

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57564; File No. SR-NASDAQ-2008-022)

March 26, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the Rules Governing the Operation of The NASDAQ Options Market

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 March 19, 2008, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared substantially by Nasdaq. Nasdaq has filed this proposal pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to make five modifications to the rules governing its recently-approved NASDAQ Options Market (“NOM”).<sup>5</sup> Specifically, Nasdaq proposes to: (1) revise Chapter VI, Section 1(a)(2) of the NOM Rules to clarify that all options trades will be reported to the Options Price Regulatory Authority (“OPRA”); (2) modify Chapter VI, Section 8 of the NOM Rules to

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

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

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

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

<sup>5</sup> See Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (order approving File Nos. SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (“NOM Approval Order”).

change the final tie-breakers for the Order Imbalance Indicator and the execution algorithm of the Opening and Closing Crosses; (3) replace improper references to the Nasdaq Market Center with proper references to NOM; (4) revise Chapter VII, Section 6(c)(ii)(2) of the NOM Rules to replace an inaccurate reference to a subsection of Rule 602 of Regulation NMS under the Act;<sup>6</sup> and (5) revise Chapter VI, Sections 7 and 10 of the NOM Rules to eliminate erroneous references to Displayed Orders, which is not a defined term in the NOM Rules.

The text of the proposed rule change is available at Nasdaq, in the Commission's Public Reference Room, and at [www.nasdaq.com](http://www.nasdaq.com).

## 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

On March 12, 2008, the Commission approved the Nasdaq proposals establishing NOM.<sup>7</sup> Nasdaq has identified the following five minor modifications to the operation and rules governing NOM that Nasdaq believes will improve the fair and orderly operation of NOM.

(1) Nasdaq proposes to modify Chapter VI, Section 1(a)(2) of the NOM Rules to clarify that all options trades will be reported to OPRA. In its initial filing, Nasdaq inadvertently

<sup>6</sup> 17 CFR 242.602.

<sup>7</sup> See NOM Approval Order, supra note 5.

implied that it has discretion to withhold transaction reports when, in fact, no such discretion exists. All transaction reports by NOM will be reported to OPRA.

(2) Nasdaq proposes to modify Chapter VI, Section 8 of the NOM Rules to change the final tie-breakers for the Order Imbalance Indicator and the execution algorithm of the Opening and Closing Crosses. With respect to the Closing Cross, Nasdaq proposes to clarify that the Closing Cross execution price will be the price that maximizes the number of paired contracts of available interest within NOM at the time of the Closing Cross. This formulation is the same as the formulation that Nasdaq uses in its Closing Cross for equities.

With respect to the Opening Cross, Nasdaq proposes to use as the final tie-breaker for the Order Imbalance Indicator and for the Opening Cross execution algorithm the midpoint price of the available trading interest within NOM at 9:30 a.m., rather than the Nasdaq Official Closing price from the previous trading day. After further discussion with industry representatives, Nasdaq has determined that using the prior day's closing price would introduce unnecessary uncertainty due to price changes that can and often do occur overnight. Nasdaq believes that using the midpoint price of trading interest available within NOM at 9:30 a.m. will be beneficial because it is the same tiebreaker that Nasdaq applies for its equities Opening Cross. In addition, Nasdaq believes that this price is more likely to produce a relevant market price because trading interest within NOM is more likely to reflect current market conditions than is the prior day's closing price.

(3) Nasdaq proposes to replace improper references to the Nasdaq Market Center with proper references to NOM. Throughout Chapter VI, Sections 8 and 9 of the NOM Rules, Nasdaq improperly referred to the Nasdaq Market Center rather than to NOM. Nasdaq believes that this technical correction will reduce confusion about Nasdaq's options rules.

(4) Nasdaq proposes to modify Chapter VII, Section 6(c)(ii)(2) of the NOM Rules to add one reference and to replace an inaccurate reference to subsections of Rule 602 of Regulation NMS under the Act.

(5) Nasdaq proposes to modify Chapter VI, Sections 7 and 10 of the NOM Rules to eliminate erroneous references to Displayed Orders, which is not a defined term within the NOM Rules. The rules will refer instead to orders that are displayed within the System.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to promote just and equitable principals of trade, to foster cooperation 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of the authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.

Nasdaq notes that, with the exception of the changes proposed for the Nasdaq Opening and Closing Crosses, none of the proposed changes will impact the manner in which executions occur on NOM. According to Nasdaq, the proposed changes to the Opening and Closing Crosses are designed to improve both the quality and the predictability of executions during these two critical periods of the day. In addition, Nasdaq states that the proposed changes will

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

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

more closely conform Nasdaq's options and equities trading platform, thereby facilitating improved trading by Nasdaq members.

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 notes, to the contrary, that the proposed rules are designed to effectuate the orderly launch of NOM, the seventh U.S. options market, which, Nasdaq believes, will increase competition for the quotation and trading of standardized equity and index options.

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

Nasdaq has designated the proposed rule change as one that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, as required under Rule 19b-4(f)(6)(iii),<sup>10</sup> Nasdaq provided the Commission with written notice of its intention to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

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<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

Pursuant to Rule 19b-4(f)(6)(iii) under the Act, a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Nasdaq has asked the Commission to waive the 30-day operative delay to allow the proposal to be operative on March 31, 2008, the day Nasdaq plans to launch NOM. Nasdaq states that it has carefully planned a detailed and thorough testing and roll-out schedule for the NOM market, and has coordinated this schedule with numerous industry participants. Nasdaq believes that disrupting this schedule for the proposed modifications would cause disproportionate inconvenience and delay the launch of a process that will benefit investors. The Commission notes that waiving the 30-day operative delay will allow Nasdaq to launch NOM pursuant to its planned schedule. Further, the proposal will clarify NOM's rules, correct technical errors, and provide greater consistency between NOM's opening and closing procedures and the opening and closing procedures Nasdaq uses in its equity market. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and therefore designates that the proposal become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2008-022 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 No. SR-NASDAQ-2008-022. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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 No. SR-NASDAQ-2008-022 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).