

currently requires that the number of directors on the board of directors ("Board") of the Exchange be fixed at 15, to be comprised of: (i) Two "PMM Directors"<sup>4</sup>; (ii) two "CMM Directors"<sup>5</sup>; (iii) two "EAM Directors"<sup>6</sup>; (iv) eight "Non-Industry Directors"<sup>7</sup>—at least two of whom must be "Public Directors"<sup>8</sup>—and (v) the person holding the office of President and CEO.

The proposed rule change would remove the requirement that the President be the CEO, and amend the ISE Constitution to require that the director position described in subparagraph (v) above be held by the CEO. The proposal also would amend the Constitution to establish the number of directors at no less than 15 and no more than 16.

In conjunction with these changes, Sole LLC Member,<sup>9</sup> in its sole and

<sup>4</sup> As set forth in Article III, Section 3.2(b)(i) of the ISE Constitution, a PMM Director is an officer, director, or partner of a Primary Market Maker elected by a plurality of the holders of the PMM Rights (see Article XII, Section 12.1 of the ISE Constitution) voting together as a class.

<sup>5</sup> As set forth in Article III, Section 3.2(b)(ii) of the ISE Constitution, a CMM Director is an officer, director, or partner of a Competitive Market Maker elected by a plurality of the holders of the CMM Rights (see Article XII, Section 12.2 of the ISE Constitution) voting together as a class.

<sup>6</sup> As set forth in Article III, Section 3.2(b)(iii) of the ISE Constitution, an EAM Director is an officer, director, or partner of an Electronic Access Member elected by the plurality of the holders of the EAM Rights (see Article XII, Section 12.3 of the ISE Constitution) voting together as a class.

<sup>7</sup> As set forth in Article III, Section 3.2(b)(iii) of the ISE Constitution, a "Non-Industry Director" is a director elected by the Sole LLC Member (see *infra*, note 9) who meets the requirements to be a "non-industry representative." A "non-industry representative" is defined in Article XIII, Section 13.1(w) as any person that would not be considered an "industry representative" (see below) as well as: (i) a person affiliated with a broker or dealer that operates solely to assist the securities-related activities of the business of non-member affiliates, (ii) an employee of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who is primarily engaged in the business of the non-member entity.

An "industry representative" is defined in Article XIII, Section 13.1(t) as a person who is an officer, director, or employee of a broker or dealer or who has been employed in any such capacity at any time within the prior three years, as well as a person who has a consulting or employment relationship with or has provided professional services to the Exchange and a person who had any such relationship or provided any such services to the Exchange at any time within the prior three years.

<sup>8</sup> As set forth in Article III, Section 3.2(b)(iv) of the ISE Constitution, a "Public Director" must be a "public representative," defined in Article XIII, Section 13.1(dd) as a non-industry representative (see *supra*, note 7) who has no material business relationship with a broker or dealer or the Exchange.

<sup>9</sup> As set forth in Article I, Section 1.1 of the ISE Constitution, the ISE is a single member limited liability company with one limited liability company interest currently authorized (the "LLC Interest"). The holder of the LLC interest is

absolute discretion, would be able to elect one additional director ("Former Employee Director") who was employed by the Exchange at any time during the three-year period prior to his or her initial election but otherwise meets the definition of a Non-Industry Director under the Exchange's Constitution.<sup>10</sup> The proposed rule change also would make conforming amendments to the ISE LLC Agreement.

According to the Exchange, the proposed modifications to its governance structure would provide it with the flexibility to structure its board of directors in a way that would enable the ISE to attract and keep talented individuals.

### III. Discussion

After careful review, 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. Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(1) of the Act,<sup>11</sup> which requires, among other things, that an exchange be so organized and have the capacity to be able to carry out the purposes of the Act; and with section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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 market system, and, in general, to protect investors and the public interest.<sup>13</sup>

The Commission notes that the additional member that the Sole LLC Member would be permitted to elect to the Board, aside from having been an Exchange employee within the prior

International Securities Exchange Holdings, Inc., which may assign the LLC Interest as provided in the LLC Agreement (the "Sole LLC Member").

<sup>10</sup> The term of a Former Employee Director would expire at the annual meeting of holders of Exchange Rights and the Sole LLC Member held in the second year following the year of his or her election. (Regarding Exchange Rights, see Article I, Section 1.2 of the ISE Constitution and Article VI of the ISE LLC Agreement.) A Former Employee Director would not be permitted to serve on the Board for more than three consecutive terms, but would be eligible for election as a director following a two-year hiatus from service on the Board, provided that he or she meets the relevant requirements. See proposed new Section 3.2(e)(iv) to Article III of the ISE Constitution.

<sup>11</sup> 15 U.S.C. 78f(b)(1).

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

<sup>13</sup> 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).

three years, otherwise would be required to meet the qualifications of a Non-Industry Director. Thus, the Former Employee Director could not be a person who is an officer, director, or employee of a broker or dealer or who has been employed in any such capacity at any time within the prior three years. Further, the Commission notes that, under the proposed rule change, the ISE Constitution would continue to provide that eight of the members of the Exchange's board of directors—out of a maximum total of 16 members—must be non-industry representatives. The Commission believes that this proposed balance with respect to the composition of the Exchange's Board is consistent with other self-regulatory organization governance structures that were approved by the Commission.<sup>14</sup>

### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-ISE-2007-34) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56204; File No. SR-NASDAQ-2007-070]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Certain FINRA Rules Relating to Trading Halts and Disclosure of Disciplinary Information

August 3, 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 August 3, 2007, 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 substantially prepared by Nasdaq.

<sup>14</sup> See, e.g., Securities Exchange Act Release No. 54494 (September 25, 2006), 71 FR 58023 (October 2, 2006).

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

Nasdaq has designated the proposed rule change as one constituting a non-controversial rule change 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 this rule change to add several rules, based on Financial Industry Regulatory Authority, Inc. ("FINRA") rules, that were inadvertently omitted from the Nasdaq rulebook when Nasdaq became a national securities exchange.

The text of the proposed rule change is available on Nasdaq's Web site at <http://www.nasdaq.com>, at Nasdaq's principal office, 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, 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**

To ensure that FINRA members did not incur significant regulatory burdens as a result of Nasdaq separating from FINRA and registering as a national securities exchange, Nasdaq based its rules governing regulatory standards and disciplinary processes on FINRA rules, to a significant extent. Over the past few months, however, it has come to Nasdaq's attention that several FINRA rules that arguably should have been copied into the Nasdaq rulebook were inadvertently omitted during the exchange registration process. Nasdaq believes that adding these rules will enhance Nasdaq's regulatory programs and enhance FINRA's ability to serve as Nasdaq's regulatory services provider

under NASD Regulation's regulatory services agreement with Nasdaq.<sup>5</sup>

Accordingly, Nasdaq is adding new Rule 3340, which explicitly prohibits Nasdaq members and their associated persons from trading during a trading halt. The rule is written broadly to cover effecting transactions or publishing quotations, priced bids and/or offers, unpriced indications of interest, or bids or offers accompanied by a modifier to reflect unsolicited customer interest, in securities, single stock futures, and futures on narrow indexes that could be used as proxies for trading in the halted stock. Although Nasdaq believes that violations of a trading halt by a Nasdaq member could currently be addressed as violations of Rule 2110, which mandates high standards of commercial honor and just and equitable principles of trade, adding the rule to its rulebook will provide added clarity with regard to the requirement.

Second, Nasdaq is adopting IM-8310-3, which provides for release of disciplinary complaints, decisions and other information regarding Nasdaq members and their associated persons.<sup>6</sup> The Rule is drafted to be administered by Nasdaq Regulation, which under Rule 8001, is defined to include FINRA staff, NASD Regulation staff, and FINRA departments acting on Nasdaq's behalf pursuant to Nasdaq's regulatory services agreement.<sup>7</sup> Nasdaq's rule would empower its Chief Regulatory Officer to make certain determinations regarding the scope of disclosure; the comparable FINRA rule looks to the NASD Regulation Board of Directors or the President of FINRA Regulatory Policy and Oversight to make comparable decisions. In all other material respects, however, Nasdaq's IM-8310-3 will be substantively similar to FINRA's comparable Interpretive Material.

##### **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 sections 6(b)(5) of the

Act,<sup>9</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, as amended.

#### *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 with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

Nasdaq has requested that the Commission waive the 30-day operative period for "non-controversial" proposals because it adopts rules that are already part of FINRA rules, and the waiver will allow FINRA to process disciplinary matters as Nasdaq's regulatory services provider in accordance with the disclosure standards provided in IM-8310-3 without delay. In light of the foregoing, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission has determined to waive the operative delay, and the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the

<sup>5</sup> Notwithstanding the fact that Nasdaq has entered into a regulatory services agreement with NASD Regulation to perform some of Nasdaq's functions, Nasdaq retains ultimate legal responsibility for, and control of, such functions.

<sup>6</sup> Among other things, the Interpretive Material contains descriptions of when particular decisions become effective. In this regard, the Interpretive Material is merely describing the parameters otherwise established in the 9000 Series of the Nasdaq Rules. Accordingly, Nasdaq believes that including the descriptions in the Interpretive Material enhances its clarity.

<sup>7</sup> Nasdaq will amend its entire rulebook at a later date to replace references to NASD with references to FINRA.

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

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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

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

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

Act,<sup>12</sup> and Rule 19b-4(f)(6) thereunder,<sup>13</sup> with no operative delay.<sup>14</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-2007-070 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-2007-070. 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-2007-070 and should be submitted on or before September 4, 2007.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56209; File No. SR-NYSE-2007-65]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rule 79A.30 (Miscellaneous Requirements on Stock Market Procedures)

August 6, 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 July 24, 2007, the New York Stock Exchange LLC ("NYSE" 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 substantially prepared by the Exchange. The Exchange filed the proposed rule change as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A)<sup>3</sup> of the Act 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

The Exchange is proposing to amend NYSE Rule 79A.30 to remove the requirement to obtain Floor Official

approval before trading more than one or two dollars away from the last sale. The proposed amendment would preserve the requirement in situations: (i) Where such trades are initiated by a specialist in connection with certain manual transactions when the NYSE market is "slow"; and (ii) where such trades are initiated by the specialist when reaching across the market when the market is "fast." The filing also makes certain non-substantive changes to the language of the rule in order to clarify existing provisions and procedures, and conforms the rule to changes in Exchange rules made subsequent to the last time NYSE Rule 79A.30 was amended.

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.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. NYSE has substantially 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

The Exchange is proposing to amend NYSE Rule 79A.30 to remove the requirement that members obtain prior approval from an Exchange Floor Official for trades that are more than \$1.00 from the last sale when such previous sale is under \$20.00 per share, or more than \$2.00 from the last sale when such previous sale is \$20.00 per share or more. The requirement to obtain approval would continue to apply in situations where: (i) The market is "slow"<sup>5</sup> and a proposed trade results from a pricing decision by the specialist in connection with such market events as, for example, the opening or reopening of trading, the resumption of trading after a gapped quotation has been published, the

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

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

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

<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>5</sup> For purposes of the rule, the NYSE will be considered to be a slow market when displaying a bid or offer (or both) that is not entitled to protection of Rule 611 under Regulation NMS.