SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55667; File No. SR–NASDAQ–2007–004]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Establish Rules Governing the Trading of Options on the NASDAQ Options Market

April 25, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2007, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. On April 24, 2007, Nasdaq filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes to adopt rules to govern participation in the NASDAQ Options Market, LLC (''NOM''), which will be an options exchange facility of Nasdaq. Nasdaq represents that NOM will operate a fully automated, price/time priority execution system built on the core functionality of Nasdaq's recently-approved Single Book equities platform, meaning that Nasdaq will operate its options market much as it operates its cash equities market today.[4]

Nasdaq believes that NOM will benefit individual investors, options trading firms, and the options market generally. The entry of an innovative, low cost competitor such as Nasdaq will promote competition, spurring existing markets to improve their own execution systems and reduce trading costs. NOM will differentiate its market by offering executions in price/time priority, a feature that should increase order interaction and yield better executions. NOM's execution system will be designed to quote in penny increments where consistent with the Commission's penny pilot program for options, advancing the Commission's efforts to move the industry to penny quoting in an orderly fashion and helping to narrow spreads, reduce payment for order flow, and enhance price competition.[5] The text of the proposed rule change is available on Nasdaq's Web site at *http://www.nasdaq.com*, on the Commission's Web site at *http://www.sec.gov*, at Nasdaq, 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 had 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 proposing to adopt a series of rules in connection with NOM, which will be a facility of Nasdaq. NOM will operate an electronic trading system developed to trade options (''System'') that will provide for the electronic display and execution of orders in price/time priority without regard to the status of the entities that are entering orders. The System will provide a routing service for orders when trading interest is not present on NOM, and will link with and comply with the obligations of the Plan for the Purpose of Creating and Operating an Intermarket Linkage (''Linkage Plan'').

NOM Options Participants

All Nasdaq members will be eligible to participate in NOM provided that Nasdaq specifically authorizes them to trade in the System. New Nasdaq members will be required to fulfill the requirements of the Nasdaq Rule 1000 Series as well as the incremental requirements set forth in the proposed options rules; existing Nasdaq members will be required to comply with the incremental requirements of the proposed options rules. The proposed rules avoid to the greatest extent possible proposing requirements that overlap with the rules already set forth in the Rule 1000 Series of the Nasdaq Rule Manual.

NOM will have only one category of members, known as ''Options Participants.'' Only Options Participants will be permitted to transact business on NOM via the System. Nasdaq will authorize any Options Participant who meets certain enumerated qualification requirements to obtain access to NOM. Among other things, Options Participants must be registered as broker-dealers pursuant to the Act and have as the principal purpose of being an Options Participant the conduct of a securities business. Every Options Participant shall at all times maintain membership in another registered options exchange that is not registered solely under Section 6(g) of the Act.[6] It is Nasdaq's intent not to serve as a Designated Options Examining Authority, and Nasdaq will work with the Commission and the other registered options exchanges to ensure that each Options Participant will have as its DOEA a registered options exchange other than Nasdaq. Options Participants that transact business with customers must at all times be members of the National Association of Securities Dealers (''NASD'').

There will be two types of Options Participants, Options Order Entry Firms (''OEFs'') and Options Market Makers. OEFs will be those Options Participants representing customer orders as agent on NOM and non-market maker participants conducting proprietary trading as principal. NOM will not list an options series for trading unless at least one Options Market Maker is registered in that options series. In addition, before NOM opens trading for any additional series of an options class, it would require at least one Options Market Maker to be registered for trading in that particular series. NOM may suspend or terminate any registration of an Options Market Maker when, in NOM's judgment, the interests of a fair and orderly market are best served by such action.

Options Market Makers are Options Participants registered with Nasdaq as Options Market Makers and registered with NOM in one or more series of options listed on NOM. Nasdaq is proposing to permit Options Market Makers to register on a series-by-series basis. Nasdaq does not view NOM as a ''one-stop-shop'' for trading all options. Nasdaq believes that permitting Options

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] Nasdaq will file with the Commission pursuant to Rule 19b–4 under the Act a separate proposed rule change to establish NOM as a facility (as defined in Section 3(a)(2) of the Act) of Nasdaq.

[5] *See, e.g.*, Securities Exchange Act Release No. 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (approving SR–Amex–2006–106).

[6] 15 U.S.C. 78f(g).

Market Makers to limit their registration to series in which they are eager to provide liquidity is an efficient way to identify options that will be actively traded on NOM. This will also allow Nasdaq to mitigate its use of excessive quote message capacity of the national market system and of vendors. To encourage Options Market Makers to provide liquidity in the greatest number of options series, Nasdaq is proposing to require Options Market Makers to execute at least 75% of their total options contracts executed on NOM in options series in which they are registered as Options Market Makers.

To become an Options Market Maker, an Options Participant is required to register by filing a written application. NOM will not place any limit on the number of entities that may become Options Market Makers. NOM Options Market Makers will be required to electronically engage in a course of dealing to enhance liquidity available on NOM and to assist in the maintenance of fair and orderly markets. Among other things, Options Market Makers would have to satisfy the following responsibilities and duties during trading: (i) Maintain a two-sided market for at least 10 contracts in at least seventy-five percent (75%) of the options series to which the Options Market Maker is registered; (ii) participate in the opening; and (iii) maintain minimum net capital in accordance with Commission and Nasdaq Rules. Substantial or continued failure by an Options Market Maker to meet any of its obligations and duties will subject the Options Market Maker to disciplinary action, suspension, or revocation of the Options Market Maker's registration in one or more options series.

Options Market Makers receive certain benefits for carrying out their duties. For example, a lender may extend credit to a broker-dealer without regard to the restrictions in Regulation T of the Board of Governors of the Federal Reserve System [7] if the credit is to be used to finance the broker-dealer's activities as a market maker on a national securities exchange. Thus, an Options Market Maker has a corresponding obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis to justify this favorable treatment. This goal will be supported by Nasdaq's proposal to require Options Market Makers to execute at least 75% of their total contracts in series in which they are registered Options Market Makers.

Nasdaq is proposing an Order Exposure requirement comparable to that which currently applies on other registered options exchanges. Specifically, as set forth in Chapter VII, Section 14, with respect to orders routed to NOM, Options Participants may not execute as principal orders they represent as agent unless (i) Agency orders are first exposed on NOM for at least three (3) seconds, or (ii) the Options Participant has been bidding or offering on NOM for at least three (3) seconds prior to receiving an agency order that is executable against such bid or offer.

Execution System

Nasdaq's options trading system will leverage Nasdaq's current state of the art technology, including its customer connectivity, messaging protocols, quotation and execution engine, order router, data feeds, and network infrastructure. This approach minimizes the technical effort required for existing Nasdaq members to begin trading options on NOM. As a result, NOM will closely resemble Nasdaq's equities market, but will differ from most existing options exchanges by, most prominently, offering true price/time priority across all orders and participants rather than differentiating between Participant/trading interest classes.[8]

Like the Nasdaq system for equities, all trading interest entered into the Options Trading System will be automatically executable. Orders entered into the system will be displayed anonymously or with attribution or non-displayed. For Participants seeking to trade anonymously, the NOM execution system will offer fully anonymous trading, however, options trades are not currently anonymous through settlement. NOM will become an exchange member of the Options Clearing Corporation (''OCC'').[9] The System will be linked to OCC for Nasdaq to transmit locked-in trades for clearance and settlement.

Hours of Operation. The options trading system will operate between the hours of 8 a.m. ET and market close, with all orders being available for execution from 9:30 a.m. to market close.

Minimum Quotation and Trading Increments. Nasdaq is proposing to apply the following quotation increments: (1) If the options series is trading at less than $3.00, five (5) cents; (2) if the options series is trading at $3.00 or higher, ten (10) cents; and (3) if the options series is trading pursuant to the Penny Pilot program[10] one (1) cent if the options series is trading at less than $3.00, five (5) cents if the options series is trading at $3.00 or higher, except for the QQQQs, where the minimum quoting increment will be one cent for all series. In addition, Nasdaq is proposing that the minimum trading increment for options contracts traded on NOM will be one (1) cent for all series.

NASDAQ Opening/Halt and Closing Crosses. The NOM system will support a single price opening or re-opening via an electronic cross. The NOM crosses at the opening and at the resumption of trading following a halt are modeled on the highly-acclaimed crosses that Nasdaq developed for the trading of equities, as set forth in Nasdaq Rules 4753 (Halt Cross) and 4754 (Closing Cross).

At the opening of trading and also at any resumption following a halt, NOM will execute a cross modeled on the Nasdaq Halt Cross. The Halt Cross will be used, rather than the Nasdaq Opening Cross, because the Opening Cross is designed to operate in the midst of a continuous market such as exists for equities prior to 9:30 a.m., whereas the Halt Cross is designed to operate in the absence of a continuous market such as exists for equities that are halted and also exists for options trading at 9:30 a.m. Registered Options Market Makers will be required to participate in the opening of the market by, at a minimum, opening their quotations. Orders may be submitted, modified, and cancelled throughout a brief pre-opening phase preceding the commencement of trading on the market. During this pre-opening phase, NOM will calculate and disseminate a theoretical opening price, order imbalance, and the size and direction of any imbalance. Thereafter, NOM will determine via algorithm a single price at which a particular options series will open and will match via algorithm the maximum number of available orders.

At the close of trading, NOM will conduct a single price cross based upon the Nasdaq Closing Cross for equities. The NOM Closing Cross will utilize the same elements as the opening/halt

[7] 12 CFR part 220.

[8] Nasdaq has determined that its proposed execution system can execute accommodation trades and, therefore, Nasdaq does not propose to offer a Cabinet Trading System as other exchanges have chosen to do.

[9] Nasdaq Execution Services will maintain its OCC membership as it will maintain the ability to route orders to the options exchanges as Nasdaq's broker-dealer subsidiary.

[10] *See supra* note 5.

crosses, including the dissemination of potential closing prices and imbalance information as well as algorithms to determine the closing cross price and to pair available orders. The closing cross differs from the opening/halt crosses in that NOM will offer special market-on-close and limit-on-close orders that only participate in the closing cross and not in the continuous market.

Order Types. The proposed System will make available to Participants Limit Orders, Discretionary Orders, Reserve Orders, Minimum Quantity Orders, Market Orders, and Price Improving Orders with characteristics and functionality similar to what is currently approved for use in the Nasdaq's equities trading facility. Nasdaq does not propose to adopt ''complex'' orders at this time, but may propose them for separate consideration in the future.

''Limit Orders'' are orders to buy or sell options at a specified price or better. A limit order is marketable when, for a limit order to buy, at the time it is entered into the System, the order is priced at the current inside offer or higher, or for a limit order to sell, at the time it is entered into the System, the order is priced at the inside bid or lower.

''Discretionary Orders'' are orders that have a displayed price and size, as well as a non-displayed discretionary price range, at which the entering party, if necessary, is also willing to buy or sell. The non-displayed trading interest is not entered into the System book but is, along with the displayed size, converted to an Immediate or Cancel (''IOC'') buy (sell) order priced at the highest (lowest) price in the discretionary price range when displayed contracts become available on the opposite side of the market or an execution takes place at any price within the discretionary price range. The generation of this IOC order is triggered by the automatic cancellation of the displayed contracts portion of the Discretionary Order. If more than one Discretionary Order is available for conversion to an IOC order, the system will convert and process all such orders in the same priority in which such Discretionary Orders were entered. If an IOC order is not executed in full, the unexecuted portion of the order is automatically re-posted and displayed in the System book with a new time stamp, at its original displayed price, and with its non-displayed discretionary price range.

''Reserve Orders'' are limit orders that have both a displayed size as well as an additional non-displayed amount. Both the displayed and non-displayed portions of the Reserve Order are available for potential execution against incoming orders. If the displayed portion of a Reserve Order is fully executed, the System will replenish the display portion from reserve. A new timestamp is created for the replenished portion of the order each time it is replenished from reserve, while the reserve portion retains the time-stamp of its original entry.

''Minimum Quantity Orders'' are orders that require that a specified minimum quantity of contracts be obtained, or the order is cancelled. Minimum Quantity Orders may only be entered with a time-in-force designation of IOC. Minimum Quantity Orders with an IOC time in force received prior to the opening cross will be rejected.

''Market Orders'' are orders to buy or sell at the best price available at the time of execution.

''Price Improving Orders'' are orders to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security. Price Improving Orders may be entered in increments as small as one cent. Price improving orders that are available for display will be displayed at the appropriate minimum quotation increment (rounding down to the proper increment for buys, up to the proper increment for sells).

Time in Force Designations. Participants entering orders into the System may designate such orders to remain in force and available for display and/or potential execution for varying periods of time. Unless cancelled earlier, once these time periods expire, the order (or the unexecuted portion thereof) is returned to the entering party.

''Expire Time'' or ''EXPR'' are orders that, if after entry into the System, the order is not fully executed, the order (or the unexecuted portion thereof) shall remain available for potential display and/or execution for the amount of time specified by the entering Participant unless canceled by the entering party. EXPR Orders will be available for entry from 8 a.m. until market close and for execution from 9:30 a.m. until market close.

''Immediate Or Cancel'' or ''IOC'' orders are orders that if, after entry into the System, a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) will be canceled and returned to the entering participant. IOC Orders will be available for entry from 8 a.m. until market close and for potential execution from 9:30 a.m. until market close. IOC Orders entered between 8 a.m. and 9:30 a.m. Eastern Time will be held within the System until 9:30 a.m. at which time the System shall determine whether such orders are marketable.

''DAY'' orders are orders that if, after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) will remain available for potential display and/or execution until market close, unless canceled by the entering party, after which it shall be returned to the entering party. DAY Orders will be available for entry from 8 a.m. until market close and for potential execution from 9:30 a.m. until market close.

''Good Til Cancelled'' or ''GTC'' orders are orders that if, after entry into System, the order is not fully executed, the order (or unexecuted portion thereof) will remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders will be available for entry from 8 a.m. until market close and for potential execution from 9:30 a.m. until market close.

Order Display/Matching System. The System will be based upon functionality currently approved for use in Nasdaq's equities trading system. Specifically, the System will allow participants to enter priced limit orders to buy and sell NOM-listed options as attributed, non-attributed, or non-displayed orders. Attributable Orders are designated for display (price and size) next to the Participant's MPID. Non-Attributable Orders are entered by a Participant and designated for display (price and size) on an anonymous basis in the order display service of the System. Non-Displayed Orders are not displayed in the System, but nevertheless remain available for potential execution against all incoming orders until executed in full or cancelled.

Options Participants will be permitted to enter multiple orders at single or multiple price levels and will have the option to have a portion of their order held in reserve and not displayed to the marketplace.

Routing. NOM will support orders that are designated to be routed to the National Best Bid and Offer (''NBBO'') as well as orders that will execute only within NOM. Orders that are designated to execute at the NBBO will be routed to other options markets to be executed when Nasdaq is not at the NBBO, consistent with the Options InterMarket Linkage. The system will ensure that orders designated to only execute within the system will not create a trade through or locked or crossed market violation.

Book Processing. The System, like the equities facility, will have a single execution algorithm based on price/time priority. For each order, among equally-priced or better-priced trading interest, the System executes against available contra-side displayed contract amounts in full, in price/time priority, before then moving to any non-displayed contracts which are likewise executed in price/time priority.

Data Feed. The System will create a proprietary data feed which will include all displayed orders, both attributable and non-attributable. Initially, in order to save capacity, the proprietary data will not include the market participant identifiers for attributable orders.

Linkage Plan Rules

NOM will participate in the Linkage Plan to receive orders from options exchanges that use the Options Intermarket Linkage (''Linkage'') to route orders. Nasdaq plans to use its proprietary order router to send orders to other options exchanges. Nonetheless, in order to participate and to receive orders, NOM is proposing to adopt rules relating to the Linkage that are substantially similar to the rules in place on all of the options exchanges that are Participants to the Linkage Plan.

In general, the proposed rules contain relevant definitions, establish the conditions pursuant to which Market Makers may enter Linkage orders, impose obligations on NOM regarding how it must process incoming Linkage orders, and establish a general standard that Options Participants should avoid trade-throughs. The proposed NOM Rules establish potential regulatory liability for Options Participants who engage in a pattern or practice of trading through other exchanges, establish obligations with respect to locked and crossed markets, and restrict a market maker on NOM from sending principal orders (other than principal acting as agent [''P/A''] orders), which reflect unexecuted customer orders through the Linkage if the market maker affects less than 80% of specified order flow on NOM.

For those limited instances where Nasdaq does use the Linkage to send orders, Nasdaq is proposing to designate one Market Maker per eligible class as the ''InterMarket Linkage Market Maker'' or ''ILM'' to be responsible for settling P/A and Satisfaction orders that would be sent to away markets through the Linkage for a given class of options trading on NOM.[11] The ILM responsible for such orders will be specifically designated in each Eligible Class traded on NOM and will be required to adhere to the responsibilities of an Eligible Market Maker, as set forth in the Linkage Plan.

The ILM also will be required to act with due diligence with regard to the interests of orders entrusted to it and fulfill other duties of an agent, including, but not limited to, ensuring that such orders, regardless of their size or source, receive proper representation and timely execution in accordance with the terms of the orders and the rules of NOM. NOM will immediately route all P/A orders on behalf of the ILM according to these instructions. The order would be generated automatically by NOM and routed to the away exchange with the required clearing information included. Each execution received from an away exchange would result in the automatic generation of a trade execution on NOM between the original order and the ILM. This designation of ILM will ensure that P/A and Satisfaction orders will be handled in accordance with the Linkage Plan.

Securities Traded on NOM

Nasdaq proposes to adopt listing standards for Options traded on NOM (Chapter IV of the proposed rules) as well as for Index Options (Chapter VIX) that are identical to the approved rules of other options exchanges.[12] Nasdaq will join the Options Listings Procedures Plan and will list and trade options already listed on other options exchanges. Nasdaq will gradually phase-in its trading of options, beginning with a selection of actively traded options. At least initially, Nasdaq does not plan to develop new options products or listing standards. Nasdaq is aware that, in the event Nasdaq determines to trade an options class not listed on another registered options exchange or within Nasdaq's existing listing standards, Nasdaq will be required to submit a proposed rule change to establish listing standards.

Conduct and Operational Rules for Options Participants

Nasdaq proposes to adopt rules that are substantially similar to the approved rules of other options exchanges. Thus, Nasdaq proposes to adopt rules that are substantially similar to the rules of BOX regarding: exercises and deliveries (NOM proposed rules, Chapter VIII); records, reports, and audits (Chapter IX); summaries and suspensions and minor rule violations (Chapter X); doing business with the public (Chapter XI); and margin (Chapter XIII).

Nasdaq proposes to adopt Business Conduct Rules (Chapter III) that are consistent with the BOX Business Conduct Rules, with certain exceptions.[13] Specifically, with respect to Position Limits (Section 7), Exceptions from Position Limits (Section 8), Exercise Limits (Section 9), and Reports Related to Position Limits (Section 10), Nasdaq is proposing to apply the limits established pursuant to the rules of the Chicago Board Options Exchange (''CBOE''), although NOM will establish such limits for products not traded on the CBOE. By expressly incorporating an already-approved limit, Nasdaq will ensure that an appropriate limit is in place at all times without the need to continually adjust its rules or to disrupt the operations of its participants. With respect to financial and operational rules, Nasdaq proposes to adopt rules similar to those of existing options exchanges regarding exercises and deliveries, margin, net capital, and books and records.

National Market System

NOM will operate as a full and equal participant in the national market system for options trading established under Section 11A of the Act,[14] just as its equities market participates today. NOM will become a member of the Options Price Reporting Authority, the Options Linkage Authority, the Options Regulatory Surveillance Authority, and the Options Listing Procedures Plan.

NOM expects to participate in those plans on the same terms currently applicable to current members of those plans, and it expects little or no plan impact due to the fact that NOM's market will operate on price/time priority. Nasdaq has contacted the leadership of each options-related national market system plan to begin the membership process.

Regulation

NOM will leverage many of the structures that Nasdaq established to operate a national securities exchange in compliance with Section 6 of the Act.[15] As described in more detail below, there will be three elements of that regulation: (1) Nasdaq will join the existing options industry agreements pursuant to Section 17(d) of the Act,[16] as it did with respect to equities; (2) Nasdaq's Regulatory Services Agreement with NASD will govern many aspects of the regulation

[11] The ILM will perform the same functions that the BOX InterMarket Linkage Market Maker performs on the Boston Options Exchange facility of the Boston Stock Exchange (''BOX''). *See* BOX Rules, Chapter VI, Section 5(a)(ix) and Chapter XII.

[12] *See, e.g.*, BOX Rules, Chapters IV and XIV.

[13] *See* BOX Rules, Chapter III.

[14] 15 U.S.C. 78k–1.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78q(d).

and discipline of members that participate in options trading, just as it does for equities regulation; and (3) Nasdaq will perform options listing regulation as well as real-time regulation of options trading as it does today for equities. The principle here, again, is that Nasdaq will regulate its options market much as it does the equities market today.

Section 17(d) of the Act and the related Exchange Act rules permit self-regulatory organizations (''SROs'') to allocate certain regulatory responsibilities to avoid duplicative oversight and regulation. Under Exchange Act Rule 17d–1,[17] the Commission designates one SRO to be the Designated Examining Authority (''DEA'') for each broker-dealer that is a member of more than one SRO. The DEA is responsible for the financial aspects of that broker-dealer's regulatory oversight. Because Nasdaq members also must be members of at least one other SRO, Nasdaq would generally not be designated as the DEA for any of its members.

Rule 17d–2 under the Act [18] permits SROs to file with the Commission plans under which the SROs allocate among each other the responsibility to receive regulatory reports from, and examine and enforce compliance with, specified provisions of the Act and rules thereunder and SRO rules by firms that are members of more than one SRO (''common members''). If such a plan is declared effective by the Commission, an SRO that is a party to the plan is relieved of regulatory responsibility as to any common member for whom responsibility is allocated under the plan to another SRO.

All of the options exchanges, NASD, and the New York Stock Exchange have entered into the Options Sales Practices Agreement, a Rule 17d–2 agreement. Under this Agreement, the examining SROs will examine firms that are common members of Nasdaq and the particular examining SRO for compliance with certain provisions of the Act, certain of the rules and regulations adopted thereunder, certain examining SRO rules, and certain NOM Rules. In addition, NOM Rules contemplate participation in this Agreement by requiring that any Options Participant also be a member of at least one of the examining SROs.

For those regulatory responsibilities that fall outside the scope of any Rule 17d–2 agreements, Nasdaq will retain full regulatory responsibility under the Exchange Act. However, Nasdaq has entered into a Regulatory Services Agreement with NASD, pursuant to which NASD personnel operate as agents for Nasdaq in performing certain of these functions. As is the case with Nasdaq's equities market, Nasdaq will supervise NASD Regulation and continue to bear ultimate regulatory responsibility.

Finally, as it does with equities, Nasdaq Regulation will perform real-time surveillance of NOM for the purpose of maintaining a fair and orderly market at all times. As it does with Nasdaq's equities trading, Nasdaq Regulation will monitor Nasdaq's options trading market on a real-time basis to identify unusual trading patterns and determine whether particular trading activity requires further regulatory investigation by NASD.

In addition, Nasdaq Regulation will oversee the process for determining and implementing trade halts, identifying and responding to unusual market conditions, and administering Nasdaq's process for identifying and remediating ''obvious errors'' by and among its Options Participants.[19] Nasdaq proposed rules (Chapter V) regarding halts, unusual market conditions, extraordinary market volatility, and audit trail are closely modeled on the approved rules of the BOX.[20]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 6 of the Act,[21] in general, and with Section 6(b)(5) of the Act,[22] in particular, in that it is designed 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 remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or to the administration of the exchange.

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. Nasdaq operates in an intensely competitive global marketplace for listings, financial products, transaction services, and market data. Relying on its array of services and benefits, Nasdaq competes for the privilege of providing market and listing services to broker-dealers and issuers. Nasdaq's ability to compete in this environment is based in large part on the quality of its trading systems, the overall quality of its market and its attractiveness to the largest number of investors, as measured by speed, likelihood and cost of executions, as well as spreads, fairness, and transparency.

With these aspects of competition as a guide, Nasdaq designed its current proposal to create the fastest, fairest, most transparent, most efficient, and least expensive trading venue available for the trading of options. The proposed system will incorporate the best functional elements from Nasdaq's equity trading system. The resulting system will reduce overall trading costs and increase price competition, both pro-competitive developments. Nasdaq believes that the resulting system will have the pro-competitive effect of spurring further initiative and innovation among market centers and market participants. Market participants that disagree and do not view these developments as pro-competitive, will have the flexibility to use only those functions that improve their trading or to not use the system at all; participation in the system in whole or in part is completely voluntary.

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

Within 35 days of the date of 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 such proposed rule change; or

[17] 17 CFR 240.17d–1.

[18] 17 CFR 240.17d–2.

[19] Nasdaq's proposed Obvious Error guidelines and procedures closely resemble the rules of the Philadelphia Stock Exchange, particularly with respect to the establishment of a Theoretical Price against which to measure for obvious errors.

[20] *See* BOX Rules, Chapter V.

[21] 15 U.S.C. 78f.

[22] 15 U.S.C. 78f(b)(5).

(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 proposed rule change, as amended, 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.* Please include File Number SR–NASDAQ–2007–004 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2007–004. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq.

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 publicly available. All submissions should refer to File Number SR–NASDAQ–2007–004 and should be submitted on or before May 22, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55669; File No. SR–NASDAQ–2006–065]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendments Nos. 1, 2, and 3 Thereto To Reestablish a Quotation and Trading System for Securities That Are Designated by The PORTAL® Market as PORTAL Securities

April 25, 2007.

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 December 22, 2006, The NASDAQ Stock Market LLC (''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 substantially prepared by Nasdaq. On March 6, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] On April 3, 2007, Nasdaq filed Amendment No. 3 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes to reestablish a quotation and trading system for securities that are designated by The PORTAL® Market (''PORTAL'' or the ''PORTAL® Market'') as PORTAL securities.

The text of the proposed rule change is available on Nasdaq's Web site at *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

Background

Nasdaq currently operates the PORTAL Market for securities that were sold in private placements and are eligible for resale under SEC Rule 144A[5] adopted under the Securities Act of 1933 (''Securities Act''). The National Association of Securities Dealers, Inc. (''NASD'') created the PORTAL Market in 1990,[6] simultaneously with the SEC's adoption of Rule 144A,[7] for the purposes of quotation, trading, and trade reporting in securities deemed eligible by the NASD for resale under Rule 144A. Rule 144A provides an exemption from registration under Section 5 of the Securities Act[8] for resales of privately placed securities to investors that meet the eligibility requirements of being a qualified institutional buyer (''QIB'') under Rule 144A(a)(1),[9] *i.e.*, institutional investors that in the aggregate own or invest on a discretionary basis at least $100 million in securities and broker/dealers that in the aggregate own or invest on a discretionary basis at least $10 million

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[23] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] Amendment No. 2 was filed and withdrawn on April 3, 2007.

[5] 17 CFR 230.144A.

[6] *See* Securities Exchange Act Release No. 27956 (April 27, 1990), 55 FR 18781 (May 4, 1990) (SR–NASD–88–23). The PORTAL Rules were subsequently amended. *See* Securities Exchange Act Release Nos. 28678 (December 6, 1990), 55 FR 51194 (December 12, 1990) (SR–NASD–90–50); 33326 (December 13, 1993), 58 FR 66388 (December 20, 1993) (SR–NASD–91–5); 34562 (August 19, 1994), 59 FR 44210 (August 26, 1994) (SR–NASD–94–39); 35083 (December 12, 1994), 59 FR 65104 (December 16, 1994) (SR–NASD–94–65); 40424 (September 10, 1998), 63 FR 49623 (September 16, 1998) (SR–NASD–98–68); 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (SR–NASD–99–65); 44042 (March 6, 2001), 66 FR 14969 (March 14, 2001) (SR–NASD–99–66); NASD Notice to Members 01–19 (March 2001) (the ''2001 PORTAL rule filing'').

[7] *See* Securities Exchange Act Release No. 27928 (April 23, 1990), 55 FR 17933 (April 30, 1990).

[8] 15 U.S.C. 77e.

[9] 17 CFR 230.144A(a)(1).