

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62950; File No. SR-NASDAQ-2010-115)

September 20, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of a Proposed Rule Change to Enhance Quotation Requirements for Market Makers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 17, 2010, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) 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 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 enhance quotation requirements for market makers.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.<sup>3</sup>

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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) – (b) No Change.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

(c) The term "Participant" shall mean an entity that fulfills the obligations contained in Rule 4611 regarding participation in the System, and shall include:

(1) No Change.

(2) "Nasdaq Market Makers[.]" or "Market Makers," members that are registered as Nasdaq Market Makers for purposes of participation in the System on a fully automated basis with respect to one or more System securities.

(3) No Change.

(d) – (i) No Change

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#### [4613. Character of Quotations

A member registered as a Nasdaq Market Maker shall engage in a course of dealings for its own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets in accordance with this Rule.

#### (a) Quotation Requirements and Obligations

(1) Two-Sided Quote Obligation. For each security in which a member is registered as a Nasdaq Market Maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain a two-sided quotation ("Principal Quote"), which is attributed to the market maker by a special maker participant identifier ("MPID") and is displayed in the Nasdaq Market Center at all times, subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) A registered market maker must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 604, provided, however, that a registered Nasdaq Market Maker may augment its

displayed quotation size to display limit orders priced at the market maker's quotation. Unless otherwise designated, a "normal unit of trading" shall be 100 shares.

(B) The minimum quotation increment for quotations of \$1.00 or above in all System Securities shall be \$0.01. The minimum quotation increment in the System for quotations below \$1.00 in System Securities shall be \$0.0001.

(2) The first MPID issued to a member pursuant to subparagraph (1) of this rule, or Rule 4623, shall be referred to as the member's "Primary MPID." Market makers and ECNs may request the use of additional MPIDs that shall be referred to as "Supplemental MPIDs." A market maker may request the use of Supplemental MPIDs for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it is registered and meets the obligations set forth in subparagraph (1) of this rule. An ECN may request the use of Supplemental MPIDs for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it meets the obligations set forth in Rule 4623. A market maker or ECN that ceases to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use a Supplemental MPID for any purpose in that security.

(3) Market makers and ECNs that are permitted the use of Supplemental MPIDs for displaying Attributable Quotes/Orders pursuant to subparagraph (2) of this rule are subject to the same rules applicable to the members' first quotation, with two exceptions: (a) the continuous two-sided quote requirement and excused withdrawal procedures described in subparagraph (1) above do not apply to market makers' Supplemental MPIDs; and (b) Supplemental MPIDs may not be used by market makers to engage in passive market making or to enter stabilizing bids pursuant to Nasdaq Rules 4614 and 4619. ]

### 4613. Market Maker Obligations

A member registered as a Market Maker shall engage in a course of dealings for its own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets in accordance with this Rule.

#### (a) Quotation Requirements and Obligations

(1) Two-Sided Quote Obligation. For each security in which a member is registered as a Market Maker, the member shall be willing to buy and sell such security for its own account on a continuous basis during regular market hours and shall enter and maintain a two-sided trading interest ("Two-Sided Obligation") that is identified to the Exchange as the interest meeting the obligation and is displayed in the Exchange's quotation montage at all times. Interest eligible to be considered as part of a Market Maker's Two-Sided Obligation shall have a displayed quotation size of at least one normal unit of trading (or a larger multiple thereof); provided, however, that a Market Maker may augment its Two-Sided Obligation size to display limit orders priced at the same price as the Two-Sided Obligation. Unless otherwise designated, a "normal unit of trading" shall be 100 shares. After an execution against its Two-Sided Obligation, a Market Maker must ensure that additional trading interest exists in the Exchange to satisfy its Two-Sided Obligation either by immediately entering new interest to comply with this obligation to maintain continuous two-sided quotations or by identifying existing interest on the Exchange book that will satisfy this obligation.

(2) Pricing Obligations. For NMS stocks (as defined in Rule 600 under Regulation NMS) a Market Maker shall adhere to the pricing obligations established by this Rule during Regular Market Hours.

(A) Bid Quotations. At the time of entry of bid interest satisfying the Two-Sided Obligation, the price of the bid interest shall be not more than the Designated Percentage away from the then current National Best Bid, or if no National Best Bid, not more than the Designated Percentage away from the last reported sale from the responsible single plan processor. In the event that the National Best Bid (or if no National Best Bid, the last reported sale) increases to a level that would cause the bid interest of the Two-Sided Obligation to be more than the Defined Limit away from the National Best Bid (or if no National Best Bid, the last reported sale), or if the bid is executed or cancelled, the Market Maker shall enter new bid interest at a price not more than the Designated Percentage away from the then current National Best Bid (or if no National Best Bid, the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.

(B) Offer Quotations. At the time of entry of offer interest satisfying the Two-Sided Obligation, the price of the offer interest shall be not more than the Designated Percentage away from the then current National Best Offer, or if no National Best Offer, not more than the Designated Percentage away from the last reported sale received from the responsible single plan processor. In the event that the National Best Offer (or if no National Best Offer, the last reported sale) decreases to a level that would cause the offer interest of the Two-Sided Obligation to be more than the Defined Limit away from the National Best Offer (or if no National Best Offer, the last reported sale), or if the offer is executed or cancelled, the Market Maker shall enter new offer interest at a price not more than the Designated Percentage away from the then current National Best Offer (or if no National Best Offer, the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.

(C) The National Best Bid and Offer shall be determined by the Exchange in accordance with its procedures for determining protected quotations under Rule 600 under Regulation NMS.

(D) For purposes of this Rule, the term “Designated Percentage” shall mean the individual stock pause trigger percentage under NASDAQ Rule 4120(a)(11) (or comparable rule of another exchange) less two (2) percentage points. For times during regular market hours when stock pause triggers are not in effect under Rule 4120(a)(11) (or comparable rule of another exchange), the Designated Percentage calculation will assume a trigger percentage of 22%. For NMS stocks that are not subject to such stock pause triggers the Designated Percentage will assume a trigger percentage of 32%.

(E) For purposes of this Rule, the term “Defined Limit” shall mean the individual stock pause trigger percentage under NASDAQ Rule 4120(a)(11) (or comparable rule of another exchange) less one-half (1/2) percentage point. For times during regular market hours when stock pause triggers are not in effect under Rule 4120(a)(11) (or comparable rule of another exchange), the Defined Limit calculation will assume a trigger percentage of 22%. For NMS stocks that are not subject to such stock pause triggers the Defined Limit calculation will assume a trigger percentage of 32%.

(F) Quotation Creation and Adjustment. For each Issue in which a Market Maker is registered, the System shall automatically create a quotation for display to comply with this Rule. System-created compliant displayed quotations will thereafter be allowed to rest and not be further adjusted by the System unless the relationship between the quotation and its related National Best Bid or National Best Offer, as appropriate, shrinks to 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 NASDAQ Rule 4120(a)(11), or expands to within that same percentage

less 0.5%, whereupon the System will immediately re-adjust and display the Market Maker's quote to the appropriate Designated Percentage set forth in section (D) above. As the System allows for multiple attributable quotations by a Market Maker in an issue, quotations originally entered by Market Makers shall be allowed to move freely towards or away from the National Best Bid or National Best Offer, as appropriate, for potential execution.

(G) Quotation Refresh After Execution. In the event of an execution against a System-created compliant quotation, the Market Maker shall have its quote refreshed by the System on the executed side of the market at the applicable Designated Percentage away from the then National Best Bid (Offer) (or if no National Best Bid (Offer), the last reported sale).

(H) Nothing in this Rule shall preclude a Market Marker from quoting at price levels that are closer to the National Best Bid and Offer than the levels required by this Rule.

(I) The minimum quotation increment for quotations of \$1.00 or above in all System Securities shall be \$0.01. The minimum quotation increment in the System for quotations below \$1.00 in System Securities shall be \$0.0001.

(J) The individual Market Participant Identifier ("MPID") assigned to a member to meet its Two-Sided Obligation pursuant to subparagraph (a)(1) of this Rule, or Rule 4623, shall be referred to as the member's "Primary MPID." Market Makers and ECNs may request the use of additional MPIDs that shall be referred to as "Supplemental MPIDs." A Market Maker may request the use of Supplemental MPIDs for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it is registered and meets the obligations set forth in subparagraph (1) of this rule. An ECN may request the use of Supplemental MPIDs for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it meets the obligations set forth in Rule 4623. A Market Maker or ECN that ceases to

meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use a Supplemental MPID for any purpose in that security.

(K) Market Makers and ECNs that are permitted the use of Supplemental MPIDs for displaying Attributable Quotes/Orders pursuant to subparagraph (2) of this rule are subject to the same rules applicable to the members' first quotation, with two exceptions: (a) the continuous two-sided quote requirement and excused withdrawal procedures described in subparagraph (1) above do not apply to Market Makers' Supplemental MPIDs; and (b) Supplemental MPIDs may not be used by Market Makers to engage in passive market making or to enter stabilizing bids pursuant to Nasdaq Rules 4614 and 4619.

(b) – (e) No Change.

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(b) Not applicable.

(c) Not applicable.

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



### Market Maker Quote Obligations

The Exchange proposes to adopt rules to enhance minimum quotation requirements for market makers. Under the proposal, the Exchange will require market makers 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. These enhanced market maker quotation requirements are intended to eliminate trade executions against market maker placeholder quotations traditionally priced far away from the inside market, commonly known as “stub quotes.” They are also intended to augment and work in relation to the single stock pause standards already in place on a pilot basis for stocks in the S&P 500, Russell 1000, and specified ETFs.<sup>4</sup>

Under the proposal, the Exchange will require registered market makers to enter and maintain quotes priced at no more than a certain percentage away from the national inside bid and offer. Permissible quotes are determined by the individual character of the security, the time of day in which the quote is entered, and other factors which are summarized below:

For issues subject to an individual stock trading trigger pause, a permissible quote is determined by first looking at the applicable stock trading pause trigger percentage of the security and then reducing that number by 2%. Since currently the stock pause trigger percentage across all exchanges is 10%, a market maker’s quote in a such a security may not be more than 8% away from the national best bid or best offer as appropriate. Once a compliant quote is entered, it may rest without adjustment until such time as it moves to within ½ of 1% of the applicable trigger pause percentage (i.e, currently 9.5%) whereupon the market maker must immediately move its quote back to at least the permissible default level of 8% away from the

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<sup>4</sup> See Exchange Act Release No. 62884 (September 10, 2010).

national best bid or best offer. During times in which a trigger pause percentage is not applicable (e.g. before 9:45 a.m. and after 3:35 p.m.), a market maker must maintain a quote no further than 20% away from the inside (i.e. it may rest without adjustment until it reaches 21.5%). In the absence of national best or best offer, the above calculations will remain the same, but will use the national last sale instead of the absent bid or offer.

For securities not subject to any individual stock pause trigger, the proposal will a [sic] assume a hypothetical 32% trigger pause, apply a 2% reduction, and require market makers in those issues to maintain quotes no more than 30% away from the national best and national best offer. Like securities subject to stock trading pauses, once a compliant quote is entered, it may rest without adjustment until such time as it moves to within  $\frac{1}{2}$  of 1% of its applicable trigger pause percentage (31.5%) whereupon the market maker must immediately move its quote back to at least the permissible default level of 30%. These requirements shall apply to Regulation NMS securities during normal market hours.

Nothing in the above precludes a market maker from voluntarily quoting at price levels that are closer to the national best bid and best offer than required under the proposal.

#### Automated Quote Management

In order to assist market makers in meeting their enhanced quotation obligations, the Exchange will also provide automated quote management functionality. For each issue in which a market maker is registered, the Exchange will automatically create a quotation for display to comply with this standard set forth in this proposal. Compliant displayed quotations will thereafter be allowed to rest and not be further adjusted by the Exchange unless the relationship between the quotation and its related national best bid or national best offer, as appropriate, shrinks to 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 NASDAQ Rule 4120(a)(11), or expands to within that same percentage less 0.5%, whereupon the Exchange will immediately re-adjust and display the market maker's quote to the appropriate designated percentage. Quotations originally entered by market makers shall be allowed to move freely towards the national best bid or national best offer, as appropriate, for potential execution.

In the event of an execution against a System-created compliant quotation, the market maker shall have its quote refreshed by the System on the executed side of the market at the applicable designated percentage away from the then national best bid (offer), or if no national best bid (offer), the last reported sale.

#### Previously Approved Rule Text

Finally, the sections (I), (J) and (K) of the proposed rule are portions of previously approved text of Rule 4613 that have moved so as group the proposed market making standard sections together within the rule.

## 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"),<sup>5</sup> 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>6</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning

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<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 15 U.S.C. 78k-1(a)(1).

minimum market maker quotation requirements.

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

Within 45 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 Exchange consents, the Commission shall: (a) by order approve or disapprove 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2010-115 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2010-115. 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 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 a.m. and 3:00 p.m. Copies of such 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 publicly available. All submissions should refer to File

Number SR-NASDAQ-2010-115 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.<sup>7</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).