

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66149; File No. SR-FINRA-2011-069]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Relating to Post-Trade Transparency for Agency Pass-Through Mortgage-Backed Securities Traded TBA**

January 13, 2012.

On November 22, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change related to post-trade transparency for agency pass-through mortgage-backed securities traded "to be announced" ("MBS TBA Transactions"). The proposed rule change was published for comment in the *Federal Register* on December 8, 2011.<sup>3</sup> The Commission received one comment letter on the proposal.<sup>4</sup>

Section 19(b)(2) of the Act<sup>5</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is January 22, 2012. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, the comment received, and any response to the comment submitted by FINRA. The proposed rule change would, among other things, provide for post-trade transparency of MBS TBA Transactions that are reported to the

Trade Reporting and Compliance Engine ("TRACE").

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> designates March 7, 2012, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

Kevin M. O'Neill,

Deputy Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66153; File No. SR-NASDAQ-2012-009]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rules 4613(a)(2)(F) and (G) To Allow Exchange Market Makers To Opt Out of the Automated Quote Management Service**

January 13, 2012.

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 January 11, 2012, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") 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 NASDAQ. 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 Rules 4613(a)(2)(F) and (G) to reflect changes to the Automated Quote Management service that will allow market makers to opt out of the service.

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

\* \* \* \* \*

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(31).

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

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

**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) No change.

(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 Trading Hours; provided, however, that such pricing obligations (i) shall not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) shall be suspended during a trading halt, suspension, or pause, and shall not recommence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor

(A)-(E) No change.

(F) Quotation Creation and Adjustment. For each Issue in which a Market Maker is registered, the System shall, in the absence of a quotation that complies with this Rule entered by that Market Maker, 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. Quotations originally entered by Market Makers which have not been modified by the System upon entry or after resting on the book shall be allowed to move freely towards the National Best Bid or National Best Offer, as appropriate, for potential execution. *A Market Maker may opt out of this service at any time by informing Nasdaq of its desire to cease the service. Nasdaq will reinstate service upon a Market Maker's request.*

(G) Quotation Refresh After Execution. In the event of an execution

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

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

<sup>3</sup> Securities Exchange Act Release No. 65877 (December 2, 2011), 76 FR 76777.

<sup>4</sup> See letter from Chris Killian, Managing Director, Securitization, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, Commission, dated December 22, 2011.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

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). *A Market Maker may opt out of this service at any time by informing Nasdaq of its desire to cease the service. Nasdaq will reinitiate service upon a Market Maker's request.*

(H)–(K) No change.

(b)–(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, 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 the Statutory Basis for, the Proposed Rule Change [sic]

#### 1. Purpose

NASDAQ proposes to amend Rules 4613(a)(2)(F) and (G) to allow Exchange market makers to opt out of the Automated Quote Management

#### Automated Quote Management

On November 5, 2010, the Commission approved all new Rule 4613, which included the Exchange's Automated Quote Management service provided under Rules 4613(a)(2)(F) and (G).<sup>3</sup> The Automated Quote Management service assists market makers in meeting their enhanced quotation obligations. For each issue in which a market maker is registered, the Exchange automatically creates a quotation for display to comply with the quoting requirements of Rule 4613(a). Compliant displayed quotations are thereafter 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 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 are 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 an Exchange-created compliant quotation, the market maker has its quote refreshed by the Exchange 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.

#### New Functionality

As initially adopted, the Automated Quote Management service is currently applied to all Exchange market makers, with no provision for such member firms to opt out of the service. The Exchange is proposing to make the Automated Quote Management service voluntary and is adding functionality to allow Exchange market makers to opt out of the service. An Exchange market maker must inform the Exchange of its desire to opt out of the Automated Quote Management service, otherwise the service will continue to apply to the market maker's quotes. An Exchange market maker that has opted out of the Automated Quote Management service may opt back into the service by likewise informing the Exchange. To provide notice to the Exchange, a market maker must inform the NASDAQ Trade Desk in writing via *tradedesk@nasdaqomx.com* of its desire to opt in or out of the service. The NASDAQ Trade Desk will process the request once received and confirm the market maker's change in Automated Quote Management service status. An Exchange market maker may request that the Exchange change its status intraday. The Exchange will process such requests as they are received and the processing time may vary based on factors such as the number of requests received.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Allowing Exchange market makers to opt out of AQR will provide such firms the option to control their quote in all instances. A market maker that opts out of Automated Quote Management service may develop its own system to manage its quote, individually tailored to the firm's operations and which may be superior to the Automated Quote Management service. Accordingly, the Exchange believes that the proposed changes to Rule 4613(a)(2) meet the requirements of Section 6(b)(5) of the Act<sup>6</sup> in that they will allow Exchange market makers to develop individual solutions to their market making quoting obligations, potentially superior to that of the Automated Quote Management service.

### 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.

### 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 proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

<sup>6</sup> *Id.*

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

<sup>3</sup> See Securities Exchange Act Release No. 63255 (November 5, 2010), 75 FR 69484 (November 12, 2010) (SR-NASDAQ-2010-115, *et al.*).

<sup>4</sup> 15 U.S.C. 78f(b).

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

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal only allows Exchange market makers to opt out of the Automated Quote Management service which will enable market makers to manage their own quotes if they so choose. Therefore, the Commission designates the proposed rule change to be operative upon filing with the Commission.<sup>9</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2012-009 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-NASDAQ-2012-009. 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 a.m. and 3 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-2012-009 and should be submitted on or before February 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66159; File No. SR-NASDAQ-2012-002]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Adopt an Alternative to the \$4 Initial Listing Bid Price Requirement for the Nasdaq Capital Market of Either \$2 or \$3, if Certain Other Listing Requirements Are Met

January 13, 2012.

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 January 3, 2012, The NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. 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 adopt an alternative to the \$4 initial listing bid price requirement for the Nasdaq Capital Market. The text of the proposed rule change is available on the Nasdaq's Web site at <http://www.nasdaq.cchwallstreet.com>, at Nasdaq's principal office, and at the Commission's Public Reference Room. Nasdaq will implement the proposed rule change upon approval.

#### 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Nasdaq proposes to adopt an alternative to the minimum \$4 price requirement for companies seeking to list on the Capital Market which meet the express exclusion from the definition of a "penny stock" contained in Exchange Act Rule 3a51-1(g).<sup>3</sup>

Nasdaq is seeking to make this change to enhance the competition among exchanges for companies with securities priced between \$2 and \$4. While Section 11A of the Act<sup>4</sup> reflects a Congressional finding that it "is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure \* \* \* fair competition \* \* \* among exchange markets," currently the only exchange listing alternative available to these companies is NYSE Amex, which has listing standards permitting the listing of companies at either \$2 or \$3.<sup>5</sup> Nasdaq is unable to adopt an identical requirement for the Capital Market because of changes the Commission made to the Penny Stock

<sup>9</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 17 CFR 240.3a51-1(g).

<sup>4</sup> 15 U.S.C. 78k-1.

<sup>5</sup> Section 102(b) of the NYSE Amex Company Guide.