

(j) To have and to make available the NYSE System to assume the functions of the System on a preemptive and priority basis in the event of a disaster which renders the System inoperable. Such system is composed of computers and peripheral equipment sufficient to operate the System at a minimum of 50% of the System's rated 150 messages per second capacity and 75% of the System's disk capacity.

(ii) That the facilities manager is authorized to take the actions necessary to make the NYSE System available to assume the functions of the System within two hours in the event of a limited disaster and on the next day in the event of a full site disaster. The facilities manager is authorized to make the determinations that, in its good faith judgment, there has been a limited disaster or full site disaster, the System is inoperable, and the NYSE System will assume the functions of the System.

(iii) That the NYSE System will be located at a site remote from the site where the System is located.

(d) *Implementation Obligations of Participants Other than NYSE ("Other Participants")*.

(i) *Fees*. In consideration of the NYSE's making available the NYSE System to assume the functions of the System in the event of a disaster, the Other Participants agree to pay to the NYSE: (A) A preemptive and priority reserve fee totaling \$24,800 per calendar quarter (such reserve fee shall be adjusted each January by the same percentage change as in the Consumer Price Index as calculated by the U.S. Department of Commerce for the preceding calendar year); and (B) a *per diem* fee, if in the event of a disaster the NYSE System assumes the functions of the System, for each day in excess of five consecutive trading days that the NYSE System is so utilized. Such *per diem* fee shall equal  $\frac{1}{250}$  of the yearly dollar amount the facilities manager charges the NYSE to operate the NYSE System.

This subsection (d)(i) shall become effective on the date that the facilities manager confirms in writing to the Supervisory Committee that it has taken all actions necessary to make the NYSE System available to assume the functions of the System as specified in subsection (c) of this section 12. If such effective date is other than the first day of the calendar quarter, then the preemptive and priority reserve fee for such calendar quarter shall be calculated pro rata based upon the number of days in such calendar quarter that the NYSE System is so available.

(ii) *Fee Sharing*. Each of the Other Participants agrees to pay a share of the

preemptive and priority reserve and per diem fees based upon a proportional share of its production costs excluding the NYSE's share.

(iii) *Fee Payment*. Fee payment will be computed by the System's facilities manager as soon as practicable following the close of each calendar month. Each Other Participant's (or former Participant's) estimated share thereof shall be billed by the System's facilities manager and shall be payable to the System's facilities manager promptly following receipt. Any appropriate adjustment will be made between the System's facilities manager and each Other Participant promptly following the close of each calendar quarter. The facilities manager shall forward such payments to the NYSE as the NYSE may from time to time instruct the facilities manager.

(e) *Liability Limits*. Neither the NYSE nor the facilities manager shall be liable to any Participant, to any member of any Participant using or having access to the NYSE system, or to any other person for any loss or damage resulting from any non-performance or interruption in the operation of the NYSE System, from any inaccuracies, errors or omissions in any of the information conveyed or received through the NYSE System, or from any delays, omissions, or errors in the transmissions, or errors in the transmission of any such information.

(f) *Termination*.

(i) In the event that the NYSE determines to withdraw the NYSE System from use by the Linkage, it shall so notify the Supervisory Committee, in writing, a minimum of six months prior to such withdrawal.

(ii) In the event of such withdrawal, this section 12 shall be terminated and the Participants must then determine whether they should provide for alternative procedures in the event of System inoperability.

### 13. Effective Date

The Linkage Plan shall become operative on October 1, 2006.

### 14. Counterparts

The Linkage Plan may be executed in any number of counterparts, no one of which need contain all signatures of all Participants, and as many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

By \_\_\_\_\_  
American Stock Exchange LLC

By \_\_\_\_\_  
Boston Stock Exchange, Inc.

By \_\_\_\_\_  
Chicago Board Options Exchange, Inc.

By \_\_\_\_\_

Chicago Stock Exchange, Inc.

By \_\_\_\_\_  
NASDAQ Stock Market LLC

By \_\_\_\_\_  
National Stock Exchange

By \_\_\_\_\_  
New York Stock Exchange LLC

By \_\_\_\_\_  
NYSE Arca, Inc.

By \_\_\_\_\_  
Philadelphia Stock Exchange, Inc.

[FR Doc. E6-12638 Filed 8-3-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54249; File No. SR-NASDAQ-2006-017]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Technical and Conforming Changes to Nasdaq's 1000 Series Rules

July 31, 2006.

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> notice is hereby given that on July 24, 2006, The NASDAQ Stock Market LLC ("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. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission.<sup>5</sup> 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 conform the Rule 1000 Series of Nasdaq's rules to certain changes made to the Rule 1000 Series of the rules of the National Association of Securities Dealers, Inc. ("NASD") since approval of Nasdaq's rules by the Commission in January 2006 and to correct certain errors in the approved

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> Nasdaq requested the Commission to waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

rules. Nasdaq proposes to implement the proposed rule change immediately.

The text of the proposed rule change is available on Nasdaq's Web site (<http://www.complinet.com/nasdaq>), at Nasdaq's principal office, and at the Commission's Public Reference Room.

## 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 is modifying its 1000 Series Rules, which are based to a substantial extent on comparable NASD Rules, to conform them to certain changes made to the Rule 1000 Series of the rules of NASD since approval of Nasdaq's rules by the Commission in January 2006 and to correct certain errors in the approved rules. Specifically, Nasdaq is:

- Amending Nasdaq IM-1002-2 (currently erroneously designated as IM-1000-2), to conform it to recent changes to comparable NASD Interpretive Material. The rule allows associated persons to be placed on inactive status, thereby preserving their registration, while serving in the Armed Forces of the United States. In SR-NASD-2005-135,<sup>6</sup> NASD tolled the two-year licensing expiration provisions under its Rule 1000 Series for a person previously registered with a member who commences active military duty within two years after he or she has ceased to be registered with the member, and also tolled the expiration provisions for a person placed upon "inactive" status pursuant to the Interpretive Material, who while serving in the Armed Forces of the United States, ceases to be registered with a member. Nasdaq is proposing to adopt the same tolling provisions as the NASD.

- Amending Nasdaq Rule 1013 to reflect changes to the names of the

forms used by NASD to authorize access to its Web CRD system.<sup>7</sup>

- Correcting an error in the description of the requirements for registration as a Limited Representative—Equity Trader. The comparable NASD Rule requires an associated person of a NASD member engaged in trading "otherwise than on a securities exchange" to register as an equity trader and pass the applicable qualifications examination, known as the Series 55 exam. Because the trading systems of The Nasdaq Stock Market, Inc. had historically been the primary systems for trading otherwise than on an exchange, the exam has been focused largely on the use of those systems. Nasdaq Rule 1032(f) had likewise been intended to focus registration and examination requirements on traders using Nasdaq systems, but the words "otherwise than on a securities exchange" were deleted from the rule without an appropriate substitution. Accordingly, Nasdaq is amending the rule to require registration "with respect to transactions in equity, preferred or convertible debt securities on Nasdaq." Thus, if an associated person of a Nasdaq member is engaged in trading securities on a venue other than Nasdaq, the Nasdaq Rule would not require the trader to register under this category.

- Amending Nasdaq Rules 1011, 1012, 1013, 1032, and 1140 and IM-1002-4 to correct typographical errors.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that the proposal 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to

<sup>7</sup> See Securities Exchange Act Release No. 53564 (March 29, 2006), 71 FR 16847 (April 4, 2006) (SR-NASD-2006-038). Web CRD is an NASD system used by NASD and other SROs for maintenance of registration information concerning broker-dealers and their associated persons. Nasdaq members are required to use Web CRD.

SR-NASD-2006-038 also adopted a uniform form for registration of NASD members, Form NMA. Nasdaq is not at this time formally adopting Form NMA, because of differences between the requirements of Nasdaq Rule 1013 and the comparable NASD Rule 1013. Applicants for Nasdaq membership may, however, use Form NMA to enhance their understanding of those aspects of Nasdaq Rule 1013 that directly parallel requirements of NASD Rule 1013.

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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. The proposed rule change conforms the Rule 1000 Series of Nasdaq's rules to certain changes made to the Rule 1000 Series of NASD rules since approval of Nasdaq's rules by the Commission in January 2006 and corrects certain errors in the approved rules.

### 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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder<sup>11</sup> because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6)<sup>13</sup> thereunder.

Nasdaq has requested that the Commission waive the 30-day operative delay.<sup>14</sup> The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the 30-day operative period will allow Nasdaq to implement these changes immediately so that they can be in place prior to the time Nasdaq begins to operate as a national securities exchange. Accordingly, the Commission designates the proposal to be effective

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> CFR 240.19b-4(f)(6).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> Securities Exchange Act Release No. 53182 (January 26, 2006), 71 FR 5391 (February 1, 2006) (SR-NASD-2005-135).

and operative upon filing with the Commission.<sup>15</sup>

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 the 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2006-017 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2006-017. This file number should be included on the subject line if e-mail 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 inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549-1090. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be

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

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-2006-017 and should be submitted on or before August 25, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E6-12612 Filed 8-3-06; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54252; File No. SR-NASDAQ-2006-022]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Technical and Conforming Changes to Nasdaq's 6000, 9000, and 11000 Series Rules

July 31, 2006.

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 July 28, 2006, 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. Nasdaq has designated the proposed rule change as constituting a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to conform the Rule 6000, 9000, and 11000 Series of Nasdaq's rules to certain changes made to the corresponding rule series of the rules of the National Association of Securities Dealers, Inc. ("NASD") since approval of Nasdaq's rules by the Commission in January 2006 and to correct certain errors in the approved

rules. Nasdaq proposes to implement the proposed rule change immediately. The text of the proposed rule change is available on Nasdaq's Web site (<http://www.nasdaq.com>), at Nasdaq's principal office and at the Commission's Public Reference Room.

#### 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 is modifying its 6000, 9000 and 11000 Series Rules to conform them to certain changes made to the corresponding NASD rule series since approval of Nasdaq's rules by the Commission in January 2006 and to correct certain errors in the approved rules. Specifically, Nasdaq is:

- Amending Nasdaq Rule 6951 to reflect the effectiveness of a change to the definition of "Reporting Member."
- Adding Nasdaq Rule 6958 to provide exemptive authority comparable to the authority provided to NASD by NASD Rule 6958.<sup>4</sup>
- Amending Nasdaq Rule 9120 to reflect the deletion, effective August 28, 2006, of the Nasdaq Rule 5000 Series and to eliminate an erroneous reference to the Nasdaq Rule 7000 Series.<sup>5</sup>
- Amending Nasdaq IM-11810 in accordance with changes to NASD IM-11810 made by SR-NASD-2005-087.<sup>6</sup>
- Amending Nasdaq Rule 11890 to reflect changes made to NASD Rule 11890 by SR-NASD-2006-033.<sup>7</sup>
- Amending Nasdaq Rules 6250, 6800, 6954, 9110, 11310, and 11840 and

<sup>4</sup> Securities Exchange Act Release Nos. 53819 (May 17, 2006), 71 FR 29697 (May 23, 2006) (SR-NASD-2006-052); and 53580 (March 30, 2006), 71 FR 17529 (April 4, 2006) (SR-NASD-2006-040).

<sup>5</sup> Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR-NASDAQ-2006-001).

<sup>6</sup> Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (SR-NASD-2005-087).

<sup>7</sup> Securities Exchange Act Release No. 53541 (March 22, 2006), 71 FR 15792 (March 29, 2006) (SR-NASD-2006-033).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).