impose any significant burden on competition, or (3) significantly have the effect of limiting the access to or availability of the system. At any time within 60 days of the filing of such 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 purpose 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 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. 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. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30134 Filed 11–24–00; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43564; File No. SR–NASD–00–61]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Penalty for Market Makers That Voluntarily or Accidentally Withdraw Their Quotes or Fail To Refresh Their Quotes and the Time Period Market Makers Have To Apply To Reinstate Their Quotes

November 15, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III 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 is filing this proposed rule change to amend NASD Rules 4620 and 4730 to reduce the penalty for market makers that voluntarily or accidentally withdraw their quotes or fail to refresh their quotes in a timely manner. The proposal would also increase the time period market makers have to apply to reinstate their quotes.

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

4620. Voluntary Termination of Registration

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its quotations from The Nasdaq Stock Market. A market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for [twenty (20)] *ten (10)* business days. Withdrawal from SOES participation as a market maker in a Nasdaq National Market security shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction System and thereby terminates its registration as a market maker in Nasdaq National Market issues may register as a market maker at any time after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements contained in Rule 6100.

(b) Notwithstanding the above, a market maker that accidentally withdraws as a market maker may be reinstated if:

(1) The market maker notified Market Operations of the accidental withdrawal as soon as practicable under the circumstances, but *no later than 7:00 p.m. Eastern Time on the same day* [within at least one hour] of such withdrawal, and immediately thereafter provided written notification of the withdrawal and reinstatement request;

* * * * *

4730. Participant Obligations in SOES

* * * * *

(b) Market Makers

* * * * *

(6) In the case of an NNM security, a Market Maker will be suspended from SOES if its bid or offer has been decremented to zero due to SOES executions and will be permitted a standard grace period, the duration of which will be established and published by the Association, within which to take action to restore a two-sided quotation in the security for at least one normal unit of trading. A Market Maker that fails to reenter a two-sided quotation in a NNM security within the allotted time will be deemed to have withdrawn as a Market Maker (''SOESed out of the Box''). Except as provided below in this subparagraph and in subparagraph (7), a Market Maker that withdraws in an NNM security may not reenter SOES as a Market Maker in the security for [twenty (20)] *ten (10)* business days.

(A) Notwithstanding the above, a market maker can be reinstated if:

(i) the market maker makes a request for reinstatement to Market Operations as soon as practicable under the circumstances, but *no later than 7:00 p.m. Eastern Time on the same day* [within at least one hour] of having been SOESed out of the Box, and immediately thereafter provides written notification of the reinstatement request;

* * * * *

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

1. Purpose

(a) Penalty for Withdrawing Quotes

NASD Rule 4620 permits a market maker to voluntarily terminate its registration in a security by withdrawing its quote from the market or by withdrawing from the Small Order Execution System (''SOES''). A market maker that voluntarily terminates its registration in an issue may not reregister as a market maker in that security for twenty business days (''20 days penalty'').

Under NASD Rule 4730, the 20 day penalty also applies to market makers in Nasdaq National Market (''NNM'') securities that fail to update their quotes in a timely manner after their displayed size is reduced to zero. Presently, all market makers in NNM securities must be registered as SOES market makers. For NNM securities, SOES automatically executes unpreferenced orders in rotation against those market makers who are at the best quoted bid or offer on Nasdaq at the time the order is entered. If a market maker's displayed size in an NNM security is reduced to zero, the quote is placed in a ''closed quote'' status and re-ranked at the bottom of the quotes displayed in the Nasdaq montage. If the market maker does not update its quote size or price in a NNM security within five minutes, the quote is placed in a SOES suspended state (*i.e.*, the market maker has been ''SOESed-out-of-the-Box''). Market Makers that are SOESed-out-of-the-Box for a security may not reenter SOES as a market maker in that security for twenty business days.[3]

The purpose of the twenty day period is to prevent market makers from withdrawing from the market without consequence.[4] A market maker that is prohibited from making a market for a security is penalized economically by the lost transaction revenue, and also sustains damage to its reputation, which can lead to future economic losses. The NASD believes, however, that a ten day penalty will now achieve the same deterrent effect as the 20 day penalty. The penalty was set twenty days in 1988, when the daily average share volume was approximately 122.5 million shares a day. As of September 7, 2000, the daily average share volume for this year is approximately 1.63 billion shares a day. With the increase in trading on Nasdaq, the 20 day period is a much greater penalty now than in 1988. Therefore, the NASD proposes to reduce the penalty period to ten business days.

Under the proposal, a market maker that voluntarily or accidentally withdraws its quotes (in either a NMS or SmallCap security), or is SOESed-out-of-the-Box for a NNM security, may reregister (or reenter in the case of SOES-out) as a market maker after ten business days.[5]

(b) Applying to Reinstate Quotes

To avoid the 20 day penalty, market makers that accidentally withdraw their quotes or are SOESed-out-of-the-Box can apply to be reinstated within one hour from the time their quote lapse.[6] A Nasdaq officer (or staff when the withdrawal is accidental) can grant the reinstatement if he or she determines that the SOES-out or accidental withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous, two-sided market.[7] In making his or her decision, the Nasdaq officer or staff will consider, among other things, whether the market conditions in the issue or other issues in which the market maker makes a market included unusual volatility or other unusual activity.[8] The Nasdaq officer (or staff) also will consider the number of accidental withdrawals or the frequency with which the firm has been SOESed-out-of-the-Box.[9] There are limits, however, to the number of reinstatements a firm can receive within a calendar year. The number varies based on the number of markets made by the firm the previous year.[10] A decision by a Nasdaq officer or staff to not reinstate a market maker can be appealed by the firm to the Market Operations Review Committee (''Committee'').[11]

As discussed earlier, trading volumes on Nasdaq have increased enormously. One result of the increase in trading volumes is that market makers must actively manage their quotes and trading in many securities, which increases the chances a market maker may fail to comply with the one hour deadline, especially when the quotes lapse in less actively traded securities. Nasdaq cannot consider a reinstatement application that is untimely filed. Therefore, a market maker that otherwise would be reinstated (because it was not trying to avoid its market making obligations) cannot be reinstated because of its failure to comply with a procedural requirement of the rule. In this situation, the market maker is subject to the 20 day penalty. As such, the liquidity in these less actively traded securities can be decreased even further because there is one less market maker during the penalty period. For these reasons, the NASD is requesting to permit market makers until 7:00 p.m. Eastern Time on the day they accidentally withdrew their quotes or were SOESed-out-of-the-Box to apply for reinstatement.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) and Section 11A of the Exchange Act.[12] Section 15A(b)(6) requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principals of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; 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. In addition, the rules must not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Section 11A(a)(1)(C) of the Exchange Act[13] states that it is the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure (1) economically efficient executions of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer.

The NASD believes establishing a 10 day penalty period for market makers that voluntarily or accidentally

[3] NASD Rule 4730(b)(6).

[4] *See* Securities Exchange Act Release No. 27591 (June 9, 1988), 53 FR 22594 (June 16, 1988).

[5] This proposal does not address the situation when a market maker is SOESed-out-of-the-Box for a SmallCap security. To encourage market makers to participate in SOES for SmallCap securities, the NASD filed with the Commission a proposal to completely eliminate the 20 day penalty when a market maker is SOESed-out-of-the-Box for a SmallCap security. *See* SR–NASD–99–73 (filed December 16, 1999).

[6] *See* NASD Rules 4620 and 4730.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] 15 U.S.C. 78o–3(b)(6) and 15 U.S.C. 78k–1.

[13] 15 U.S.C. 78k–1(1)(1)(C).

withdraw their quotes or are SOESed-out-of-the-Box is consistent with Sections 15A(b)(6 and 11A of the Exchange Act because the 10 day period will continue to penalize market makers that fail to keep quotes in the market. Reducing the period to 10 days will not diminish the deterrent effect of the penalty because market makers will continue to be penalized economically through the lost trade revenue and will continue to suffer harm to their reputation. In addition, because of the enormous increase in trading on Nasdaq since the 20 day penalty was established, the NASD believes that a 10 day penalty period today may be more severe than the 20 day penalty was in 1988.

Based on the daily average share volume in 1988, which was 122.5 million shares per day, the average share volume on a single day on Nasdaq is equal to approximately 13 days average share volume in 1988. While the daily average share volume is not a direct measure of the amount of business any one particular market maker may lose during a penalty period, the number does not demonstrate the extraordinary increase in trading on Nasdaq. Therefore, the NASD believes that a 10 day penalty period will continue to serve as a significant deterrent. As such, the NASD believes the proposed penalty will continue to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, protect investors and the public interest, and promote the maintenance of fair and orderly markets.

The NASD also believes that allowing market makers until 7:00 p.m. Eastern Time on the day in which they accidentally withdrew their quotes or were SOESed-out-of-the-Box to apply for reinstatement is consistent with Sections 15A(b)(6) and 11A of the Exchange Act. As discussed earlier, the volume of trading on Nasdaq has increased significantly over the past few years. This surge in volume requires market makers to actively manage their quotes and trading in many securities. Due to these increased demands, it is likely that a market maker cannot file a request for reinstatement within one hour from the time its quotes lapse, especially when the quotes lapse in a less actively traded security.

The direct benefit of extending the deadline is that market makers would have more of an opportunity to have their requests considered on the substantive merits. Furthermore, this proposal does not diminish the standards that an applicant must meet to be reinstated. Applications that comply with the new filing deadline will continue to be reviewed in accordance with the standards codified in NASD Rules 4620 and 4730.

Another potential benefit would be to maintain liquidity in some less actively traded stocks by reducing the potential that a market maker will be subject to the penalty period for procedural reasons only, and, thus, be prohibited from making a market in a stock. For these reasons, the NASD believes that the proposal will promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, protect investors and the public interest, and promote the maintenance of fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Nasdaq neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and timing for Commission Act

Within 35 days of the 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 Nasdaq consents, the Commission will:

(A) By order approve the 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 proposal is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–61 and should be submitted by December 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30135 Filed 11–24–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43583; File No. SR–NASD–00–62]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc., Relating to the Removal of Duplicative Provisions

November 17, 2000.

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 October 19, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[3] The Commission is publishing this notice to

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq originally submitted the proposal on October 19, 2000. On November 8, 2000, Nasdaq submitted a letter from Sara Nelson Bloom, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation (''Division''), Commission, amending the filing (''Amendment No. 1''). In Amendment No. 1, Nasdaq made several corrections to its rule text and designated the proposed rule change as effective pursuant to Section 19(b)(3)(A)(i) of the Act, and Rule 19b–4(f)(3) thereunder. 15 U.S.C. 78s(b)(3)(A)(i), 17 CFR 240.19b–4(f)(3). Because of the nature of the Amendment, the Commission deems the filing date to be November 8, 2000, the date of the final amendment.