

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54253; File No. SR-NASDAQ-2006-018)

July 31, 2006

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Technical and Conforming Changes to Nasdaq's 2000 and 3000 Series Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 25, 2006, The NASDAQ Stock Market LLC ("Exchange" or "Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has filed this proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the 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 conform the Rule 2000 and 3000 Series of Nasdaq's rules to certain changes made to the Rule 2000 and 3000 Series of the rules of National Association of Securities Dealers, Inc. ("NASD") since approval of Nasdaq's rules by the Commission in January 2006, to make several minor modifications, and to correct certain typographical errors in the approved rules. Nasdaq proposes to implement the proposed rule change immediately.

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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).

The text of the proposed rule change is included below. Proposed new language is underlined; deletions are [bracketed].

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2111. Trading Ahead of Customer Market Orders

(a) Nasdaq members and persons associated with a member shall comply with NASD Rule 2111 as if such Rule were part of Nasdaq's rules.

(b) For purposes of this Rule, references to IM-2110-2, Rule 2320, and Rule 3110[, and Rule 6440] shall be construed as references to Nasdaq IM-2110-2, Nasdaq Rule 2320, and Nasdaq Rule 3110[, and Nasdaq Rule 6440].

(c) Nasdaq members and persons associated with a member relying upon the exemption set forth in NASD Rule 2111(f) shall comply with the provisions of the NASD Rule 4600 Series and 6400 Series cited therein as if such Rules were part of Nasdaq's Rules. Nasdaq and NASD Regulation, an affiliate of NASD, are parties to the Regulatory Contract pursuant to which NASD Regulation has agreed to perform certain functions on behalf of Nasdaq. Therefore, Nasdaq members are complying with Nasdaq Rule 2111(f) by complying with NASD Rule 2111(f) as written, including, for example, filing requirements and notifications. In addition, functions performed by NASD Regulation, NASD Regulation departments, and NASD Regulation staff under Nasdaq Rule 2111(f) are being performed by NASD Regulation on behalf of Nasdaq.

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2520. Margin Requirements

(a) No change.

(b) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with the initial and maintenance margin requirements of Regulation T and the NASD Rule 2520 as if such Rules were part of Nasdaq's Rules.

(c) No change.

~~[(c)]~~(d) Pursuant to the Rule 9600 Series, Nasdaq may exempt any member from the requirements contained in paragraph (e)(3) of NASD Rule 2520, as applied to Nasdaq members through Nasdaq Rule 2520, if the account referenced in paragraph (e)(3) of NASD Rule 2520 is confined exclusively to transactions and positions in exempted securities.

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#### 2810. Direct Participation Programs

(a) No change.

(b) For purposes of this Rule 2810:

(1) – (2) No change.

(3) for purposes of this Rule only, Nasdaq members and their associated persons shall comply with applicable provisions of NASD Rule 2710 as ~~[of]~~if such Rule were part of Nasdaq's Rules.

(c) No change.

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#### 2852. Reporting Requirements

(a) Each member shall file with Nasdaq Regulation a report with respect to each account in which the member has an interest, each account of a partner, officer, director or employee of such member, and each customer account of the member, which has established an aggregate position of 100,000 index warrants on the same side of the market in an index warrant issue

listed on Nasdaq, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market traded on Nasdaq or another national securities exchange.

(b) Such report shall identify the person or persons having an interest in such account and shall identify separately the total number of each type of index warrant that comprises the reportable position in such account. The report shall be in such form as may be prescribed by Nasdaq Regulation and shall be filed no later than the close of business on the next business day following the day on which the transaction or transactions necessitating the filing of such report occurred. Whenever a report shall be required to be filed with respect to an account pursuant to this Rule, the member filing such report shall file with Nasdaq Regulation such additional periodic reports with respect to such account as Nasdaq Regulation may from time to time prescribe.

#### 2853. Liquidation of Index Warrant Positions

(a) Whenever Nasdaq Regulation determines that a person or group of persons acting in concert holds or controls an aggregate position (whether short or long) in index warrants overlying the same index in excess of the position limitations established by Rule 2850, it may, when deemed necessary or appropriate in the public interest and for the protection of investors, direct any member or all members carrying a position in index warrants overlying such index for such person or persons to liquidate such position or positions, or portions thereof, as expeditiously as possible and consistent with the maintenance of an orderly market, so as to bring such person or persons into compliance with the position limitations contained in Rule 2850.

(b) Whenever such a directive is issued by Nasdaq Regulation no member receiving notice thereof shall accept and/or execute for any person or persons named in such directive any order to purchase or sell short any index warrants based on the same index, unless in each instance express approval therefor is given by Nasdaq Regulation, or the directive is rescinded.

2854. [Trading Halts or Suspensions] Reserved

[(a) The trading in an index warrant on Nasdaq shall be halted whenever Nasdaq Regulation shall conclude that such action is appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are the following:]

[(1) trading has been halted or suspended in underlying stocks whose weighted value represents 20% or more of the index value;]

[(2) the current calculation of the index derived from the current market prices of the stocks is not available;]

[(3) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.]

[(b) Trading in index warrants that has been the subject of a trading halt or suspension may resume if Nasdaq Regulation determines that the conditions which led to the halt or suspension are no longer present or that the interests of a fair and orderly market are served by a resumption of trading. In either event, the reopening may not occur until Nasdaq Regulation has determined that trading in underlying stocks whose weighted value represents more than 50% of the index is occurring.]

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IM-3010-1. Standards for Reasonable Review

(a) Nasdaq members and persons associated with a member shall comply with NASD

Interpretive Material IM-3010-1 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) references to Rule 3010 shall be construed as references to Nasdaq Rule 3010;

and

(2) references to "NASD Rules" shall be construed as references to "Nasdaq Rules".

IM-3010-2. Guidance on Heightened Supervision Requirements

Nasdaq members shall comply with NASD Notice to Members 97-19 as if such Rule were part of Nasdaq's Rules.

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IM-3011-1. Independent Testing Requirements

Nasdaq members and persons associated with a member shall comply with NASD

Interpretive Material IM-3011-1 as if such Rule were part of Nasdaq's Rules. For purposes of this Rule, references to Rule 3011 shall be construed as references to Nasdaq Rule 3011.

IM-3011-2. Review of Anti-Money Laundering Compliance Person Information

Nasdaq members and persons associated with a member shall comply with NASD

Interpretive Material IM-3011-2 as if such Rule were part of Nasdaq's Rules. For purposes of this Rule, references to Rule 3011 shall be construed as references to Nasdaq Rule 3011.

3012. Supervisory Control System

(a) Members and persons associated with a member shall comply with NASD Rule 3012 as if such Rule were part of Nasdaq's rules. Nasdaq and NASD Regulation, an affiliate of

NASD, are parties to the Regulatory Contract pursuant to which NASD Regulation has agreed to perform certain functions on behalf of Nasdaq. Therefore, Nasdaq members are complying with Nasdaq Rule 3012 by complying with NASD Rule 3012 as written, including, for example, filing requirements and notifications. In addition, functions performed by NASD Regulation, NASD Regulation departments, and NASD Regulation staff under Nasdaq Rule 3012 are being performed by NASD Regulation on behalf of Nasdaq.

(b) No change.

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#### 3080. Disclosure to Associated Persons When Signing Form U[-]4

Nasdaq Members shall comply with NASD Rule 3080 as if such Rule were part of Nasdaq's Rules. In lieu of incorporating in the written statement the language in paragraph (2) of NASD Rule 3080, members shall include the following provision:

A claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated under Nasdaq rules. Such a claim may be arbitrated under Nasdaq rules only if the parties have agreed to arbitrate it, either before or after the dispute arose. The rules of other arbitration forums may be different.

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#### 3110. Books and Records

(a) – (e) No change.

(f) Requirements When Using Predispute Arbitration Agreements With Customers

(1) – (2) No change.

(3) (A) A member shall provide a customer with a copy of any predispute arbitration clause or customer agreement executed between the customer and the

member, or inform the customer that the member does not have a copy thereof, within ten business days of receipt of the customer's request. If a customer requests such a copy before the member has provided the customer with a copy pursuant to subparagraph (2)(B) of this [Rule]paragraph, the member must provide a copy to the customer by the earlier date required by this subparagraph (3)(A) or by subparagraph (2)(B).

(B) No change.

(4) – (7) No change.

(g) – (j) No change.

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3130. Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties

(a) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with NASD Rule 3130 (except NASD Rule 3130(a)) as if such Rule were part of Nasdaq's Rules.

(b) No change.

IM-3130. Restrictions on a Member's Activity

(a) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with NASD Interpretive Material 3130 (except IM-3130(d)) as if such Rule were part of Nasdaq's Rules.

(b) No change.

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3360. Short-Interest Reporting



(a) To the extent such information is not otherwise reported to the NASD in conformance with NASD Rule 3360, each member shall maintain a record of total "short" positions in all customer and proprietary firm accounts in securities listed on Nasdaq and shall regularly report such information to Nasdaq in such a manner as may be prescribed by Nasdaq. [For the purposes of this rule, the term "customer" includes a broker/dealer.] Reports shall be made as of the close of the settlement date designated by Nasdaq. Reports shall be received by Nasdaq no later than the second business day after the reporting settlement date designated by Nasdaq.

(b) For purposes of this Rule[,];

(1) "short" positions to be reported are those resulting from "short sales" as that term is defined in SEC Rule 200[, under the Act]of Regulation SHO, with the exception of positions that meet the requirements of Subsections (e)(1), (6), (7), (8), and (10) of SEC Rule 10a-1 adopted under the Act[.]; and

(2) the term "customer" includes a broker-dealer.

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### 3380. Order Entry and Execution Practices

No member or associated person may engage in conduct that has the intent or effect of splitting any order into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind amount to be received by the member or associated person as a result of the execution of such orders or the transaction reporting of such executions. For purposes of this rule, "monetary or in-kind amount" shall be defined to include, but not be limited to, any credits, commissions, gratuities, payments for or rebates of fees, or any other payments of value to the member or associated person.

338[0]1. SEC Rule 19c-1 — Governing Certain Off-Board Agency Transactions by Members of  
National Securities Exchanges

No rule, stated policy, or practice of this exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability of any member acting as agent to effect any transaction otherwise than on this exchange with another person (except when such member also is acting as agent for such other person in such transaction), in any equity security listed on this exchange or to which unlisted trading privileges on this exchange have been extended.

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

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

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

1. Purpose

Nasdaq is modifying its 2000 and 3000 Series Rules, which are based to a substantial extent on comparable NASD Rules, to conform them to certain changes made to the Rule 2000 and 3000 Series of the rules of NASD since approval of Nasdaq's rules by the Commission in January 2006, to make several minor modifications, and to correct certain typographical errors in the approved rules. Specifically, Nasdaq is:

- Amending Nasdaq Rule 2111, which incorporates NASD Rule 2111 by reference, to reflect certain changes to the underlying text of that rule made by SR-NASD-2005-139.<sup>5</sup>
- Amending Nasdaq Rules 2852 and 2853 at the request of SEC staff to reflect that certain functions identified therein will be performed by Nasdaq Regulation staff.
- Deleting Nasdaq Rule 2854, governing trading halts and suspension of index warrants, so that it may be transferred to Nasdaq Rule 4120, which contains Nasdaq's other rules concerning trading halts and suspensions. The change to Nasdaq Rule 4120 will be made by a corresponding filing concerning technical amendments to the Nasdaq 4000 Series rules that Nasdaq will submit on or prior to August 1, 2006 on an immediately effective basis.
- Incorporating by reference NASD IM-3013-1, which was added to the NASD Rules by SR-NASD-2003-104,<sup>6</sup> and making a conforming change to the numbering of current Nasdaq IM-3010.
- Incorporating by reference NASD IM-3011-1 and IM-3011-2, which were added to the NASD Rules by SR-NASD-2005-066.<sup>7</sup>
- Amending Nasdaq Rule 3012, which incorporates NASD Rule 3012 by reference, to include language that reflects a filing requirement added to the NASD Rule by SR-NASD-2005-084.<sup>8</sup>

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<sup>5</sup> See Securities Exchange Act Release No. 52998 (December 22, 2005), 70 FR 77223 (December 29, 2005) (SR-NASD-2005-139).

<sup>6</sup> See Securities Exchange Act Release No. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (SR-NASD-2003-104).

<sup>7</sup> See Securities Exchange Act Release No. 53030 (December 28, 2005), 71 FR 632 (January 5, 2006) (SR-NASD-2005-066).

<sup>8</sup> See Securities Exchange Act Release No. 52799 (November 18, 2005), 70 FR 71573 (November 29, 2005) (SR-NASD-2005-084).

- Amending Nasdaq Rule 3360 to reflect minor changes made to the comparable NASD Rule by SR-NASD-2005-112.<sup>9</sup>
- Adopting new Nasdaq Rule 3380, which is based on NASD Rule 3380, and which was added to the NASD Rules by SR-NASD-2005-144,<sup>10</sup> and renumbering existing Nasdaq Rule 3380 as Nasdaq Rule 3381.
- Amending Nasdaq Rules 2520, 2810, 3080, 3110, 3130, and Nasdaq IM-3130 to correct typographical errors.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>11</sup> in general, and with Section 6(b)(5) of the Act,<sup>12</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. The proposed rule change conforms the Rule 2000 and 3000 Series of Nasdaq's rules to certain changes made to the Rule 2000 and 3000 Series of NASD rules since approval of Nasdaq's rules by the Commission in January 2006, makes several minor modifications and corrects certain typographical errors in the approved rules.

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<sup>9</sup> See Securities Exchange Act Release No. 53224 (February 3, 2006), 71 FR 7101 (February 10, 2006) (SR-NASD-2005-112).

<sup>10</sup> See Securities Exchange Act Release No. 53371 (February 24, 2006), 71 FR 11008 (March 3, 2006).

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6)<sup>14</sup> thereunder because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.<sup>15</sup>

Nasdaq has requested that the Commission waive the 30-day pre-operative period requirement for “non-controversial” proposals, based upon a representation that such waiver will allow Nasdaq to implement the rule changes, which have either recently been made effective as changes to NASD rules or are technical in nature, prior to the time when Nasdaq begins to operate as a national securities exchange. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Waiver of the 30-day

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 C.F.R. 240.19b-4(f)(6).

<sup>15</sup> As required under Rule 19b-4(f)(6)(iii), Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date.

operative period will allow Nasdaq to implement these changes immediately so that they can be in place prior to the time Nasdaq begins to operate as a national securities exchange.

Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>16</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

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

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2006-018 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-2006-018. 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

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<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 available publicly. All submissions should refer to File Number SR-NASDAQ-2006-018 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Nancy M. Morris  
Secretary

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