

NASD NOTICE TO MEMBERS 97-52

SEC Approves Amendments Relating To Market Maker Registration And Primary Market Maker Eligibility By Managers And Co- Managers Of Secondary Offerings

Suggested Routing

- ☐ Senior Management
- ☐ Advertising
- ☒ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ☐ Internal Audit
- ☒ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☒ Operations
- ☐ Options
- ☐ Registration
- ☐ Research
- ☒ Syndicate
- ☐ Systems
- ☒ Trading
- ☐ Training

Executive Summary

On June 27, 1997, the Securities and Exchange Commission (SEC) approved amendments to NASD® Rules 4611(d) and 4612(g) with regard to market maker registration and Primary Market Maker (PMM) eligibility by managers and co-managers of secondary offerings.

Background And Summary

A) Market Maker Registration

On April 24, 1997, the National Association of Securities Dealers, Inc. (NASD) submitted a proposed rule change to NASD Rule 4611 to permit managers and co-managers of an underwriting syndicate participating in a secondary offering of a security listed and traded on Nasdaq® to register as a market maker in such issue on a same-day basis on the day of the secondary offering.

Previously, on-line registration requests by all members in an issue that had been trading on Nasdaq for more than five days became effective on the business day after such request. The rule is designed to minimize the potential for "fair weather" market making and to ensure that members registering as market makers are making a legitimate commitment of their capital to the issue for the betterment of the market, not just capturing short-term trading profits during the brief periods of favorable market conditions. However, managers and co-managers of underwriting syndicates who failed to submit a market maker registration on the day before the offering were sometimes unjustly precluded from trading an issue on the day of the secondary offering.

Accordingly, with this amendment to Rule 4611(d), managers and co-managers of syndicates in a secondary offering can register in such issue on a same-day basis on the day of the

secondary offering. Because of the inherent commitment of managers and co-managers of underwriting syndicates, the need for their members to make a market in the stock to manage their risk, and the additional liquidity and pricing efficiency that these market makers may provide, Nasdaq determined that same-day, on-line registrations are appropriate for managers and co-managers of an issue on the day of the secondary offering.

B) Primary Market Maker Eligibility

Also on April 24, 1997, the NASD submitted a proposed rule change to NASD Rule 4612(g), permitting managers and co-managers of a secondary offering to be eligible to become a Primary Nasdaq Market Maker in that issue prior to the effective date of the secondary offering when the member is a PMM in 80 percent or more of the securities in which they are registered, regardless of whether the member was a registered market maker in the stock before the announcement of the secondary offering.¹

While Rule 4612(g) does not prevent member firms from registering as market makers in a particular issue, it may prevent a member firm from registering as a market maker and immediately becoming a PMM in that issue in certain circumstances. Specifically, Rule 4612(g) provides that if a member registers in a stock after a secondary offering in that issue has been announced, or a registration statement has been filed, but before the offering has been declared effective, then that member cannot become a PMM in that stock unless: (1) the secondary offering has become effective and the market maker had satisfied the PMM standards between the time the market maker registered in the security and the time the offering became effec-

tive, or (2) the market maker has satisfied the PMM standards for 40 calendar days (Secondary Offering PMM Delay Rule).

Nasdaq's concern underlying Rule 4612(g) is that dealers may enter the market after secondary offerings have been announced in order to take advantage of the market maker exemption from the short sale rule. Specifically, it has been Nasdaq's experience that the time period after secondary offerings have been announced is sensitive to short selling pressure, as the "overhang" on the market from the offering makes the security particularly susceptible to manipulative short selling.

Because of the Secondary Offering PMM Delay Rule, there have been instances where managers and co-managers of secondary offerings were precluded from becoming a PMM in the issue prior to the effective date of the secondary offering, simply because they were not previously registered in the issue.

Because of the inherent commitment of managers and co-managers of underwriting syndicates to their issues, as well as the additional liquidity that these members provide, Nasdaq determined that it would be appropriate to permit managers and co-managers to register as PMMs in their issues prior to the effective date of the secondary offering.

Text Of Amendments

(Note: New language is underlined; deletions are bracketed.)

NASD Rule 4611

(a) through (c) No change.

(d) A Nasdaq market maker may become registered in an issue already included in Nasdaq by entering a registration request via a Nasdaq terminal. If registration is requested in an issue that has been included in Nasdaq for more than five (5) days, and the requirements of paragraph (b) above are satisfied, registration shall become effective on the date after the registration request is entered. Provided, [If] however, that same day registration is permissible for:

(1) a Nasdaq market maker, registered in a security that is the subject of a publicly announced merger or acquisition offer with another Nasdaq issue, who seeks registration in the other merger or acquisition issue; [, same-day registration is permissible.]; and

(2) a manager or co-manager of an underwriting syndicate for a secondary offering of that security.

(e) through (g) No change.

NASD Rule 4612

(a) through (g)(1) No change.

(g)(2) Notwithstanding paragraph (g)(1) above, after an offering in a stock has been publicly announced or a registration statement has been

filed, no market maker may register in the stock as a Primary Nasdaq Market Maker unless it meets the requirements set forth below:

(A) For secondary offerings:

(i) the secondary offering has become effective and the market maker has satisfied the qualification criteria in the time period between registering in the security and the offering becoming effective: provided, however, that if the member is a manager or co-manager of the underwriting syndicate for the secondary offering and it is a PMM in 80% or more of the Nasdaq National Market securities in which it is registered, the member is eligible to become a PMM in the issue prior to the effective date of the secondary offering regardless of whether the member was a registered market maker in the stock before the announcement of the secondary offering; or

(ii) the market maker has satisfied the qualification criteria for 40 calendar days.

(g)(2)(B) through (h) No change.

Questions regarding this rule change should be directed to Nasdaq Market Operations at (800) 219-4861.

Endnotes

¹A firm is not precluded from being a manager or co-manager of a secondary offering if it is not a PMM in 80 percent or more of the stocks in which it makes a market.

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