonably related to the prevailing market fails to re-enter its quotations, Nasdaq may suspend the market maker's quotations in one or all securities.]

In the event that a Nasdaq Market Maker's ability to enter or update quotations is impaired, the market maker shall immediately contact Nasdaq Market Operations to request the withdrawal of its quotations.

In the event that a Nasdaq Market Maker's ability to enter or update quotations is impaired and the market maker elects to remain in Nasdaq, the Nasdaq Market Maker shall execute an offer to buy or sell received from another member at its quotations as disseminated through the Nasdaq Market Center.

(d) – (e) No change.

* * * * *

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 proposes to amend Rule 4613(c) to delete the requirement that a Nasdaq market maker’s quotations must be “reasonably related to the prevailing market.” The purpose of the amendment is to clarify the obligations of Nasdaq market makers. The proposed amendment would delete the first paragraph of the rule. The remainder of the rule, which addresses a market maker’s impaired ability to enter or update quotations, would remain. Additionally, Rule 4613(c) would be revised to read “Impaired Ability to Enter or Update Quotations.”

Nasdaq is not proposing to amend Rule 4613(a)(1), which contains the long-standing quotation requirements and obligations applicable to market makers. As a result, for each security in which they are registered, market makers will continue to be subject to the requirement to be willing to buy and sell the security for their own account on a continuous basis and maintain at all times a two-sided attributable quotation that is displayed in the Nasdaq Quotation Montage. This basic market maker requirement mirrors the definition of “market maker” set forth in Section 3(a)(38) of the Act.⁴ Furthermore, this basic market maker obligation is consistent with the market maker obligations contained in the rules of other national securities exchanges, such as NYSE Arca Rule 7.23, which requires continuous two-sided quotations but does not contain a subjective requirement of the quotations’ relation to the market.

⁴ 15 U.S.C. 78c(a)(38) states: “The term ‘market maker’ means any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.”

The rule was first introduced in 1987, at a time when Nasdaq's market structure and the regulatory environment in which it operated were quite different.⁵ Nasdaq believes that the requirement is no longer a meaningful means of ensuring market execution quality in the highly competitive and increasingly automated environment in which Nasdaq and other trading venues now operate. Rather, Nasdaq's price/time priority execution algorithm and the obligation to seek favorable prices imposed by Regulation NMS and the duty of best execution ensure that market makers with the most competitive quotations will receive executions and thereby provide incentives to quote at or near the inside where practicable. Moreover, market makers who display a quotation that is not at or near the inside are still "holding themselves out" as willing to buy and sell for their own account through an attributable quotation that is disseminated through public data feeds. Regulation NMS and best execution obligations require that customer orders directed to these market makers in response to their publicly-displayed quotations must be executed, at a minimum, at the national best bid or offer. Finally, the quality of a market maker's order executions can be objectively determined by a review of the market execution quality reports required by Rule 605 under Regulation NMS.⁶ Therefore, Nasdaq believes it is appropriate to eliminate this requirement.

Deleting the requirement also would have the benefit of eliminating confusion about whether particular market maker behavior constitutes a violation of the rule. For example, market makers sometimes reflect their client's non-marketable limit orders as attributable orders in lieu of entering proprietary quotes. If there are no current client orders in a particular stock, in

⁵ See Securities Exchange Act Release No. 24579 (June 10, 1987), 52 FR 23117 (June 17, 1987) (SR-NASD-87-8).

⁶ 17 CFR 242.605. See also Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

order to meet its two-sided quotation obligation, the market maker may display “stub,” or widely spaced, quotations, such as a bid of \$0.01 and an offer of \$2,000 in stocks where this is the case.

Because of the current rule’s ambiguity, it may be difficult to determine whether a stub quote should be considered “reasonably related” to the market. Measured against what another market maker may be quoting, the stub quote may bear little relation to the market, but when measured against the market maker’s practice of representing customer orders, the stub quote may be an accurate reflection of the absence of such orders.

Nasdaq does not believe that the change in the rule will have any effect on market quality. However, as is always the case, Nasdaq will carefully monitor the performance of market makers to determine if the change has any impact on the extent to which market makers quote at or near the inside market.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and with Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

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.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

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 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, as amended, 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-2007-069 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2007-069. 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 Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of 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-NASDAQ-2007-069 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.⁹

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).