

FINRA's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA is amending IM-2210-4 to reflect its new corporate identity and to ensure that its rule regarding the use of its corporate name is current and accurate.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will impose 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 proposed 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> because the foregoing proposed rule 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 if consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such 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.<sup>13</sup>

### **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-FINRA-2007-014 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 Number SR-FINRA-2007-014. 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 offices of FINRA. 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-FINRA-2007-014 and should be submitted on or before November 2, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E7-20118 Filed 10-11-07; 8:45 am]

**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-56604; File No. SR-NASDAQ-2007-080]

#### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of a Proposed Rule Change Relating to the Establishment of the NASDAQ Options Market LLC**

October 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 September 17, 2007, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. 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 establish the NASDAQ Options Market, LLC ("NOM LLC"), a Delaware limited liability company that will operate the NASDAQ Options Market ("NOM") as a Nasdaq facility, as that term is defined in section 3(a)(2) of the Act.<sup>3</sup> In this filing, Nasdaq is submitting to the Commission NOM LLC's Limited Liability Company Agreement ("LLC Agreement"), which is the source of NOM LLC's governance and operating authority, and therefore, functions much like the articles of incorporation and bylaws for a corporation. Nasdaq also is submitting a Delegation Agreement whereby Nasdaq will make a limited delegation to NOM LLC as described in detail below. The texts of the LLC Agreement and the Delegation Agreement, are available on Nasdaq's Web site at <http://www.nasdaq.com>, on the Commission's Web site at <http://www.sec.gov>, at Nasdaq, 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

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

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

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

<sup>14</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. 78c(a)(2).

comments it had 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 a registered national securities exchange and a self-regulatory organization ("SRO") under section 6 of the Act.<sup>4</sup> Under section 6(b) of the Act,<sup>5</sup> a national securities exchange must be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of the Act)<sup>6</sup> to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

Nasdaq has submitted a separate rule proposal to establish rules relating to listing, membership and trading on NOM.<sup>7</sup> Here, Nasdaq proposes that NOM be created as a Nasdaq facility, as that term is defined in section 3(a)(2) of the Act,<sup>8</sup> and that it be operated by NOM LLC, a wholly-owned subsidiary of Nasdaq. As such, NOM LLC will be an extension of Nasdaq, and NOM and NOM LLC will be subject to self-regulation by Nasdaq and oversight by the Commission. As a facility of Nasdaq, NOM will be subject to Nasdaq's self-regulatory functions and Nasdaq will have regulatory responsibility for the activities of NOM. Nasdaq represents that it has the ability to discharge all regulatory functions related to the facility that it has undertaken to perform by virtue of forming NOM as a facility of Nasdaq.

As part of this filing, Nasdaq is submitting to the Commission the LLC Agreement of NOM LLC, which specifically relates to the governance of NOM LLC that will ensure that Nasdaq has authority over NOM LLC to fulfill Nasdaq's responsibility for all regulatory functions related to NOM. The primary purpose of this rule filing is to establish

that Nasdaq's current corporate and self-regulatory structures along with the proposed structure of NOM LLC as a wholly-owned subsidiary are sufficient to ensure that NOM LLC and NOM will be operated and regulated in a manner that is consistent with the Act.

*Nasdaq Corporate Structure:* The Commission, in approving Nasdaq's registration as a national securities exchange, determined that Nasdaq's current structure and self-regulatory functions are adequately designed to ensure the completeness and independence of regulation of the Exchange.<sup>9</sup> The Nasdaq Stock Market, Inc. ("NASDAQ Inc.") is currently organized as a holding company with multiple subsidiaries, including the Exchange and the Trade Reporting Facility LLC, which operates the joint Nasdaq/FINRA TRF. Although NASDAQ Inc. does not itself carry out regulatory functions, its activities with respect to the operation of the Exchange were designed to be consistent with, and not interfere with, the Exchange's self-regulatory obligations. Thus, NASDAQ Inc. corporate documents include provisions that maintain the independence of the Exchange's self-regulatory function from NASDAQ Inc., enable the Exchange to operate in a manner that complies with the federal securities laws, and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act.

For example, NASDAQ Inc. submitted to the Commission's jurisdiction with respect to activities relating to the Exchange, and agreed to provide the Commission with access to its books and records. NASDAQ Inc. also agreed to keep confidential non-public information relating to the self-regulatory function of the Exchange and not to use such information for any non regulatory purpose. In addition, the board of directors of NASDAQ Inc., as well as its officers, employees, and agents are required to give due regard to the preservation of the independence of the Exchange's self-regulatory function. Finally, the NASDAQ Inc. By-Laws require that any changes to the NASDAQ Inc. Certificate of Incorporation and By-Laws be submitted to the Board of Directors of the Exchange ("Exchange Board"), and, if the Exchange Board determines that such amendment is required to be filed with the Commission pursuant to section 19(b) of the Act, such change shall not be effective until filed with, or

filed with and approved by, the Commission.

NASDAQ Inc.'s Certificate of Incorporation imposes limits on direct and indirect changes in control, which prevent any shareholder from exercising undue control over the operation of the Exchange. Specifically, no person who beneficially owns shares of common stock, preferred stock, or notes in excess of five percent of the securities generally entitled to vote may vote the shares in excess of five percent. The Exchange's rules also prohibit Exchange members and persons associated with Exchange members from beneficially owning more than twenty percent of the then-outstanding voting securities of NASDAQ Inc. These rules prevent a member that is a controlling shareholder of an exchange from exerting that controlling influence to direct or otherwise cause the exchange to refrain from diligently monitoring and surveiling the member's conduct or diligently enforcing its rules and the federal securities laws with respect to conduct by the member that may violate such provisions.

The protections, limitations, and requirements provided by the structure established in NASDAQ Inc.'s Certificate of Incorporation and Bylaws will continue to exist and, under this proposal, will apply with equal force to NOM LLC as a facility and wholly-owned subsidiary of the Exchange upon its creation. Moreover, Commission approval would be required in order to modify the protections provided by NASDAQ Inc.'s Certificate of Incorporation or Bylaws.

In addition to protections contained in the NASDAQ Inc. structure, the Exchange structure also provides protections via the composition of its Board of Directors, Board Committees, and several regulatory structures. Under the Exchange's By-laws, twenty percent of the Directors on the Exchange Board, which is the governing body of the Exchange and possesses all of the powers necessary for the execution of its self-regulatory responsibilities, must be "Member Representative Directors." In addition, the number of "Non-Industry Directors" must equal or exceed the sum of the number of "Industry Directors" and "Member Representative Directors." The Exchange Board also must include at least one "Public Director" and at least one issuer representative (or at least two if the Exchange Board consists of ten or more members). The requirement that twenty percent of the directors be "Member Representative Directors" and the means by which they are elected by members provides for the fair representation of members in the

<sup>4</sup> 15 U.S.C. 78f.(b).

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

<sup>6</sup> 15 U.S.C. 78q(d) or 15 U.S.C. 78s(g)(2), respectively.

<sup>7</sup> See Securities Exchange Act Release No. 55667 (April 25, 2007), 72 FR 23869 (May 1, 2007) (SR-NASDAQ-2007-004) ("Proposed NOM Rules").

<sup>8</sup> See 15 U.S.C. 78c(a)(2).

<sup>9</sup> See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131).

selection of directors and the administration of the Exchange consistent with the requirement in Section 6(b)(3) of the Act.<sup>10</sup> This requirement helps to ensure that members have a voice in the use of self-regulatory authority, and that the Exchange is administered in a way that is equitable to all those who trade on its market or through its facilities. In Nasdaq's view, the protections provided by the composition and selection of the Exchange's Board of Directors carry through to NOM by virtue of the fact that all NOM Options Participants<sup>11</sup> will be members of the Exchange. As a result, NOM Options Participants will have an equal opportunity to elect Member Representative Directors who, along with the entire Exchange Board, will have a duty to ensure that NOM is administered in a fair and equitable manner.

As Exchange members, NOM participants will also be protected by several committees established by the Exchange's By-laws that are composed solely of directors: An Executive Committee, a Finance Committee, a Management Compensation Committee, an Audit Committee, and a Regulatory Oversight Committee ("ROC"). In addition, the Exchange has these other committees that are not required to be composed solely of directors: Nasdaq Listing and Hearing Review Committee, a Nasdaq Review Council ("NRC"), a Nominating Committee, a Member Nominating Committee, a Quality of Markets Committee, a Market Operations Review Committee, an Arbitration and Mediation Committee, and a Market Regulation Committee. The Exchange's committees enable it to carry out its responsibilities under the Act.

The ROC plays a central role in the regulation of the Exchange and its facilities. It consists of three members, each of whom must be a Public Director and "independent director" as defined by Nasdaq Exchange Rule 4200. The ROC is responsible for monitoring the adequacy and effectiveness of the Exchange's regulatory program, assessing the Exchange's regulatory performance, assisting the Exchange Board in reviewing the Exchange's regulatory plan and the overall effectiveness of the Exchange's

regulatory functions. The ROC meets with the Chief Regulatory Officer ("CRO") in executive session at regularly scheduled meetings and at any time upon request of the CRO or any member of the ROC. The ROC is informed about the CRO's compensation, promotion, or termination (including reasons). Finally, the Exchange regulatory budget is presented to the ROC so that its members may inquire as to the adequacy of resources available for the Nasdaq Exchange's regulatory program. Under this proposal, the ROC and the Exchange CRO will assume responsibility for regulating quoting and trading on NOM and conduct by NOM participants.

The Exchange's CRO has general supervision of the regulatory operations of the Exchange, including overseeing surveillance, examination, and enforcement functions. The CRO administers the regulatory services agreement with NASD Regulation. Although the Exchange is an SRO with all of the attendant regulatory obligations under the Act, it has entered into the Regulatory Contract with NASDR, under which NASDR performs certain regulatory functions on its behalf. In addition to performing certain membership functions for the Exchange, NASDR performs certain disciplinary and enforcement functions for the Exchange. Generally, NASDR investigates members, issue complaints, and conducts hearings pursuant to the Exchange's rules. Appeals of disciplinary hearings, however, will be handled by the NRC. The Regulatory Contract between the Exchange and NASDR governs the Exchange and its facilities and therefore will automatically govern NOM. In connection with the creation of NOM, the Exchange and NASDR will modify the Regulatory Contract as necessary to ensure complete and high quality regulation of all quoting and trading on NOM as well as the conduct of NOM participants.

Notwithstanding the Regulatory Contract, the Exchange retains ultimate legal responsibility for the regulation of its members and its market. The Exchange's By-Laws and rules provide that it has disciplinary jurisdiction over its members so that it can enforce its members' compliance with its rules and the federal securities laws. The Exchange's rules also permit it to sanction members for violations of its rules and violations of the federal securities laws by, among other things, expelling or suspending members, limiting members' activities, functions, or operations, fining or censuring

members, or suspending or barring a person from being associated with a member. The Exchange's rules also provide for the imposition of fines for minor rule violations in lieu of commencing disciplinary proceedings.

The Exchange has an independent regulatory department, Nasdaq Regulation, which carries out many of the Exchange's regulatory functions, including administering its membership and disciplinary rules and is functionally separate from the Exchange's business lines. Nasdaq Regulation includes MarketWatch, which performs real-time intraday surveillance over all Nasdaq Exchange-listed companies and all Nasdaq Exchange market participants. More specifically, MarketWatch oversees the complete and timely disclosure of Nasdaq Exchange issuers' material information to determine if a trading halt is necessary to maintain an orderly market for the release of material news. In addition, MarketWatch, through its automated detection system, monitors the trading activity of each security and will generate a price and volume alert to aid in the assessment of unusual market activity. MarketWatch also coordinates and executes the release of initial public offerings; administers market participants' excused withdrawals and passive market making requests; and handles the clearly erroneous trade adjudication process. If MarketWatch observes any activity that may involve a violation of Commission or Exchange rules, MarketWatch immediately refers the activity to NASDR's Market Regulation Department for further investigation and potential disciplinary action. Nasdaq Regulation, including MarketWatch, will perform the same regulatory role with respect to NOM, including operating automated detection systems to perform real-time surveillance of quoting and trading on NOM and to maintain a fair and orderly market.

*NOM LLC Structure:* NOM LLC will be established as a facility of, and a wholly-owned subsidiary owned and operated by, the Exchange in a manner designed to extend to options trading on NOM each and every regulatory protection provided by NASDAQ Inc. and the Exchange structures described above. Specifically, NOM LLC will be formed as a limited liability company under the laws of the State of Delaware. NOM LLC will be governed by the LLC Agreement, filed herewith, section 5 of which states that NOM LLC shall have a single member and that that member will be Nasdaq. Section 8 of the LLC Agreement states that the Member shall have all powers necessary to act for

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

<sup>11</sup> Nasdaq proposed to define the term "Options Participant" to mean "a firm or organization that is registered with the Exchange \* \* \* for the purposes of participating in options trading on NOM as a 'Nasdaq Options Order Entry Firm' or 'Nasdaq Options Market Maker.'" See Section 1(a)(40) of Ch. I of the Proposed NOM Rules, *supra* note 7.

NOM LLC, as well as to exercise all rights and powers conferred to NOM LLC under Delaware law. Section 9(b) requires NOM LLC and the Member to comply with the federal securities laws and the rules and regulations thereunder, and to cooperate with the SEC and NOM pursuant to their regulatory authority.

By virtue of NOM LLC's structure as a facility of the Exchange, and as single-member LLC having the Exchange as the single member, NOM LLC will, *ipso facto*, be bound by all of the regulatory obligations of its SRO member, and it will be endowed with all of the self-regulatory protections provided by the NASDAQ Inc. and Exchange governing documents. NOM LLC will be under the complete control and discretion of the Exchange and will be able to act only through the action of the Exchange and its officers and directors by virtue of the fact that there will be no separate NOM LLC board and that all NOM LLC officers will be officers of the Exchange. The Exchange, in turn, is governed by its By-laws, its Exchange Board, and the numerous Committees that the Commission has rigorously scrutinized and found to be consistent with the Act. All actions by NOM LLC that, if taken by the Exchange would require a vote of the Exchange Board, will also require a vote of the Exchange Board. Any action by NOM LLC that, were it taken by the Exchange would require a proposed rule change under Section 19 of the Act, will likewise require a proposed rule change under section 19 of the Act.

Not only is NOM LLC limited to acting exclusively through the Exchange, it is also limited to acting only through officers of the Exchange. Under Section 10 of the LLC Agreement, each officer of NOM LLC will also be an officer of the Exchange with the same powers, obligations, and responsibilities of an officer of the Exchange. Moreover, the LLC Agreement requires NOM LLC officers separately to agree to comply with the federal securities laws and the rules and regulations thereunder, and to cooperate with the SEC and Nasdaq pursuant to their regulatory authority and the provisions of the LLC Agreement. Any violation of the federal securities laws by an individual officer acting in her capacity as a NOM LLC officer would also be a violation by an Exchange officer and, in both cases, such violations would be subject to Commission jurisdiction.

Finally, the Exchange's rules provide an additional layer of regulatory protection by requiring that each broker-dealer that participates in the options trading on NOM must first be a member of the Exchange, as set forth in the

companion proposal on NOM rules.<sup>12</sup> As a result, all options trading and all options participants will operate pursuant to Exchange rules, subject to Exchange regulation, and Commission oversight. The Exchange will regulate NOM activity just as it regulates equity trading through a combination of structural regulation by the Exchange, the Exchange Board, the ROC, and the Exchange CRO, and real-time surveillance by Nasdaq, as well as through participation in industry-wide joint regulatory agreements under Section 17(d) of the Act.

*Delegation and Protection of SRO Functions:* The Exchange intends to delegate to NOM LLC certain limited responsibilities and obligations solely with respect to the operation of an options trading facility pursuant to the Nasdaq Delegation Agreement. The delegation is limited to Nasdaq's options market functions and does not include equities market functions or other functions not specifically mentioned in the limited delegation.

Specifically, Nasdaq will delegate performance of the following functions to NOM pursuant to the Nasdaq Delegation Agreement:

1. To operate NOM, including automated systems supporting it.
2. To provide and maintain a communications network infrastructure linking market participants for the efficient processing and handling of quotations, orders, transaction reports, and comparisons of transactions in options.
3. To act as a Securities Information Processor for quotations and transaction information related to securities traded on NOM and any trading facilities operated by NOM.
4. To administer the participation of Nasdaq in the National Market System plans governing the listing, quoting, trading, and regulation of options and Commission regulations related thereto.
5. To collect, process, consolidate, and provide to Nasdaq accurate information requisite to the operation of a surveillance audit trail for the quoting and trading of options.
6. To develop and adopt rules governing listing standards applicable to options listed on NOM in consultation with Nasdaq.
7. To establish and assess listing fees, access fees, transaction fees, market data fees and other fees for the products and services offered by NOM.
8. To develop, adopt, and administer rules governing participation in NOM.
9. To refer to Nasdaq any complaints of a regulatory nature involving

potential rule violations by member organizations or employees.

10. To establish the annual budget for NOM.

11. To determine allocation of NOM resources.

12. To manage external relations on matters related to trading on and the operation and functions of NOM with Congress, the Commission, state regulators, other SROs, business groups, and the public.

Nasdaq will have ultimate responsibility for the operations, rules and regulations developed by NOM, as well as their enforcement. Actions taken pursuant to delegated authority will remain subject to review, approval or rejection by the Exchange Board in accordance with procedures established by that board of directors.

In addition, Nasdaq will expressly retain the following authority and functions:

1. To exercise overall responsibility for ensuring that statutory and self-regulatory obligations and functions of Nasdaq are fulfilled and to perform any duties and functions not delegated.
2. To delegate authority to NOM to take actions on behalf of the Nasdaq.
3. To direct NOM to take action necessary to effectuate the purposes and functions of Nasdaq, consistent with the independence of Nasdaq's regulatory functions, exchange rules, policies, and procedures, and the federal securities laws.

In addition, for so long as NOM has any delegated market responsibility pursuant to the Nasdaq Delegation Agreement, NOM agrees that:

1. To the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of Nasdaq or any Delegated Market Responsibility (including but not limited to disciplinary matters, trading data, trading practices, and audit information) contained in the books and records of Nasdaq that shall come into the possession of NOM shall: (a) Not be made available to any person (other than as provided in the next sentence) other than to those officers, directors, employees and agents of the NOM who have a reasonable need to know the contents thereof; (b) be retained in confidence by NOM and the officers, directors, employees and agents of NOM; and (c) not be used for any commercial purposes; provided, that nothing in this sentence shall be interpreted so as to limit or impede the rights of the Commission or Nasdaq to access and examine such confidential information pursuant to the federal securities laws and the rules and

<sup>12</sup> See Proposed NOM Rules, *supra* note 7.

regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of NOM to disclose such confidential information to the Commission or Nasdaq.

2. NOM's books and records shall be subject at all times to inspection and copying by (a) the Commission and (b) Nasdaq.

3. NOM's books and records shall be maintained within the United States.

4. The books, records, premises, officers, and employees of NOM shall be deemed to be the books, records, premises, officers and employees of Nasdaq for purposes of and subject to oversight pursuant to the Act.

5. NOM shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and Nasdaq pursuant to and to the extent of its regulatory authority, and shall take reasonable steps necessary to cause its agents to cooperate, with the Commission and, where applicable, Nasdaq, pursuant to their regulatory authority.

6. NOM, its officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of Nasdaq and to obligations to investors and the general public and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of Nasdaq relating to their regulatory functions (including disciplinary matters) or that would interfere with the ability of Nasdaq to carry out its responsibilities under the Act.

7. NOM, its officers, and those of its employees whose principal place of business and residence is outside of the United States shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of Nasdaq or any delegated market responsibility (and shall be deemed to agree that NOM may serve as the U.S. agent for purposes of service of process in such suit, action, or proceeding), and NOM and each such officer or employee, in the case of any such officer or employee by virtue of his acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the

jurisdiction of the Commission, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.

For so long as NOM has any delegated market responsibility pursuant to this Agreement, Nasdaq agrees that Nasdaq may not transfer or assign any of its ownership of NOM. The Nasdaq Delegation Agreement may not be modified except pursuant to a written agreement among Nasdaq and NOM provided that, prior to the effectiveness of any such amendment, such amendment shall be filed with, and approved by, the Commission under Section 19 of the Act and the rules promulgated thereunder.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.<sup>13</sup> Specifically, the Exchange believes the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act<sup>14</sup> that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts 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.

### 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## 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-2007-080 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 Number SR-NASDAQ-2007-080. 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 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-2007-080 and should be submitted on or before November 2, 2007.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56617; File No. SR-NASDAQ-2007-083]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Annual Membership Fee for Nasdaq Members

October 4, 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 October 1, 2007, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been substantially prepared by the Exchange. Nasdaq filed this proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> thereunder, which renders it 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 increase the annual membership fee for Nasdaq members under Nasdaq Rule 7001. The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and Nasdaq's Web site, <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

Nasdaq is increasing its annual membership fee, which is assessed on all Nasdaq members as of a date determined by Nasdaq in December of each year, from \$1,200 to \$3,000 per year. The fee had initially been set at a level to ease the transition of the Nasdaq Market Center's status as a facility of the Financial Industry Regulatory Authority, Inc. (f/k/a the National Association of Securities Dealers, Inc.) to a facility of a new self-regulatory organization ("SRO"). Now that Nasdaq has an established membership base, Nasdaq believes that the fee increase is warranted to ensure that its annual membership fee funds a greater portion of the cost of regulating the Nasdaq market. Nasdaq believes that even with the fee increase, the cost of Nasdaq membership is generally lower than the cost of membership in other SROs.<sup>5</sup> In this regard, it is particularly notable that unlike other SROs, Nasdaq does not charge annual registration fees for each of a firm's registered representatives.

##### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 6 of the Act,<sup>6</sup> in general, and with section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it provides for an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using any facility or system which Nasdaq operates or controls. Nasdaq believes that an increased annual membership fee is reasonable and equitable method of ensuring that its annual membership fee funds a greater portion of the cost of regulating the Nasdaq market, and that the overall cost of Nasdaq membership is reasonable as

compared with the cost of membership in other SROs.

#### 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 upon filing with the Commission pursuant to section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder,<sup>9</sup> in that the proposed rule change establishes or changes a member due, fee, or other charge imposed by the SRO. 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 No. SR-NASDAQ-2007-083 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 Number SR-NASDAQ-2007-083. This file number should be included on the subject line if e-mail is used. To help the

<sup>5</sup> See, e.g., New York Stock Exchange Price List 2007 at <http://www.nyse.com/pdfs/2007pricelist.pdf> (itemizing numerous registration, regulation, and trading rights fees); NASD By-Laws, Schedule A, Section 1 at [http://nasd.complinet.com/nasd/display/display.html?rbid=1189&element\\_id=1159000126](http://nasd.complinet.com/nasd/display/display.html?rbid=1189&element_id=1159000126); Chicago Stock Exchange Fees and Assessments at [http://wallstreet.cch.com/CHXtools/PlatformViewer.asp?SelectedNode=chp\\_1\\_1&manual=/CHX/Admin/chx-feesandassessments/](http://wallstreet.cch.com/CHXtools/PlatformViewer.asp?SelectedNode=chp_1_1&manual=/CHX/Admin/chx-feesandassessments/).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<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)(ii).

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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).