

to clarify members' obligations under NASD Rule 4625.⁶ This proposed rule change is effective upon the Commission's receipt of Nasdaq's filing.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

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4614. Stabilizing Bids

(a) Market Maker Obligation/Identifier

A market maker that intends to stabilize the price of a Nasdaq security that is a subject or reference security under SEC Rule 101 shall submit a request to Nasdaq [Market Operations] *MarketWatch* for the entry of a one-sided bid that is identified on Nasdaq as a stabilizing bid in compliance with the standards set forth in this Rule and SEC Rules 101 and 104.

(b) and (c) No change.

(d) Submission of Request to Association

(1) A market maker that wishes to enter a stabilizing bid shall submit a request to Nasdaq [Market Operations] *MarketWatch* for entry on Nasdaq of a one-sided bid identified as a stabilizing bid. The market maker shall confirm its request in writing no later than the close of business the day the stabilizing bid is entered by submitting an Underwriting Activity Report to Nasdaq [Market Operations] *MarketWatch* that includes the information required by subparagraph (d)(2).

(2) In lieu of submitting the Underwriting Activity Report as set forth in subparagraph (d)(1), the market maker may provide written confirmation to Nasdaq [Market Operations] *MarketWatch* that shall include:

(A) The identity of the security and its Nasdaq symbol;

(B) The contemplated effective date of the offering and the date when the offering will be priced;

(C) The date and time that an identifier should be included on Nasdaq; and

(D) A copy of the cover page of the preliminary or final prospectus or similar offering document, unless the Association determines otherwise.

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4619. Withdrawal of Quotations and Passive Market Making

(a) A market maker that wishes to withdraw quotations in a security or have its quotations identified as the quotations of a passive market maker shall contact Nasdaq [Market Operations] *MarketWatch* to obtain excused withdrawal status prior to withdrawing its quotations or identification as a passive market maker. Withdrawals of quotations or identifications of quotations as those of a passive market maker shall be granted by Nasdaq [Market Operations] *MarketWatch* only upon satisfying one of the conditions specified in this Rule.

(b) Excused withdrawal status based on circumstances beyond the market maker's control may be granted for up to five (5) business days, unless extended by Nasdaq [Market Operations] *MarketWatch*. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon notification, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph (d) below). Excused withdrawal status based on religious holidays may be granted only if written notice is received by the Association one business day in advance and is approved by the Association. Excused withdrawal status based on vacation may be granted only if:

(1) The written request for withdrawal is received by the Association one business day in advance, and is approved by the Association;

(2) The request includes a list of the securities for which withdrawal is requested; and

(3) The request is made by a market maker with three (3) or fewer Nasdaq level 3 terminals. Excused withdrawal status may be granted to a market maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in the issue pursuant to the same-day registration procedures contained in Rule 4611 above, provided the market maker has remained registered in one of the affected issues. The withdrawal of quotations because of pending news, a sudden influx of orders or price

changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status.

(c) No change.

(d) Excused withdrawal status or passive market maker status may be granted to a market maker that is a distribution participant (or, in the case of excused withdrawal status, an affiliated purchaser) in order to comply with SEC Rule 101, 103, or 104 under the Act on the following conditions:

(1) A member acting as a manager (or in a similar capacity) of a distribution of a Nasdaq security that is a subject security or reference security under Rule 101 and any member that is a distribution participant or an affiliated purchaser in such a distribution that does not have a manager shall provide written notice to Nasdaq [Market Operations] *MarketWatch* and the Market Regulation department of NASD Regulation, Inc. no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC rule 10, unless later notification is necessary under the specific circumstances.

(A) No change.

(B) The managing underwriter shall advise each market maker that it has been identified as a distribution participant or an affiliated purchaser to Nasdaq [Market Operations] *MarketWatch* and that its quotations will be automatically withdrawn or identified as passive market maker quotations, unless a market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) notifies Nasdaq [Market Operations] *MarketWatch* as required by subparagraph (d)(2), below.

(2) A market maker that has been identified to Nasdaq [Market Operations] *MarketWatch* as a distribution participant (or an affiliated purchaser of a distribution participant) shall promptly notify Nasdaq [Market Operations] *MarketWatch* and the manager of its intention not to participate in the prospective distribution or not to act as a passive market maker in order to avoid having its quotations withdrawn or identified as the quotations of a passive market maker.

(3) If a market maker that is a distribution participant withdraws its quotations in a Nasdaq security in order to comply with the net purchases limitation of SEC Rule 103 or with any other provision of SEC Rules 101, 103, or 104 and promptly notifies Nasdaq [Market Operations] *MarketWatch* of its action, the withdrawal shall be deemed an excused withdrawal. Nothing in this

⁶Nasdaq states that, with one exception, the proposed rule change is concerned solely with the administration of the self-regulatory organization, and therefore immediately effective pursuant to section 19(b)(3)(A)(iii) of the Act. The one exception to this is the addition of the words "or other transaction" to one of the examples contained in NASD Rule 4625 (the relevant example was originally contained in Rule 4625(a)(2)(D) but is now being re-designated as Rule 4625(a)(1)(G)). Nasdaq states that this particular aspect of the proposed rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule, and is therefore immediately effective pursuant to section 19(b)(3)(A)(i) of the Act. See Amendment No. 1, *supra*, n.3.