

integrity of Nasdaq's systems, considering [shall consider] the applicant's impact on Nasdaq's capacity, in conjunction with the overall impact on Nasdaq's capacity of existing Computer Generated Quoting systems authorized by Nasdaq, or (iii) in order to protect [as well as the protection of] investors and the public interest. [If a market maker that engages in Computer Generated Quoting fails to comply with the terms set forth in the interpretive relief,] Furthermore, Nasdaq may summarily modify or revoke the approval [interpretive relief] and/or summarily suspend [such quoting] a firm's Computer Generated Quoting activity if the firm has not complied with any, some or all of the terms of approval and/or with any previously imposed conditions [necessary to preserve capacity and to protect investors and the public interest].

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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 seeks to streamline the process of obtaining an authorization pursuant to IM 4613 to engage in Computer Generated Quoting ("CGQ"). Currently, a firm seeking such an authorization provides certain information about its CGQ system in a letter to Nasdaq. Nasdaq then grants approval by sending an appropriate response letter to the requesting firm; such a letter also details the applicable conditions of the approval.⁶

Under the proposed rule change, a firm wishing to obtain CGQ authorization would be required to submit to Nasdaq a standard application form, which seeks certain information

that Nasdaq needs in order to ensure that the proposed CGQ activity will not degrade Nasdaq's systems or otherwise undermine Nasdaq's ability to protect investors and the public interest. The information sought in the application form is of the same type as the information Nasdaq has sought from firms requesting CGQ authorization in the past. The application form also contains a certification and agreement section, to be executed by the applicant firm, in which the firm would promise to notify Nasdaq of any changes to the information previously provided in connection with CGQ and to comply with any existing or future restrictions on (including termination of) the practice of CGQ with respect to some or all quotes. Nasdaq represents that it will notify approved firms of any future conditions on CGQ authorization in writing either individually, if the condition applies to a particular firm, or through a rule filing with the Commission, if it applies globally.⁷

Under the proposed rule change, Nasdaq will have five business days to reject an application. If an application is not rejected within this time frame, it will be deemed approved. In the case of rejection, Nasdaq will notify the applicant firm by e-mail or fax and, if possible, by telephone (one call will be made to the number listed in the application; if the listed contact is not available, a message will be left if possible).

Nasdaq may reject an application, impose conditions (either at the time of initial approval or at any time thereafter), or revoke a previously granted approval: (a) In furtherance of applicable laws or NASD rules; (b) in order to protect the integrity of Nasdaq's systems, including preserving sufficient system capacity; or (c) in order to protect investors and the public interest. Furthermore, Nasdaq may further condition or revoke approval at any time if a firm has not complied with any, some, or all of its obligations contained in the certification and agreement section of the application (such as, but not limited to, the obligation to notify Nasdaq in advance of any changes) and/or with any previously imposed conditions.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁸

including Section 15A(b)(6) of the Act,⁹ which requires that the rules of the NASD foster cooperation and coordination with persons engaged in facilitating transactions in securities and remove impediments to and perfect the mechanism of a free and open market. Nasdaq believes that the proposed rule change will make the process of applying for CGQ authorization simpler and add speed and certainty to the process. Since an authorization would be deemed granted five business days after a completed application is received by Nasdaq, applicant firms would be able to plan the relevant aspects of their business accordingly.

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

This proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act,¹⁰ and Rule 19b-4(f)(1)¹¹ thereunder, in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission,

⁶ Firms that have already received approval to engage in CGQ will not need to re-apply by virtue of this proposed rule change so long as such firms remain in compliance with the conditions stated in their respective approval letters.

⁷ Telephone conversation between Katherine A. England, Assistant Director, Joseph A. Morra, Special Counsel, and Leah Mesfin, Attorney, Commission and Alex Kogan, Associate General Counsel, Nasdaq on July 30, 2003.

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(1).