

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58069; File No. SR-NASDAQ-2008-054]

### 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 Rules

June 30, 2008.

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 June 13, 2008, The NASDAQ Stock Market LLC ("Nasdaq" or "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 prepared by the Exchange. Nasdaq designated the proposed rule change as "non-controversial" under 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 miscellaneous non-controversial changes to the Nasdaq rulebook. Nasdaq proposes to implement the proposed rule change immediately. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://nasdaq.complinet.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, 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. 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 proposes to make miscellaneous non-controversial changes to the Nasdaq rulebook. When Nasdaq separated from the National Association of Securities Dealers, Inc. ("NASD") and began to operate as a national securities exchange in 2006, it adopted a rulebook with provisions regulating member conduct that was designed to parallel the NASD rulebook in many respects. There were three compelling reasons for this approach. First, most Nasdaq members were expected to be members of NASD that had traded on the Nasdaq while it was a facility of NASD, so these members were accustomed to the requirements of NASD rules. Second, adopting rules at variance with NASD rules would impose unnecessary regulatory burdens on Nasdaq members by requiring them to comply with a new rule set. Third, adopting parallel rules allowed Nasdaq and NASD to enter into an agreement under Rule 17d-2 under the Act<sup>5</sup> (the "17d-2 Agreement") to allocate responsibility to NASD for enforcement of common rules with respect to common members.<sup>6</sup>

The main purpose of this rule change is to adopt conforming changes to reflect recent changes to certain NASD rules that impact corresponding Nasdaq rules, and to make other related changes to ensure that duplicative regulatory burdens are not imposed on Nasdaq members. Second, Nasdaq is also amending its rules to reflect the name change of NASD to the Financial Industry Regulatory Authority, Inc. ("FINRA") following its merger with elements of the New York Stock Exchange ("NYSE") regulatory unit. As a result of this merger, the corporate name of the entity has changed, but NASD rules continue to be denominated as such.<sup>7</sup> Accordingly, references in the Nasdaq rules to NASD rules are not being changed at this time, but references to the corporate entity and its members are being changed. Third, Nasdaq is making a range of changes aimed at deleting obsolete references and correcting typographical errors.

<sup>5</sup> 17 CFR 240.17d-2.

<sup>6</sup> See Securities Exchange Act Release No. 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (File No. 4-517).

<sup>7</sup> The rules of FINRA include both NASD rules and NYSE Regulation rules incorporated by FINRA. See <http://www.finra.org/RulesRegulation/FINRARules/index.htm>.

Specifically, Nasdaq proposes to make the following changes:

- Amending Nasdaq Rule 1017 to conform the rule more closely to NASD Rule 1017 so that the rule continues to be covered by the 17d-2 Agreement. Nasdaq Rule 1017 pertains to approval of changes in ownership, control, or business operations by Nasdaq members. In SR-NASDAQ-2007-085,<sup>8</sup> Nasdaq adopted amendments to Nasdaq Rule 1017 to shorten the time-frame for review of applications under the rule and to simplify the standards for approval. These changes were intended to benefit Nasdaq members that are not required to become members of FINRA because they conduct a limited business that does not involve the carrying of customer accounts.

As a result of the amendments to the Nasdaq Rule, however, the content of NASD Rule 1017 and Nasdaq Rule 1017 are now somewhat different and therefore may not be considered eligible for coverage under the 17d-2 Agreement. However, Nasdaq believes that no useful regulatory purpose would be served by requiring duplicative applications to FINRA and Nasdaq, since a joint member could not implement a change requiring an application to FINRA until FINRA had granted approval. Accordingly, Nasdaq is amending the rule to reinstate the time frames for application review previously in effect and to incorporate by reference to NASD Rule 1014 the standards for approval of applications by FINRA members.<sup>9</sup> Thus, the coverage of the rule would be identical to the NASD rule for joint members, while the simplified rule would continue to be applicable to Nasdaq members that are not required to become members of FINRA. Nasdaq is also making conforming changes to Nasdaq Rules 1012 and 1014.

- Amending Nasdaq Rule 1060 to remove the registration exemption for

<sup>8</sup> See Securities Exchange Act Release No. 56917 (December 6, 2007), 72 FR 70632 (December 12, 2007) (SR-NASDAQ-2007-085).

<sup>9</sup> Nasdaq incorporates by reference a range of NASD rules, thereby ensuring that Nasdaq members and FINRA members are subject to comparable regulatory standards, reducing regulatory burdens on these members, and reducing the extent to which Nasdaq must amend its own rules to maintain comparable regulatory standards. In connection with this filing, Nasdaq plans to submit an amended letter to the Commission requesting an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to those Nasdaq rules that are effected solely by virtue of a change to a cross-referenced NASD rule. See Letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Nancy Morris, Secretary, Commission (January 12, 2006); Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131).

<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).

associated persons of broker-dealers engaged exclusively in options trading. The exemption is inconsistent with recently approved rules for the NASDAQ Options Market, which requires registration of such persons.<sup>10</sup>

- Adopting new Nasdaq Rule 1160 and amending Nasdaq Rules 1120, 1150, and 3520 and IM-3011-2 to conform to changes to corresponding NASD rules<sup>11</sup> regarding the time frame for members to report changes in contact information. NASD Rule 1160 contemplates that FINRA members will use the NASD Contact System to report changes; because this system is not available to non-FINRA members at this time, the corresponding Nasdaq Rule requires use of this system by Nasdaq members that are FINRA members and submissions via e-mail or paper mail for other Nasdaq members.

- Amending Nasdaq IM-2110-3, IM-2110-6, and IM-2110-7, whose text is virtually identical to corresponding NASD rules, by requiring Nasdaq members to comply with the corresponding NASD rules, thereby incorporating by reference the NASD rules.<sup>12</sup> Similarly, Nasdaq is incorporating by reference new NASD Rules 2290,<sup>13</sup> 2342,<sup>14</sup> 2441,<sup>15</sup> and 3160.<sup>16</sup>

- Amending Nasdaq Rule 2320 and adopting IM-2320 to reflect changes made to the corresponding NASD Rules by SR-NASD-2004-026.<sup>17</sup>

- Amending Nasdaq Rule 2340 to reflect changes made to the corresponding NASD Rule by SR-NASD-2006-066.<sup>18</sup>

- Amending Nasdaq IM-2210-4, to adopt a simplified version of the changes made to NASD IM-2210-4 by SR-FINRA-2007-014.<sup>19</sup> Specifically,

while NASD IM-2210-4 requires FINRA members advertising FINRA membership on their Web sites to provide a link to the FINRA Web site in order to provide investors with information about FINRA, Nasdaq believes that such a requirement would be inappropriate for a for-profit exchange such as Nasdaq. The Nasdaq rule, however, like the FINRA rule, will provide that members may indicate Nasdaq membership in any communication with the public, provided that the communication complies with the applicable standards of Nasdaq Rule 2210 (which governs member advertising) and neither states nor implies that Nasdaq, or any other corporate name or facility affiliated with Nasdaq, or any other regulatory organization endorses, indemnifies, or guarantees the member's business practices, selling methods, the class or type of securities offered, or any specific security.

- Amending Nasdaq Rule 3010 to reflect changes made to the corresponding NASD Rule by SR-NASD-2003-104.<sup>20</sup>

- Amending Nasdaq IM-4390 and Rules 3390, 4611, 4619, 4625, 4756, 4758, 4761, and 6430 (redesignated as Rule 3350), and deleting Nasdaq Rules 4602 and 4759 and IM-4759-1, to reflect the termination of the Intermarket Trading System Plan and the NYSE Direct + System.

- Amending Nasdaq Rule 4613 and IM-4390 to eliminate obsolete references to previously deleted rules.

- Amending Nasdaq Rule 4618 to clarify that transactions in any security, not just Nasdaq-listed securities, may be settled "ex-clearing" if the parties to the transaction agree.

- Amending Nasdaq Rule 4625 to reflect the previous deletion of a requirement that market maker quotations be reasonably related to the prevailing market.<sup>21</sup>

- Amending Nasdaq Rule 4751 to correct technical errors in the description of the scope of securities traded on the Nasdaq Market Center, the definition of "Nasdaq ECNs," and the definition of the "Price to Comply Post Order," and to remove obsolete language associated with the transition by the Nasdaq Market Center to the Regulation NMS environment.
- Amending Nasdaq Rule 4758 to clarify the description of Nasdaq's order routing options.

- Redesignating Nasdaq Rules 6430 and 6440 as Rules 3350 and 3351 and making amendments to reflect amendments to a corresponding NASD rule, Rule 5120, that were made by SR-NASD-2006-104.<sup>22</sup>

- Amending Nasdaq Rule 6951 to reflect changes to the corresponding NASD Rule made by SR-NASD-2007-028.<sup>23</sup>

- Amending Nasdaq Rules 9556, 9800, 9810, and 9860 to reflect changes to the corresponding NASD Rules made by SR-NASD-2005-061 and SR-NASD-2007-033.<sup>24</sup>

- Amending Nasdaq IM-10100 and Rules 10100 and 10102 to reflect the replacement by FINRA of the Rule 10000 Series with the Rule 12000 and Rule 13000 Series.<sup>25</sup> The NASD Rule 10000 Series governed all arbitration disputes submitted by members, associated persons and customers. The NASD replaced that single rule series with two rule series: The 12000 Series governing disputes with customers and the 13000 Series governing industry disputes. Nasdaq members are subject to the new NASD Rule 12000 and 13000 Series, just as they were subject to the old NASD 10000 Series.

- Amending Nasdaq Rule 11810 to reflect changes to the corresponding NASD Rule made by SR-NASD-2007-035.<sup>26</sup>

- Amending Nasdaq Rules 0115, 1002, 2210, 2211, 3010, 3110, 4380, 9120, and 11630 and IM-3011-1 and IM-4390 to correct typographical errors.

Amending Nasdaq Rules 0120, 0130, 1001, 1002, 1012, 1022, 1050, 1060, 1120, 2111, 2210, 2361, 2520, 3010, 3012, 3020, 3070, 3150, 3510, 4120, 4200, 4619, 4624, 6951, 6954, 6955, 8001, 8210, 8211, 9001, 9120, 9521, 9552, 9553, 9554, 9555, 9556, 9557, 9558, 9810, 10001, 10100, 11210, 11860, and 11870, and IM-1002-4, IM-1022-2, IM-2110-2, IM-10100, and IM-11130 to reflect the name change of NASD to FINRA.

- Amending Nasdaq Rule 2140 to reflect the change in the name of the Commission's Division of Market

<sup>10</sup> See Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and -080).

<sup>11</sup> See Securities Exchange Act Release No. 56179 (August 1, 2007), 72 FR 44203 (August 7, 2007) (SR-NASD-2007-034).

<sup>12</sup> See *supra* note 9.

<sup>13</sup> See Securities Exchange Act Release No. 56645 (October 11, 2007), 72 FR 59317 (October 19, 2007) (SR-NASD-2005-080).

<sup>14</sup> See Securities Exchange Act Release No. 55737 (May 10, 2007), 72 FR 27606 (May 16, 2007) (SR-NASD-2006-124).

<sup>15</sup> See Securities Exchange Act Release No. 54088 (June 30, 2006), 71 FR 38950 (July 10, 2006) (SR-NASD-2004-135).

<sup>16</sup> See Securities Exchange Act Release No. 54456 (September 15, 2006), 71 FR 56203 (September 26, 2006) (SR-NASD-2006-064).

<sup>17</sup> See Securities Exchange Act Release No. 54339 (August 21, 2006), 71 FR 50959 (August 28, 2006) (SR-NASDAQ-2004-026).

<sup>18</sup> See Securities Exchange Act Release No. 54811 (November 22, 2006), 71 FR 69161 (November 29, 2006) (SR-NASD-2006-066).

<sup>19</sup> See Securities Exchange Act Release No. 56615 (October 4, 2007), 72 FR 58136 (October 12, 2007) (SR-FINRA-2007-014).

<sup>20</sup> See Securities Exchange Act Release No. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (SR-NASD-2003-104).

<sup>21</sup> See Securities Exchange Act Release No. 56759 (November 7, 2007), 72 FR 64102 (November 14, 2007) (SR-NASDAQ-2007-069).

<sup>22</sup> See Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (SR-NASD-2006-104).

<sup>23</sup> See Securities Exchange Act Release No. 56003 (July 2, 2007), 72 FR 37287 (July 9, 2007) (SR-NASD-2007-028).

<sup>24</sup> See Securities Exchange Act Release Nos. 51860 (June 16, 2005), 70 FR 36427 (June 23, 2005) (SR-NASD-2005-061); and 55819 (May 25, 2007), 72 FR 30895 (June 4, 2007) (SR-NASD-2007-033).

<sup>25</sup> See Securities Exchange Act Release No. 55158 (January 24, 2007), 72 FR 4574 (January 31, 2007) (SR-NASD-2003-158 and SR-NASD-2004-011).

<sup>26</sup> See Securities Exchange Act Release No. 56972 (December 14, 2007), 72 FR 73927 (December 28, 2007) (SR-NASD-2007-035).

Regulation to the Division of Trading and Markets.

- Amending Nasdaq IM-10100 to correct the names of several exchanges listed in the rule.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>27</sup> in general, and Section 6(b)(5) of the Act,<sup>28</sup> in particular, in that it 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 makes miscellaneous changes to Nasdaq rules to maintain appropriate parallelism with corresponding NASD rules, in order to prevent unnecessary regulatory burdens and promote efficient administration of the rules. The change also makes minor updates and corrections to certain Nasdaq rules.

### *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

Because the proposed rule change 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 after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>29</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>30</sup> As required under Rule

19b-4(f)(6)(iii),<sup>31</sup> Nasdaq provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, prior to the date of filing of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative for 30 days after the date of filing.<sup>32</sup> However, Rule 19b-4(f)(6)(iii)<sup>33</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day operative delay because the proposed rule change: (1) makes miscellaneous changes to Nasdaq rules in order to maintain appropriate parallelism with corresponding NASD rules, prevent unnecessary regulatory burdens, and promote efficient administration of the rules; and (2) makes minor updates and corrections to certain Nasdaq rules.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow Nasdaq to immediately conform its rules to corresponding NASD rules. This will ensure that such Nasdaq rules will continue to be covered by the existing 17d-2 Agreement between Nasdaq and FINRA and that unnecessary duplicatory regulatory burdens are not imposed on Nasdaq members. Further, waiving the operative delay will allow Nasdaq to immediately make minor updates and corrections to certain Nasdaq rules, which are non-substantive and do not raise any regulatory issues. For these reasons, the Commission designates that the proposed rule change become operative immediately.<sup>34</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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-2008-054 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2008-054. 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-2008-054 and should be submitted on or before July 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

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<sup>27</sup> 15 U.S.C. 78f.

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>30</sup> 17 CFR 240.19b-4(f)(6).

<sup>31</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>35</sup> 17 CFR 200.30-3(a)(12).