

connection with the investment by the Investing Fund in the Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Investing Company in an amount at least equal to any compensation received from a Fund by the Subadviser, or an affiliated person thereof, other than any advisory fees paid to the Subadviser or its affiliated person by a Fund, in connection with the investment by the Investing Company in the Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Investing Company.

11. With respect to registered separate accounts that invest in any Investing Fund, no sales load will be charged at the Investing Fund level or at the Fund level. Other sales charges and service fees, as defined in Rule 2830, if any, will only be charged at the Investing Fund level or at the Fund level, not both. With respect to other investments in an Investing Fund, any sales charges and/or service fees charged with respect to shares of the Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Rule 2830.

12. No Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by section 12(d)(1)(E) of the Act or exemptive relief from the Commission permitting the Fund to purchase shares of an affiliated money market fund for short-term cash management purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E7-21694 Filed 11-5-07; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting Federal Register Citation of Previous Announcement: November 5, 2007

*Status:* Closed meeting.

*Place:* 100 F Street, NE., Washington, DC.

*Date and Time of previously Announced meeting:* November 8, 2007 at 2 p.m.

*Change in the Meetings:* Date and Time Change.

The Closed Meeting scheduled for Thursday, November 8, 2007 at 2 p.m.,

has been changed to Wednesday, November 7, 2007 at 2:30 p.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

November 1, 2007.

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E7-21772 Filed 11-5-07; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56722; File No. SR-NASDAQ-2007-085]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Amending Nasdaq's Membership Application Rules

October 31, 2007.

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 October 30, 2007, 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change modifies Nasdaq's membership application procedures. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

#### 1010. Membership Proceedings

##### 1011. Definitions

Unless otherwise provided, terms used in the Rule 1000 Series shall have the meaning as defined in Rule 0120.

(a)-(f) No change.

(g) "material change in business operations".

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

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

The term "material change in business operations" includes, but is not limited to:

- (1) removing or modifying a membership agreement restriction;
  - (2) market making, underwriting, or acting as a dealer for the first time; [and]
  - (3) adding business activities that require a higher minimum net capital under SEC Rule 15c3-1; and
  - (4) *adding business activities that would cause a proprietary trading firm no longer to meet the definition of that term contained in this rule.*
- (h)-(n) No change.

#### (o) "Proprietary Trading Firm"

The term "proprietary trading firm" means an Applicant with the following characteristics:

(1) *the Applicant is not required by Section 15(b)(8) of the Act to become a FINRA member but is a member of another registered securities exchange not registered solely under Section 6(g) of the Act;*

(2) *all funds used or proposed to be used by the Applicant for trading are the Applicant's own capital, traded through the Applicant's own accounts;*

(3) *the Applicant does not, and will not have "customers," as that term is defined in Nasdaq Rule 0120(g); and*

(4) *all Principals and Representatives of the Applicant acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Applicant.*

#### 1012. General Provisions

(a) No change.

#### (b) Lapse of Application

(1) Absent a showing of good cause, an application filed under Rule 1013 or 1017 shall lapse if an Applicant fails to:

(A) respond fully within [60] 15 business days after service of an initial written request for information or documents under Rule 1013, [within 30 days after service of] an initial written request for information or documents under Rule 1017, [within 30 days after service of] or a subsequent written request for information or documents under Rule 1013 or 1017, or within such other time period agreed to by the Department and the Applicant;

(B) appear at or otherwise participate in a scheduled membership interview pursuant to Rule 1013(b) or 1017(f), *if required*; or

[(C)] file an executed membership agreement under Rule 1014(d) or [Rule] 1017(g)(4) within 25 days after service of the agreement, or within such other period agreed to by the Department and the Applicant.

(2) If an Applicant wishes to continue to seek membership or approval of a

change in ownership, control, or business operations, then the Applicant shall be required to submit a new application under Rule 1013 or 1017, respectively, and any required fee. Nasdaq shall not refund any fee for a lapsed application.

(c)–(d) No change.

(e) Computation of Time

(1) Calendar Day

In the Rule 1010 Series, “day” means calendar day, *unless otherwise specified*.

(2) Formula

In computing a period of time under the Rule 1010 Series, the day of the act, event, default, or lapse from which the period of time designated begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall be excluded from the computation when the period prescribed is ten days or less or when the term “business day” is used.

(f)–(j) No change.

1013. New Member Application [and Interview]

(a) Filing of Application

(1) Where to File; *Contents*

An Applicant for Nasdaq membership shall file its application with the Department in accordance with this Rule. *An Applicant shall submit an application that includes:*

[(2) Contents]

[The application shall include:]

(A) a copy of the Applicant’s current Form BD;

(B) an original Nasdaq-approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f–2 and for whom a fingerprint card has not been filed with another self-regulatory organization;

[(C) Reserved]

[(D)] (C) a check for such fee as may be required under the Nasdaq Rules;

[(E)] (D) *a description of the Applicant’s proposed trading activities on Nasdaq, such as the types of securities it will trade, whether it will be a market maker, an order entry firm, and/or engage in block trading activities, and the extent to which the Applicant is conducting such activities as a member of other SRO(s);* [business information that describes the

Applicant’s operations and that includes:]

[(i)] (E) [a trial balance and computation of net capital, each of which has been prepared as of a date that is within 30 days before the filing date of the application] *a copy of the Applicant’s most recent audited financial statements and a description of any material changes in the Applicant’s financial condition since the date of the financial statements;*

[(ii)] Reserved]

[(iii)] (F) an organizational chart;

[(iv)] (G) the intended location of the Applicant’s principal place of business and all other offices, if any, whether or not such offices would be required to be registered under the Nasdaq Rules, and the names of the persons who will be in charge of each office;

[(v)] a list of the types of securities to be offered and sold and the types of retail or institutional customers to be solicited;]

[(vi)] Reserved]

[(vii)] Reserved]

[(viii)] the number of markets to be made, if any, the type and volatility of the products, and the anticipated maximum inventory positions;]

[(ix)] Reserved]

[(x)] any plan to distribute or maintain securities products in proprietary positions, and the risks, volatility, degree of liquidity, and speculative nature of the products; and]

[(xi)] Reserved]

[(xii)] (H) a description of the communications and operational systems the Applicant will employ to conduct business [with customers or other members] and the plans and procedures the Applicant will employ to ensure business continuity, including: system capacity to handle the anticipated level of usage; contingency plans in the event of systems or other technological or communications problems or failures [that may impede customer usage or firm order entry or execution]; system redundancies; disaster recovery plans; *and* system security; [disclosures to be made to potential and existing customers who may use such systems; and supervisory or customer protection measures that may apply to customer use of, or access to, such systems;]

[(F)] (I) a copy of any decision or order by a federal or state authority or self-regulatory organization taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person;

[(G)] Reserved]

[(H)] (J) *a statement indicating whether the Applicant is currently, or*

*has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any self-regulatory organization, the foreign equivalent of a self-regulatory organization, a foreign or international securities exchange, a contract market designated pursuant to the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, a futures association registered under the Commodity Exchange Act or any substantially similar foreign statute or regulation, the Commission or any other “appropriate regulatory agency” (as defined in the Act), the Commodity Futures Trading Commission, or any state financial regulatory agency regarding the Applicant’s activities that [documentation of any of the following events, unless the event] has not been reported to the Central Registration Depository, together with all relevant details, including any sanctions imposed;[:]*

(K) *a statement indicating whether any person listed on Schedule A of the Applicant’s Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any self-regulatory organization, the foreign equivalent of a self-regulatory organization, a foreign or international securities exchange, a contract market designated pursuant to the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, a futures association registered under the Commodity Exchange Act or any substantially similar foreign statute or regulation, the Commission or any other “appropriate regulatory agency”, the Commodity Futures Trading Commission, or any state financial regulatory agency regarding the Applicant’s activities that has not been reported to the Central Registration Depository, together with all relevant details, including any sanctions imposed;*

[(i) a regulatory action against or investigation of the Applicant or an Associated Person by the Commission, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization that is pending, adjudicated, or settled;]

[(ii) an investment-related civil action for damages or an injunction against the Applicant or an Associated Person that is pending, adjudicated, or settled;]

[(iii) an investment-related customer complaint or arbitration that is required to be reported on Form U4;]

[(iv) a criminal action (other than a minor traffic violation) against the Applicant or an Associated Person that

is pending, adjudicated, or that has resulted in a guilty or no contest plea; and]

[(v) a copy of any document evidencing a termination for cause or a permitted resignation after investigation of an alleged violation of a federal or state securities law, a rule or regulation thereunder, a self-regulatory organization rule, or an industry standard of conduct;]

[(l) a description of any remedial action, such as special training, continuing education requirements, or heightened supervision, imposed on an Associated Person by a state or federal authority or self-regulatory organization;]

[(j) a written acknowledgment that heightened supervisory procedures and special educational programs may be required pursuant to NASD Notice to Members 97-19 (as incorporated by reference into Nasdaq IM-3010) for an Associated Person whose record reflects disciplinary actions or sales practice events;]

[(k) (L) a copy of [final or proposed contracts with banks, clearing entities, or service bureaus, and a general description of any other final or proposed contracts]any contract or agreement with another broker-dealer, a bank, a clearing entity, a service bureau or a similar entity to provide the Applicant with services regarding the execution or clearance and settlement of transactions effected on Nasdaq;

[(L) (M) if the Applicant proposes to make markets on Nasdaq, a description of the source and amount of Applicant's capital to support its market making activities on Nasdaq, and the source of any additional capital that may become necessary [a description of the nature and source of Applicant's capital with supporting documentation, the risk to net capital presented by the Applicant's proposed business activities, and any arrangement for additional capital should a business need arise];

[(M) (N) a description of the financial controls to be employed by the Applicant with respect to Nasdaq Rule 3011;

[(N) a description of the Applicant's supervisory system and a copy of its written supervisory procedures] (O) a copy of the Applicant's written supervisory procedures with respect to the activities identified in paragraph (a)(1)(D);

[(O) a description of the number, experience, and qualifications of supervisors and principals and the number, experience, and qualifications of persons to be supervised by such personnel] (P) a list of the persons conducting the Applicant's market

making and other trading activities, and a list of the persons responsible for such persons' supervision, together with the CRD number (if applicable) or a copy of Form U-4 for each such person;

[(P) Reserved]

[(Q) Reserved]

[(R) (Q) if not previously provided to FINRA, a[n NASD] FINRA Entitlement Program Agreement and Terms of Use and an Account Administration Entitlement Form;

[(S) (R) a copy of the Applicant's most recent "FOCUS Report" (Form X-17A-5) filed with the SEC pursuant to SEC Rule 17a-5 (the most current Parts I, II, and III, as applicable);

(S) all examination reports and corresponding responses regarding the Applicant for the previous two years from the self-regulatory organizations of which it is a member;

(T) an agreement to comply with the federal securities laws, the rules and regulations thereunder, the Nasdaq Rules, and all rulings, orders, directions, and decisions issued and sanctions imposed under the Nasdaq Rules;

(U) an agreement to pay such dues, assessments, and other charges in the manner and amount as from time to time shall be fixed pursuant to the Nasdaq Rules; and

(V) such other reasonable information with respect to the applicant as Nasdaq may require.

Each Applicant and Nasdaq member shall ensure that its membership application with Nasdaq is kept current at all times by supplementary amendments via electronic process or such other process as Nasdaq may prescribe. Such amendments to the application shall be filed with Nasdaq not later than [30]15 business days after the applicant or Nasdaq member learns of the facts or circumstances giving rise to the need for the amendment. The Applicant shall promptly notify the Department in writing of any material adverse change in its financial condition.

[(3) (2) [Electronic Filings] Uniform Registration Forms

Upon approval of the Applicant's Account Administrator Entitlement Form, the Applicant shall submit its Forms U4 for each Associated Person who is required to be registered under the Rules, any amendments to its Forms BD or U4, and any Form U5 electronically via Web CRD.

[(4) (3) Rejection of Application That Is Not Substantially Complete

If the Department determines within [30]15 business days after the filing of an application that the application is not substantially complete, the Department may reject the application

and deem it not to have been filed. In such case, within the [30]15 day period, the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefor. Nasdaq shall refund the application fees, if any, in accordance with the provisions of the Nasdaq Rules governing such fees. If the Applicant determines to continue to seek membership, the Applicant shall submit a new application and any required fee under this Rule.

[(5) (4) [Request For] Additional Documents Or Information

Within [30]15 business days after the filing of an application, the Department shall serve an initial request for any additional information or documents necessary to render a decision on the application. The Department may serve subsequent requests for additional information or documents at any time during the membership application process.

Unless otherwise agreed by the Department and the Applicant, the Applicant shall file any additional information and documents with the Department within [60]15 business days after service of the Department's [initial] request [and 30 days after service of any subsequent request].

[(6) (5) Applicants That Are Members of an Association or Another Exchange

(A) Applicants for Nasdaq membership that are also simultaneously applying for [NASD] FINRA membership may file one application with [the NASD]FINRA in compliance with the NASD Rule 1010 Series; however, Nasdaq will not take action on the application for Nasdaq membership until the applicant is an active member of [the NASD]FINRA.

(B) Applicants that are members of another registered national securities exchange or association must submit a complete application form containing all of the required items of information listed in Rule 1013(a)[(2)](1).

(C) An applicant that is an approved [NASD]FINRA member shall have the option to apply to become a Nasdaq member and to register with Nasdaq all associated persons of the firm whose registrations with the firm are approved with FINRA[the NASD] in categories recognized by Nasdaq rules through an expedited process by submitting a Waive-in Membership Application Form and a Nasdaq Membership Agreement.

(b) Membership Interview

(1) Optional [Requirement for] Interview

Before the Department serves its decision on an application for new

membership in Nasdaq, the Department [shall] *may* conduct a membership interview with a representative or representatives of the Applicant *if the Department determines that an interview is necessary to clarify aspects of an application.*

(2) Service of Notice

At least seven days before [the] a membership interview, the Department shall serve on the Applicant a written notice that specifies the date and time of the interview and the representative or representatives of the Applicant who are required to participate in the interview. The Department shall serve the notice by facsimile or overnight courier. The Applicant and the Department may agree to a shorter or longer period for notice or a different method of service under this subparagraph.

(3) Time

Unless the Department directs otherwise for good cause shown, *any* membership interview shall be scheduled to occur within [90]60 days after the filing of an application or within [60]15 *business* days after the filing of all additional information or documents requested, whichever is later.

(4) Place

The membership interview shall be conducted in a location specified by Nasdaq.

[(5) Updated Financial Documents] [On or before the date of the membership interview, an Applicant shall file an updated trial balance and computation of net capital. The Applicant shall prepare such documents as of a date that is within 45 days before the date of the membership interview, unless the Applicant and the Department agree on a longer period. The Applicant shall promptly notify the Department in writing of any material adverse change in its financial condition that occurs before a decision constituting final action of Nasdaq is served on the Applicant.]

[(6)] (5) Review of Standards for Admission

During [the] *any* membership interview, the Department shall review the application and the *bases for denial of* [standards for admission to] membership with the Applicant's representative or representatives.

[(7)] (6) Information From Other Sources

During [the] *any* membership interview, the Department shall provide to the Applicant's representative or representatives any information or

document that the Department has obtained from the Central Registration Depository or a source other than the Applicant and upon which the Department intends to base its decision under Rule 1014. If the Department *does not* conduct a membership interview, receives such information or document after the membership interview, or decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant. *The Applicant may submit such materials as it may deem relevant with respect to such information or document at any time prior to the service of a decision under Rule 1014.*

**1014. Department Decision**

(a) [Standards for Admission] *Bases for Denial of Membership*

After considering the *completed* application, [the membership interview,] other information and documents provided by the Applicant, other information and documents obtained by the Department, and the public interest and the protection of investors, *the Department shall approve the application unless the Department determines that such information or documents provide a basis for denial of membership:*

(1) [t]The Department [shall determine whether the Applicant meets each of the following standards:] *may deny (or condition) approval of an Applicant for the same reasons that the Securities and Exchange Commission may deny or revoke a broker or dealer registration and for those reasons required or allowed under the Act;*

(2) *Without limiting the generality of the foregoing, the Department may deny (or condition) approval of an Applicant when the Applicant directly or indirectly:*

(A) *is unable to satisfactorily demonstrate its present capacity to adhere to all applicable Nasdaq and Commission policies, rules, and regulations, including, without limitation, those concerning record-keeping, reporting, finance, and trading procedures;*

(B) *has previously violated, and there is a reasonable likelihood such Applicant will again engage in acts or practices violative of, any applicable Nasdaq or Commission policies, rules and regulations, including, without limitation, those concerning record-keeping, reporting, finance and trading procedures or those rules of other self-*

*regulatory organizations of which such Applicant is or was a member;*

(C) *has engaged, and there is a reasonable likelihood such Applicant will again engage, in acts or practices inconsistent with just and equitable principles of trade;*

(D) *is not in compliance with the SEC's net capital rule (17 CFR. 240.15c3-1), or has financial difficulties involving an amount that is more than 5% of the Applicant's net worth;*

(E) *has been itself, or is the successor to an entity which has been subject to any bankruptcy proceeding, receivership or arrangement for the benefit of creditors within the past three years;*

(F) *has engaged in an established pattern of failure to pay just debts;*

(G) *does not have such licenses and registrations as are required by governmental authorities and self-regulatory organizations; or*

(H) *is unable satisfactorily to demonstrate reasonably adequate systems capacity and capability.*

[(1) The application and all supporting documents are complete and accurate.]

[(2) The Applicant and its Associated Persons have all licenses and registrations required by state and federal authorities and self-regulatory organizations.]

[(3) The Applicant and its Associated Persons are capable of complying with the federal securities laws, the rules and regulations thereunder, and the Nasdaq Rules, including observing high standards of commercial honor and just and equitable principles of trade. In determining whether this standard is met, the Department shall take into consideration whether:]

[(A) a state or federal authority or self-regulatory organization has taken permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person;]

[(B) an Applicant's or Associated Person's record reflects a sales practice event, a pending arbitration, or a pending private civil action;]

[(C) an Applicant or Associated Person is the subject of a pending, adjudicated, or settled regulatory action or investigation by the Commission, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization; an adjudicated, or settled investment-related private civil action for damages or an injunction; or a criminal action (other than a minor traffic violation) that is pending, adjudicated, or that has resulted in a guilty or no contest plea; or an

Applicant, its control persons, principals, registered representatives, other Associated Persons, any lender of 5% or more of the Applicant's net capital, or any other member with respect to which any of these persons is or was a control person or a 5% lender of its net capital is subject to unpaid arbitration awards, other adjudicated customer awards, or unpaid arbitration settlements;]

[(D) an Associated Person was terminated for cause or permitted to resign after an investigation of an alleged violation of a federal or state securities law, a rule or regulation thereunder, a self-regulatory organization rule, or industry standard of conduct;]

[(E) a state or federal authority or self-regulatory organization has imposed a remedial action, such as special training, continuing education requirements, or heightened supervision, on an Associated Person; and]

[(F) a state or federal authority or self-regulatory organization has provided information indicating that the Applicant or an Associated Person otherwise poses a threat to public investors.]

[(4) The Applicant has established all contractual or other arrangements and business relationships with banks, clearing corporations, service bureaus, or others necessary to;]

[(A) initiate the operations described in the Applicant's application, considering the nature and scope of operations and the number of personnel; and]

[(B) comply with the federal securities laws, the rules and regulations thereunder, and the Nasdaq Rules.]

[(5) The Applicant has or has adequate plans to obtain facilities that are sufficient to;]

[(A) initiate the operations described in the Applicant's application, considering the nature and scope of operations and the number of personnel; and]

[(B) comply with the federal securities laws, the rules and regulations thereunder, and the Nasdaq Rules.]

[(6) The communications and operational systems that the Applicant intends to employ for the purpose of conducting business with customers and other members are adequate and provide reasonably for business continuity in each area set forth in Rule 1013(a)(2)(E)(xii);]

[(7) The Applicant is capable of maintaining a level of net capital in excess of the minimum net capital requirements set forth in SEC Rule 15c3-1 adequate to support the

Applicant's intended business operations on a continuing basis, based on information filed under Rule 1013. The Department may impose a reasonably determined higher net capital requirement for the initiation of operations after considering:]

[(A) the amount of net capital sufficient to avoid early warning level reporting requirements, such as SEC Rule 17a-11;]

[(B) the amount of capital necessary to meet expenses net of revenues for at least twelve months, based on reliable projections agreed to by the Applicant and the Department;]

[(C) any planned market making activities, the number of markets to be made, the type and volatility of products, and the anticipated maximum inventory positions;]

[(D) any plan to enter into other contractual commitments, such as underwritings or other securities-related activities;]

[(E) any plan to distribute or maintain securities products in proprietary positions, and the risks, volatility, degree of liquidity, and speculative nature of the products; and]

[(F) any other activity that the Applicant will engage in that reasonably could have a material impact on net capital within the first twelve months of business operations.]

[(8) The Applicant has financial controls to ensure compliance with the federal securities laws, the rules and regulations thereunder, and the Nasdaq Rules.]

[(9) The Applicant has compliance, supervisory, operational, and internal control practices and standards that are consistent with practices and standards regularly employed in the investment banking or securities business, taking into account the nature and scope of Applicant's proposed business.]

[(10) The Applicant has a supervisory system, including written supervisory procedures, internal operating procedures (including operational and internal controls), and compliance procedures designed to prevent and detect, to the extent practicable, violations of the federal securities laws, the rules and regulations thereunder, and the Nasdaq Rules. In evaluating the adequacy of a supervisory system, the Department shall consider the overall nature and scope of the Applicant's intended business operations and shall consider whether:]

[(A) the number, location, experience, and qualifications of supervisory personnel are adequate in light of the number, location, experience, and qualifications of persons to be supervised; the Central Registration

Depository record or other disciplinary history of supervisory personnel and persons to be supervised; and the number and locations of the offices that the Applicant intends to open and the nature and scope of business to be conducted at each office;]

[(B) the Applicant has identified specific Associated Persons to supervise and discharge each of the functions in the Applicant's business plan, and to supervise each of the Applicant's intended offices, whether or not such offices are required to be registered under the Nasdaq Rules;]

[(C) the Applicant has identified the functions to be performed by each Associated Person and has adopted procedures to assure the registration with Nasdaq and applicable states of all persons whose functions are subject to such registration requirements;]

[(D) each Associated Person identified in the business plan to discharge a supervisory function has at least one year of direct experience or two years of related experience in the subject area to be supervised;]

[(E) the Applicant will solicit retail or institutional business;]

[(F) the Applicant will recommend securities to customers;]

[(G) the location or part-time status of a supervisor or principal will affect such person's ability to be an effective supervisor;]

[(H) the Applicant should be required to place one or more Associated Persons under heightened supervision pursuant to NASD Notice to Members 97-19 (as incorporated by reference into Nasdaq IM-3010);]

[(I) any remedial action, such as special training or continuing education requirements or heightened supervision, has been imposed on an Associated Person by a state or federal authority or self-regulatory organization; and]

[(J) any other condition that will have a material impact on the Applicant's ability to detect and prevent violations of the federal securities laws, the rules and regulations thereunder, and the Nasdaq Rules.]

[(11) The Applicant has a recordkeeping system that enables Applicant to comply with federal, state, and self-regulatory organization recordkeeping requirements and a staff that is sufficient in qualifications and number to prepare and preserve required records.]

[(12) The Applicant has completed a training needs assessment and has a written training plan that complies with the continuing education requirements imposed by the federal securities laws, the rules and regulations thereunder, and the Nasdaq Rules.]

[(13) Nasdaq does not possess any information indicating that the Applicant may circumvent, evade, or otherwise avoid compliance with the federal securities laws, the rules and regulations thereunder, or the Nasdaq Rules.]

[(14) The application and all supporting documents otherwise are consistent with the federal securities laws, the rules and regulations thereunder, and the Nasdaq Rules.]

[(15)] (3) *The Department will not approve an Applicant unless [T]the Applicant is a member of another registered securities exchange or association that is not registered solely under Section 6(g) or Section 15A(k) of the Securities Exchange Act of 1934. An Applicant that will transact business with the public must be a member of [the NASD]FINRA.*

(b) Granting or Denying Application

(1) [In reviewing an application for membership, the Department shall consider whether the Applicant and its Associated Persons meet each of the standards in paragraph (a). Where the Department determines that the Applicant or its Associated Persons are the subject of any of the events set forth in Rule 1014(a)(3)(A) and (C) through (E), a presumption exists that the application should be denied. The Applicant may overcome the presumption by demonstrating that it can meet each of the standards in paragraph (a), notwithstanding the existence of any of the events set forth in Rule 1014(a)(3)(A) and (C) through (E).]

[(2) If the Department determines that the Applicant meets each of the standards in paragraph (a), the Department shall grant the application for membership.]

[(3)] *Unless [If] the Department determines that there is a basis for denying (or conditioning) approval of the [Applicant] application under [does not meet one or more of] the [standards] bases for denial in paragraph (a) [in whole or in part], the Department shall approve the application for membership. If the Department does not approve the application, the Department shall:*

(A) grant the application subject to one or more restrictions reasonably designed to address a specific financial, operational, supervisory, disciplinary, investor protection, or other regulatory concern [based on the standards for admission in Rule 1014(a)]; or

(B) deny the application.

(c) Decision

(1) Time

The Department shall serve a written decision on the membership application within [30] *15 business* days after the conclusion of the membership interview *(if any)* or after the filing of [additional] *all required* information or documents, whichever is later.

(2) Content

If the Department denies the application *or grants the application subject to restrictions*, the decision shall explain in detail the reason for denial *or restriction*, referencing the applicable [standard or standards] *bases* in paragraph (a). [If the Department grants the application subject to restrictions, the decision shall explain in detail the reason for each restriction, referencing the applicable standard or standards in paragraph (a) upon which the restriction is based and identify the specific financial, operational, supervisory, disciplinary, investor protection, or other regulatory concern that the restriction is designed to address and the manner in which the restriction is reasonably designed to address the concern.]

(3) Failure to Serve Decision

If the Department fails to serve a decision within [180] *90* days after the filing of an application *(or 120 days if the Department has opted to conduct a membership interview)* or such later date as the Department and the Applicant have agreed in writing, the Applicant may file a written request with the Nasdaq Board requesting that the Nasdaq Board direct the Department to serve a decision. Within seven days after the filing of such a request, the Nasdaq Board shall direct the Department to serve its written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the Nasdaq Board may extend the [180] *90-day (or 120-day)* time limit by not more than [90] *45* days.

(d)–(g) No change.

**1015. Review by Nasdaq Review Council**

(a) Initiation of Review by Applicant

Within 25 days after service of a decision under Rule 1014 or 1017, an Applicant may file a written request for review with the Nasdaq Review Council. A request for review shall state with specificity why the Applicant believes that the Department's decision is inconsistent with the [membership standards] *bases for denial* set forth in Rule 1014, or otherwise should be set

aside, and state whether a hearing is requested. The Applicant simultaneously shall file by first-class mail a copy of the request with the Department.

(b)–(i) No change.

(j) Decision

(1) No change.

(2) Contents

The decision shall include:

(A) a description of the Department's decision, including its rationale;

(B) a description of the principal issues raised in the review;

(C) a summary of the evidence on each issue; and

(D) a statement whether the Department's decision is affirmed, modified, or reversed, and a rationale therefor that references the [applicable standards] *bases for denial* in Rule 1014.

(3)–(4) No change.

\* \* \* \* \*

**1017. Application for Approval of Change in Ownership, Control, or Business Operations**

(a) No change.

(b) Filing and Content of Application

(1) No change.

(2) The application shall describe in detail the change in ownership, control, or business operations and include a business plan, pro forma financials, an organizational chart, and written supervisory procedures reflecting the change.

(A) No change.

(B) If the application requests the removal or modification of a membership agreement restriction, the application also shall:

(i) present facts showing that the circumstances that gave rise to the restriction have changed; and

(ii) state with specificity why the restriction should be modified or removed in light of [the standards set forth in Rule 1014 and] the articulated rationale for the imposition of the restriction.

(C) No change.

(c) Effecting Change and Imposition of Interim Restrictions

(1) A member shall file an application for approval of a change in ownership or control at least 30 days prior to such change. A member may effect a change in ownership or control prior to the conclusion of the proceeding, but the Department may place new interim restrictions on the member [based on the standards in Rule 1014,] pending final Department action.

(2)–(3) No change.

**(d) Rejection Of Application That Is Not Substantially Complete**

If the Department determines within [30] 15 business days after the filing of an application that the application is not substantially complete, the Department may reject the application and deem it not to have been filed. In such case, within the [30] 15 day period, the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefor. If the Applicant determines to continue to apply for approval of a change in ownership, control, or business operations, the Applicant shall submit a new application under this Rule.

**(e) Request for Additional Documents and Information**

Within [30] 15 business days after the filing of an application, the Department shall serve a request for any additional information or documents necessary to render a decision on the application. The Department may request additional information or documents at any time during the application process. Unless otherwise agreed to by the Department and the Applicant, the Applicant shall file such additional information or documents with the Department within [30] 15 business days after the Department's request.

**(f) Membership Interview**

(1) The Department may require the Applicant to participate in a membership interview within [30] 15 business days after the filing of the application, or if the Department requests additional information or documents, within [30] 15 business days after the filing of the additional information or documents by the Applicant.

(2)–(4) No change.

**(g) Department Decision**

(1) The Department shall consider the application, the membership interview, other information and documents provided by the Applicant or obtained by the Department, the public interest, and the protection of investors. [In rendering a decision on an application submitted under Rule 1017(a), the Department shall consider whether the Applicant and its Associated Persons meet each of the standards in Rule 1014(a). Where the Department determines that the Applicant or its Associated Person are the subject of any of the events set forth in Rule 1014(a)(3)(A) and (C) through (E), a presumption exists that the application should be denied. The Applicant may overcome the presumption by

demonstrating that it can meet each of the standards in Rule 1014(a), notwithstanding the existence of any of the events set forth in Rule 1014(a)(3)(A) and (C) through (E).] *Unless the Department determines that there is a basis for denying (or conditioning) approval of the Applicant under the bases for denial in Rule 1014(a), the Department shall approve an application submitted under Rule 1017(a).*

(A) In rendering a decision on an application for approval of a change in ownership or control, or an application for approval of a material change in business operations that does not involve modification or removal of a membership agreement restriction, the Department shall determine if *there would be a basis for denying (or conditioning) approval of the Applicant [would continue to meet] under the [standards] bases for denial in Rule 1014(a) upon approval of the application.*

(B) In rendering a decision on an application requesting the modification or removal of a membership agreement restriction, the Department shall consider whether maintenance of the restriction is appropriate in light of:

(i) [the standards set forth in Rule 1014;]

[(ii)] the circumstances that gave rise to the imposition of the restriction;

[(iii)] (ii) the Applicant's operations since the restriction was imposed;

[(iv)] (iii) any change in ownership or control or supervisors and principals; and

[(v)] (iv) any new evidence submitted in connection with the application.

(2) The Department shall serve a written decision on the application within [30] 15 business days after the conclusion of the membership interview or the filing of additional information or documents, whichever is later. If the Department does not require the Applicant to participate in a membership interview or request additional information or documents, the Department shall serve a written decision within [45] 20 business days after the filing of the application under paragraph (a). The decision shall state whether the application is granted or denied in whole or in part, and shall provide a rationale for the Department's decision, referencing the applicable standard in Rule 1014.

(3) If the Department fails to serve a decision within [180] 90 days after filing of an application or such later date as the Department and the Applicant have agreed in writing, the Applicant may file a written request with the Nasdaq Board requesting that the Nasdaq Board

direct the Department to issue a decision. Within seven days after the filing of such a request, the Nasdaq Board shall direct the Department to issue a written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the Nasdaq Board may extend the time limit for issuing a decision by not more than [30] 15 business days.

(4) *Notwithstanding anything in this Rule 1017 to the contrary:*

(A) *in the event that a Nasdaq member that is also a FINRA member submits an application for approval under this Rule and such member is also required to submit an application under NASD Rule 1017, the Department shall not be required to serve a written decision under this rule until 10 business days after FINRA serves a written decision; and*

(B) *in the event that a proposed change in ownership, control, or business operations by a Nasdaq member requires such member to become a member of FINRA, the Department shall not be required to serve a written decision under this rule until 10 business days after the Nasdaq member becomes a FINRA member.*

(4) No change.

(h)–(k) No change.

\* \* \* \* \*

**1020. Registration of Principals****1021. Registration Requirements**

(a)–(d) No change.

**(e) Requirement of Two Registered Principals for Members**

(1) A Nasdaq member, except a sole proprietorship, shall have at least two officers or partners who are registered as principals with respect to each aspect of the member's investment banking and securities business pursuant to the applicable provisions of Rule 1022; *provided, however, that a proprietary trading firm with 25 or fewer registered representatives shall only be required to have one officer or partner who is registered as a principal.* This requirement applies to persons seeking admission as members and existing members.

(2)–(3) No change.

\* \* \* \* \*

**1032. Categories of Representative Registration**

(a)–(e) No change.

**(f) Limited Representative—Equity Trader**

(1) Each person associated with a member who is included within the

definition of a representative as defined in Rule 1011 must register with Nasdaq as a Limited Representative—Equity Trader if, with respect to transactions in equity, preferred or convertible debt securities on Nasdaq, such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities, other than any person associated with (A) a member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by or is under common control, with the member, or (B) a proprietary trading firm.

- (2) No change.
(g)–(h) No change.

\* \* \* \* \*

1130. Reliance on Current Membership List

The Nasdaq Secretary shall keep a currently accurate and complete membership roll, containing the name and address of each Nasdaq member, and the name and address of the executive representative of each Nasdaq member. In any case where a membership has been terminated, such fact shall be recorded together with the date on which the membership ceased. The membership roll of Nasdaq shall at all times be available to all members of Nasdaq, to all governmental authorities, and to the general public; provided, however, that the names and addresses of executive representatives shall not be available to members or the general public. For the purpose of complying with pertinent Rules, a member shall be entitled to rely on such membership roll.

\* \* \* \* \*

1150. Executive Representative

Each Nasdaq member shall appoint and certify to the Secretary of Nasdaq one "executive representative" who shall represent, vote, and act for the Nasdaq member in all the affairs of Nasdaq; provided, however, that other representatives of a Nasdaq member may also serve on the Nasdaq Board or committees of Nasdaq or otherwise take part in the affairs of Nasdaq. If a Nasdaq member is also a member of FINRA, the Nasdaq executive representative shall be the same person appointed to serve as the FINRA executive representative. A Nasdaq member may change its executive representative or appoint a substitute for its executive representative upon giving notice thereof to the Nasdaq Secretary via

electronic process or such other process as Nasdaq may prescribe. An executive representative of a Nasdaq member or a substitute shall be a member of senior management and registered principal of the Nasdaq member. Each executive representative shall maintain an Internet electronic mail account for communication with Nasdaq and shall update firm contact information as prescribed by Nasdaq. Each member shall review and, if necessary, update its executive representative designation and contact information within 17 business days after the end of each calendar quarter.

\* \* \* \* \*

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Nasdaq is proposing to amend its 1000 Series rules governing the process for applying to become a member of Nasdaq. When Nasdaq first adopted membership rules as an exchange in 2006, it based Rules 1013 and 1014, which stipulate the content of a membership application and the standards for review and approval, primarily on corresponding rules of the then National Association of Securities Dealers ("NASD").<sup>3</sup> However, Nasdaq also adopted Rule 1013(a)(6)(C), which allows any FINRA member in good standing to become a Nasdaq member through an expedited waive-in application. This approach reflected the fact that (i) the Nasdaq market had formerly been operated as a facility of NASD and virtually all Nasdaq market participants were NASD members, and (ii) FINRA's subsidiary, NASD

<sup>3</sup> In late July 2007, NASD changed its name to the Financial Industry Regulatory Authority ("FINRA"). Accordingly, we use the term NASD in this filing only (i) when referring to period of time before the name change, and (ii) with respect to rules that are still officially designated by FINRA as "NASD rules."

Regulation, is party to a regulatory services agreement with Nasdaq, under which FINRA, among other things, processes membership applications for Nasdaq. Accordingly, it was felt that maintaining similar rules would facilitate efficient review of applications by non-FINRA members, since FINRA members would become Nasdaq members through the expedited waive-in process.

As a result of section 15(b)(8) of the Act<sup>4</sup> and the exemption therefrom provided by Rule 15b9-1 under the Act,<sup>5</sup> moreover, a potential Nasdaq member must also be a member of FINRA unless it (i) carries no customer accounts, and (ii) has annual gross income derived from purchases and sales of securities otherwise than on an exchange of which it is a member in an amount no greater than \$1000. Nasdaq underscored this requirement in its own Rule 1014, which provides that an applicant for membership that will transact business with the public must be a member of FINRA. Accordingly, the only applicants for Nasdaq membership using the full membership application process have been, and logically will continue to be, proprietary trading firms that are not, and are not required to become, members of FINRA. Because the Nasdaq application process is derived directly from FINRA rules, however, it is not well suited to review of these applicants, because FINRA rules focus extensively on a member's relationship with its customers.

Nasdaq Rule 1014 also provides that an applicant for Nasdaq membership must already be a member either of FINRA or of another national securities exchange. As a result, all applicants for membership in Nasdaq already have an Examining Authority for purposes of Rule 15c3-1 under the Act<sup>6</sup> when they apply. Although there is nothing that would prevent Nasdaq from becoming a member's Examining Authority at a later date if the Commission so designated it, Nasdaq believes that its membership application rules should reflect the applicant's current status with respect to another self-regulatory organization ("SRO"), and therefore do not need to require the same degree of financial information about the applicant as would be the case if the applicant had not previously been a member of an SRO.

Nasdaq is not, however, proposing to reduce the regulatory scrutiny to which applicants are subject to a level below that provided by other SROs; rather,

<sup>4</sup> 15 U.S.C. 78o(b)(8).

<sup>5</sup> 17 CFR 240.15b9-1.

<sup>6</sup> 17 CFR 240.15c3-1.



Nasdaq seeks merely to redirect the focus of the process away from procedures derived from FINRA's role as primary regulator of firms with public customers and its status as Examining Authority for a large percentage of U.S. broker-dealers. In drafting its new proposed procedures, Nasdaq has reviewed the application procedures of other exchanges—principally NYSE Arca, Inc. and the International Securities Exchange, LLC—and has adopted standards that it believes are well designed to allow an evaluation of applicant's ability to comply with Nasdaq and SEC Rules.

As the framework for the new process, Nasdaq is proposing to define the term "proprietary trading firm" to mean an applicant for membership with the following characteristics: (i) The Applicant is not required to become a FINRA member under section 15(b)(8) of the Act but is a member of another registered securities exchange not registered solely under section 6(g) of the Act; (ii) all funds used or proposed to be used by the Applicant for trading are the Applicant's own capital, traded through the Applicant's own accounts; (iii) the Applicant does not, and will not have "customers," as that term is defined in Nasdaq Rule 0120(g); and (iv) all Principals and Representatives of the Applicant acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Applicant. Nasdaq also proposes to amend the definition of "material change in business operations" in Rule 1011 to include "adding business activities that would cause a proprietary trading firm no longer to meet the definition of that term. \* \* \*" As a result, if a firm became a member based on its status as a proprietary trading firm but then sought to expand its activities to include dealings with customers, the member would be required to undergo an assessment and obtain approval of this change under Rule 1017. As currently reflected in that Rule, a material change in business operations requires an application that describes in detail the change in ownership, control, or business operations and include a business plan, pro forma financials, an organizational chart, and written supervisory procedures reflecting the change.

Under the new application process, an applicant would be required to submit the following information in its application:

- A copy of the Applicant's current Form BD;
- An original Nasdaq-approved fingerprint card for each Associated Person who will be subject to Rule 17f-

2 under the Act and for whom a fingerprint card has not been filed with another SRO;

- Nasdaq's application fee, as provided in Nasdaq Rule 7001;
- A description of the Applicant's proposed trading activities on Nasdaq, such as the types of securities it will trade, whether it will be a market maker, an order entry firm, and/or engage in block trading activities, and the extent to which the Applicant is conducting such activities as a member of other SRO(s);
- A copy of the Applicant's most recent audited financial statements and a description of any material changes in the Applicant's financial condition since the date of the financial statements;
- An organizational chart;
- The intended location of the Applicant's principal place of business and all other offices, if any, whether or not such offices would be required to be registered under the Nasdaq Rules, and the names of the persons who will be in charge of each office;<sup>7</sup>
- A description of the communications and operational systems the Applicant will employ to conduct business and the plans the procedures, the Applicant will employ to ensure business continuity, including: system capacity to handle the anticipated level of usage; contingency plans in the event of systems or other technological or communications problems or failures; system redundancies; disaster recovery plans; and system security;
- A copy of any decision or order by a federal or state authority or self-regulatory organization taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person;
- A statement indicating whether the Applicant is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any self-regulatory organization, the foreign equivalent of a self-regulatory organization, a foreign or international securities exchange, a contract market designated pursuant to the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, a futures association registered under the Commodity Exchange Act or any substantially similar foreign statute or regulation, the Commission or any other "appropriate regulatory agency" (as defined in the Act), the Commodity Futures Trading

<sup>7</sup> For most proprietary trading firms, there would be only one office.

Commission, or any state financial regulatory agency regarding the Applicant's activities that has not been reported to the Central Registration Depository, together with all relevant details, including any sanctions imposed;

- A statement indicating whether any person listed on Schedule A of the Applicant's Form BD<sup>8</sup> is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any self-regulatory organization, the foreign equivalent of a self-regulatory organization, a foreign or international securities exchange, a contract market designated pursuant to the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, a futures association registered under the Commodity Exchange Act or any substantially similar foreign statute or regulation, the Commission or any other "appropriate regulatory agency", the Commodity Futures Trading Commission, or any state financial regulatory agency regarding the Applicant's activities that has not been reported to the Central Registration Depository, together with all relevant details, including any sanctions imposed;

- A copy of any contract or agreement with another broker-dealer, a bank, a clearing entity, a service bureau or a similar entity to provide the Applicant with services regarding the execution or clearance and settlement of transactions effected on Nasdaq;

- If the Applicant proposes to make markets on Nasdaq, a description of the source and amount of Applicant's capital to support its market making activities on Nasdaq, and the source of any additional capital that may become necessary;

- A description of the financial controls to be employed by the Applicant with respect to Nasdaq Rule 3011, which governs anti-money laundering controls;

- A copy of the Applicant's written supervisory procedures with respect to the Applicant's proposed trading activities on Nasdaq;

- A list of the persons conducting the Applicant's market making and other trading activities, and a list of the persons responsible for such persons' supervision, together with the CRD number (if applicable) or a copy of Form U-4 for each such person;

- Unless previously provided to FINRA, a FINRA Entitlement Program Agreement and Terms of Use and an

<sup>8</sup> The direct owners and executive officers of the Applicant.

Account Administration Entitlement Form;<sup>9</sup>

- A copy of the Applicant's most recent "FOCUS Report" (Form X-17A-5) filed with the Commission pursuant to Rule 17a-5 under the Act (the most current Parts I, II, and III, as applicable);

- All examination reports and corresponding responses regarding the Applicant for the previous two years from the self-regulatory organizations of which it is a member;

- An agreement to comply with the federal securities laws, the rules and regulations thereunder, the Nasdaq Rules, and all rulings, orders, directions, and decisions issued and sanctions imposed under the Nasdaq Rules;

- An agreement to pay such dues, assessments, and other charges in the manner and amount as from time to time shall be fixed pursuant to the Nasdaq Rules; and

- Such other reasonable information with respect to the applicant as Nasdaq may require.

In addition, as currently provided by Rule 1013, an applicant is required to submit its Forms U4 for each Associated Person who is required to be registered under Nasdaq Rules and any required amendments to its Forms BD or U4. As under the current rule, Applicants must keep their application current by submitting amendments if facts and circumstances change. Without limiting the generality of this requirement, Applicants must promptly notify the Department of any material adverse change in financial condition.

Nasdaq is also amending Rule 1014 to replace the specific findings that must be made prior to admission of a FINRA member with more general bases for denial of membership. Specifically, the revised rule would provide that the Nasdaq Membership Department<sup>10</sup> shall approve an application unless there is a basis for denying or conditioning approval.<sup>11</sup> The rule further provides that the Department may deny (or condition) approval of an Applicant for the same reasons that the Commission may deny or revoke a broker or dealer registration and for those reasons required or allowed under the Act. Without limiting the generality of the foregoing, the amended rule lists specific bases upon which the Department may deny (or condition) approval of an Applicant. These bases

include the inability of the Applicant to satisfactorily demonstrate capacity to adhere to applicable Nasdaq and Commission policies, rules, and regulations, including, those concerning record-keeping, reporting, finance, and trading procedures. For example, an Applicant whose written supervisory procedures did not adequately describe the means by which the firm would assure compliance by its traders with applicable market rules would be denied on that basis. Similarly, past rule violations would be a basis for denial if the firm had not taken adequate steps to guard against recurring offenses.

Other bases for denial would include factors indicative of financial difficulties, such as not being in compliance with the Commission's net capital rule; having financial difficulties involving an amount that is more than 5% of the Applicant's net worth; being subject to a current or recent bankruptcy proceeding; or engaging in an established pattern of failure to pay just debts. Finally, denial could be based on failure to have required governmental and SRO registrations, or being unable to demonstrate reasonably adequate systems capability and capacity.

The revised rule will continue to provide that the Department will not approve an Applicant unless the Applicant is a member of another registered securities exchange or association that is not registered solely with respect to futures based on single stocks or narrow indexes; and that an Applicant that will transact business with the public must be a member of FINRA. The proposed rule change also makes conforming changes to provisions of Rule 1014, 1015, and 1017 that refer to the standards for admission in Rule 1014.

The proposed rule change also reduces the time allotted for various aspects of review, both for initial applications and for changes of ownership, control and business operations under Rule 1017. This change reflects the fact that all applicants will be proprietary trading firms, whose operations are less complex than those of firms with customers that are required to become FINRA members, and are also members of other SROs that serve as their Examining Authority. In addition, FINRA may conduct review of Nasdaq member applications under the revised rule using personnel located in the Washington, DC area, rather than using personnel at FINRA district offices as had previously been the case; centralizing review has the potential to reduce the time needed to process applications. However, with respect to a

FINRA member or a firm that is required to become a FINRA member due to a change in ownership, control, or business operations, the rule is being amended to provide that the Department is not required to take action on an application for approval under Rule 1017 until FINRA has acted on the comparable application under its rule or the firm has become a FINRA member, as applicable. Similarly, the proposed rule change would make the membership interview for the initial application process optional at the discretion of the Department, since the interview process does not exist under the rules of most SROs and is of less importance with respect to proprietary trading firms. However, the Department would retain discretion to require an interview if determined necessary to clarify aspects of an application, in which case the time allotted for completion of the application review process by the Department would be expanded accordingly.

In recognition of the lower risk profile presented by a small member that does not interact with customers, Nasdaq is also amending Rule 1021 to provide that a proprietary trading firm with 25 or fewer registered representatives is required to have only one, rather than two registered principals. Similarly, Nasdaq proposes to eliminate the requirement that traders for proprietary trading firms register as equity traders under Rule 1032(f). FINRA's Series 55 exam, which is required for registration as an equity trader, continues to have a predominant focus on the over-the-counter market and the complexities of FINRA trade reporting rules applicable to it, as well as rules relating to customers. Because a proprietary trading firm is not, by definition, required to be a FINRA member, Nasdaq believes that requiring traders for these firms to register in this capacity requires them to master a body of knowledge with little relevance to their actual participation in the market. Accordingly, Nasdaq believes that it constitutes an unwarranted regulatory burden.<sup>12</sup>

Finally, Nasdaq proposes to amend Rules 1130 and 1150 to simplify Nasdaq and member recordkeeping with regard to executive representatives of Nasdaq members that are also FINRA members by requiring that a firm's executive representative under Nasdaq rules be the same as its executive representative under FINRA rules. In keeping with

<sup>12</sup> If a proprietary trading firm opted to become a FINRA member even though it was not required to, its traders would be required to take the Series 55 exam and register as equity traders under FINRA rules.

<sup>9</sup> Needed for use of FINRA's CRD system.

<sup>10</sup> The term includes FINRA staff acting on Nasdaq's behalf.

<sup>11</sup> A similar change would be made in Rule 1017, providing that an application for a material change in business operations shall be approved unless there is a basis for denying it under the standards in Rule 1014.

FINRA policies, moreover, Nasdaq is amending the rule to stipulate that the identity of the executive representative is non-public information. This restriction ensures that personal contact information for executive representatives is not used for improper purposes.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 6 of the Act,<sup>13</sup> in general, and with section 6(b)(5) of the Act,<sup>14</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 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.

### *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.

### *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 the Nasdaq consents, the Commission will:

- (A) By order approve such 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 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-2007-085 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-2007-085. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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 available publicly. All submissions should refer to File Number SR-NASDAQ-2007-085 and should be submitted on or before November 27, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E7-21740 Filed 11-5-07; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>15</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56726; File No. SR-NYSE-2007-96]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 80A (Index Arbitrage Trading Restrictions)**

October 31, 2007.

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 October 25, 2007, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The NYSE filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it 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 the Terms of Substance of the Proposed Rule Change**

The Exchange is proposing to rescind NYSE Rule 80A (Index Arbitrage Trading Restrictions) to eliminate order entry restrictions on certain index arbitrage orders entered on the Exchange. The text of the proposed rule change is available on the NYSE's Web site (<http://www.nyse.com>), at the NYSE, 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, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<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).

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

<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(5).