

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56759; File No. SR-NASDAQ-2007-069)

November 7, 2007

Self-Regulatory Organization; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change and Amendment No. 1 Thereto to Amend Its Rule Governing the Relation of a Nasdaq Market Maker's Quotations to the Prevailing Market

On August 1, 2007, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to eliminate a requirement governing the relation of Nasdaq market makers' quotations to the prevailing market. On September 19, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on October 5, 2007.³ The Commission received no comments regarding the proposal, and is thereby approving the proposed rule change as modified by Amendment No. 1.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁵ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national securities system, and, in general, to protect investors and the public interest.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 56586 (October 1, 2007), 72 FR 57085.

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

Nasdaq proposes to amend Rule 4613(c) to eliminate the requirement that a Nasdaq market maker's quotations be "reasonably related to the prevailing market." The requirement was adopted in 1987, at which time Nasdaq was part of the National Association of Securities Dealers, Inc. and operated an over-the-counter market with competing dealers. Nasdaq states that the requirement is no longer meaningful, given the regulatory changes, as well as the changes Nasdaq has made to the way its market operates in the last 20 years. However, for each security in which they are registered, market makers would continue to be required to be willing to buy and sell the security for their own account on a continuous basis and at all times maintain a two-sided, attributable quotation that is displayed in the Nasdaq Quotation Montage. The Commission believes that the proposal is reasonable in that it mirrors the market maker definition set forth in Section 3(a)(38) of the Act⁶ and is consistent with market maker obligations contained in rules of other national securities exchanges.⁷ Furthermore, the Commission notes that Nasdaq has represented that it will carefully monitor the performance of market makers to determine if the proposal has any impact on the extent to which market makers quote at or near the inside market.⁸

⁶ 15 U.S.C. 78c(a)(38).

⁷ See, e.g., NYSE Arca Rule 7.23.

⁸ In addition, the Commission notes that this rule change does not affect the market maker exception from the "locate" requirement of Regulation SHO under the Act. Rule 203(b)(2)(iii) of Regulation SHO provides an exception from the "locate" requirement for short sales executed by market makers, as defined in Section 3(a)(38) of the Act, but only in connection with bona-fide market making activities.

To qualify for Regulation SHO's "locate" exception, a broker-dealer must be both a market maker in the specific security and engaged in bona fide market making at the time of the short sale for which the broker-dealer is claiming the exception. Thus, a broker-dealer's general status as a market maker or its status as a market maker in the security being sold short does not qualify it for the exception. Further, Regulation SHO's "locate" requirement applies on a transaction-by-transaction basis and, therefore, a market maker must determine whether it is engaged in bona fide market making for each short sale

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NASDAQ-2007-069), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

transaction. See Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).