

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2013-20 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-NYSE-2013-20. This file number should be included on the subject line if email 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 Web site 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 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-NYSE-2013-20 and should be submitted on or before April 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69108; File No. SR-NASDAQ-2013-037]

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

March 11, 2013.

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 in italics.

* * * * *

4619. Withdrawal of Quotations and Passive Market Making

(a)-(f) No change.

(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.*

* * * * *

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 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, 2013,⁶ and is requiring

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

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).

⁹ 17 CFR 200.30-3(a)(12).

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 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 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:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an email 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.

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).

⁷ Rule 4751(f)(15).

⁸ 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–NASDAQ–2013–037. This file number should be included on the subject line if email 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 Web site 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 April 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2013–05983 Filed 3–14–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69101; File No. SR–NYSE–2013–19]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the New York Stock Exchange LLC Price List To Increase the Gross FOCUS Fee

March 11, 2013.

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 February

26, 2013, New York Stock Exchange LLC (the “Exchange” or “NYSE”) 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 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

The Exchange proposes to amend the Exchange's Price List to increase the gross FOCUS fee (“Gross FOCUS Fee”). The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 self-regulatory organization 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to increase the Gross FOCUS Fee. The Exchange proposes to immediately reflect the proposed change in its Price List, but not to implement the proposed rate change until April 1, 2013.³

The Exchange currently charges each member organization a monthly Gross FOCUS Fee of \$0.105 per \$1,000 of gross revenue reported on its FOCUS Report.⁴ Member organizations are subject to certain minimum annual

Gross FOCUS Fees, which are \$500 for carrying firms and designated market makers (“DMMs”), \$250 for introducing firms, and \$45 for member organizations who do not conduct a public business.

The Exchange proposes to increase the rate of the Gross FOCUS Fee from \$0.105 per \$1,000 of gross revenue to \$0.12 per \$1,000 of gross revenue.⁵ The Exchange is proposing this increase in order to offset increased regulatory expenses. In this regard, the Exchange notes that it has not increased the Gross FOCUS Fee in more than five years, since January 2008.⁶

The Exchange allocates the funds collected pursuant to the Gross FOCUS Fee to fund the performance of its regulatory activities with respect to member organizations, including expenses associated with the regulatory functions performed both by NYSE Regulation, Inc. (“NYSE Regulation”) and by the Financial Industry Regulatory Authority, Inc. (“FINRA”) pursuant to a regulatory services agreement, for which FINRA is paid by NYSE Regulation.

The Exchange will monitor the amount of revenue collected from the Gross FOCUS Fee to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange expects to monitor regulatory costs and revenues on an annual basis, at a minimum. If the Exchange determines that regulatory revenues exceed regulatory costs, the Exchange would adjust the Gross FOCUS Fee downward by submitting a fee change filing to the Commission.

In addition to being included in the Exchange's Price List, the Gross FOCUS Fee is also set forth in NYSE Rule 129, along with the applicable minimum annual fees described above.⁷ The Exchange proposes to remove the duplicative Gross FOCUS Fee text from NYSE Rule 129. As a result, NYSE Rule 129 would no longer include the Gross FOCUS Fee or the applicable annual minimums. However, NYSE Rule 129 would continue to provide that the Exchange's Board may, from time to time, impose such charge or charges on members and member organizations as it deems appropriate to reimburse the Exchange, in whole or in part, for

³ The Exchange has proposed changes to the Price List, as reflected in the Exhibit 5 in a manner that would permit readers of the Price List to identify the proposed increase to the Gross FOCUS Fee that would be implemented on April 1, 2013.

⁴ FOCUS is an acronym for Financial and Operational Combined Uniform Single Report. FOCUS Reports are filed periodically with the Securities and Exchange Commission (the “Commission” or “SEC”) as SEC Form X–17A–5 pursuant to Rule 17a–5 under the Act.

⁵ The Exchange is also proposing to specify, as is the case today, that the Gross FOCUS Fee is charged monthly. The Exchange is not proposing to change the existing minimum annual Gross FOCUS Fees.

⁶ See Securities Exchange Act Release No. 56181 (August 1, 2007), 72 FR 44206 (August 7, 2007) (SR–NYSE–2007–70).

⁷ See, e.g., Securities Exchange Act Release No. 57139 (January 14, 2008), 73 FR 3503 (January 18, 2008) (SR–NYSE–2008–01).

¹³ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.