For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57537; File No. SR–NASDAQ–2008–021]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Processing of Orders That Peg to the Midpoint Between the National Best Bid and Best Offer

March 20, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2008, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') 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 Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposed rule change 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 is amending Rule 4751(f) to modify the processing of orders that peg to the midpoint between the national best bid and best offer (''NBBO''). Nasdaq proposes to implement the proposed rule change immediately following the conclusion of the 30-day operative delay period. The text of the proposed rule change is available on Nasdaq's Web site: (*http://www.complinet.com/nasdaq*), at the principal office of 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 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 modify the rule language pertaining to pegged orders to enable orders that peg to the midpoint of the national best bid and best offer (''Midpoint Pegged Orders'') to execute in sub-penny increments when the inside spread is an odd number of pennies. Nasdaq's current pegging functionality does not display, rank, or execute Midpoint Pegged Orders in sub-penny increments. In light of the recent approval of a proposed rule change by NYSEArca relating to its Mid-Point Passive Liquidity (''MPL'') Order, Nasdaq is proposing to modify its processing of Midpoint Pegged Orders to resemble the processing of MPL Orders on NYSEArca.[4]

The following examples illustrate how the proposed rule change would operate (note that the price of the order updates in response to changes in the best bid and best offer, excluding the order's own impact on the best bid or best offer):

*Current Processing*

- The best bid on Nasdaq is $20.00 and the best offer is $20.03.
- The price of the Midpoint Peg Order to buy will be $20.01. The true midpoint would be $20.015, but to avoid pricing the order in a sub-penny increment the bid is rounded down. However, if the order instead were a sell order, the offer would be rounded up.
- The best offer updates to $20.02.
- The price of the Midpoint Peg Order remains $20.01.

*Proposed Processing*

*Scenario 1:*

- The best bid on Nasdaq is $20.00 and the best offer is $20.03.
- The price of the Midpoint Peg Order to buy will be $20.015.
- The best offer updates to $20.02.
- The price of the Midpoint Peg Order will change to $20.01.

*Scenario 2:* the market is as follows:

| Bid | Offer |
|---|---|
| 11.00 Nasdaq | 10.00 NYSE |

- A Midpoint Peg Order to sell is entered into NASDAQ.
- The order is priced at 10.50.
- The order is marketable against the Nasdaq buy order and will execute at 11.00, the price of the buy order on the Nasdaq book.
- If the Nasdaq 11.00 bid had instructions to route, at the time of the cross, it would have routed to NYSE for execution.

*Scenario 3:* the market is as follows:

| Bid | Offer |
|---|---|
| 11.00 CHX | 10.00 NYSE |
| 9.00 Nasdaq | 12.00 Nasdaq |

- A Midpoint Peg Order to buy is entered into Nasdaq.
- The order is priced at 10.50, the midpoint of the NBBO.
- The order is not executable on Nasdaq.
- If the order has instructions to route, it will be routed to NYSE for execution.
- If the order does not have instructions to route, it will be posted to the NASDAQ book at 10.50 non-display.

With respect to Regulation NMS, a Midpoint Pegged Order would be ranked in time priority for the purposes of execution as long as the midpoint is within the limit range of the order. A Midpoint Pegged Order will no longer be displayed, whereas Nasdaq currently displays Midpoint Pegged Orders in penny increments.[5] A Midpoint Pegged Order would be executed in sub-pennies if necessary to attain a midpoint price. In addition, the execution of a Midpoint Pegged Order would not result in a trade-through of a Protected Quotation. A Midpoint Pegged Order would execute against orders on the Nasdaq book or against incoming orders, including other Midpoint Pegged Orders. If the NBBO is locked, the Midpoint Pegged Order would be executed at the locked market price.

If the NBBO is crossed, the Nasdaq system would continue to accept and process Midpoint Pegged Orders.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 56072 (July 13, 2007), 72 FR 39867 (July 20, 2007) (SR–NYSEArca–2007–061) (Notice of Filing and Immediate Effectiveness of MPL Order).

[5] On Nasdaq, Non-Displayed Orders, such as the Midpoint Pegged Order as proposed, always receive lower execution priority than similarly priced Displayed Orders regardless of time of entry.

However, they generally would not execute against other Midpoint Pegged Orders during a crossed market because they are already marketable against interest on other automated trading centers that are creating the crossed market or marketable against better priced interest on Nasdaq. If Nasdaq's best quote is not part of the crossed NBBO and a Midpoint Pegged Order to buy (sell) has instructions to route, the Nasdaq system would route it to an automated trading center that is displaying a better priced order to sell (buy). Thus, there would not be an execution against an inferior sell (buy) order on Nasdaq. If Nasdaq's best quote is not part of the crossed NBBO and a Midpont Pegged Order to buy (sell) does not have instructions to route, the Nasdaq system would execute it against a marketable sell (buy) order on Nasdaq, even though a better priced sell (buy) order is being displayed by an automated trading center. If it were not marketable on the Nasdaq book, it would post undisplayed to the book. If the automated NBBO is crossed, a Midpoint Pegged Order to buy and a Midpoint Pegged Order to sell would execute against each other on the Nasdaq system only if both orders had instructions not to route, and neither order had previously executed against marketable interest on the Nasdaq book. As a result, the execution of a Midpoint Pegged Order during a crossed market would not implicate the duty of best execution any differently than other orders entered into or executed by the Nasdaq system. As examples 2 and 3 above show, if the order has instructions to route, it would be routed away without implication for best execution. If there is no routing instruction, the order would either execute or post to the Nasdaq book.

Nasdaq believes that the implementation of the proposed rule change modifying will enhance order execution opportunities on Nasdaq. The Exchange believes that the proposed order type will allow for additional opportunities for liquidity providers, especially institutions, to passively interact with interest in the Nasdaq book.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[6] in general, and with section 6(b)(5) of the Act,[7] 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. Nasdaq believes this proposal is consistent with Rule 612 of Regulation NMS under the Act, including the guidance provided in question number two of *Division of Market Regulation: Responses to Frequently Asked Questions Concerning Rule 612 (Minimum Pricing Increment) of Regulation NMS.*

*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. To the contrary, Nasdaq's processing of orders pegged to the midpoint of the NBBO is designed to compete with orders already approved and in use at other national securities exchanges, enhancing competition between the exchanges.

*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 foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this 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[8] and Rule 19b-4(f)(6) thereunder.[9]

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.

**III. 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.* Please include File No. SR–NASDAQ–2008–021 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–2008–021. 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

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing notice requirement.

submissions should refer to File Number SR–NASDAQ–2008–021 and should be submitted on or before April 16, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57534; File No. SR–NASDAQ–2008–015]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, To Modify Fees Associated With Proceedings Under Rule 11890

March 20, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 29, 2008, 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 Nasdaq. On March 18, 2008, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] Nasdaq filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2)[5] thereunder, as establishing or changing a due, fee, or other charges applicable to a member, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify fees associated with proceedings under Rule 11890. Nasdaq will implement this rule change on March 3, 2008.

The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.[6]

11890. Clearly Erroneous Transactions

(a)–(b) No change.

(c) Review by the Market Operations Review Committee (''MORC'')

(1)–(3) No change.

[(4) The party initiating the appeal shall be assessed a $500.00 fee if the MORC upholds the decision of the Nasdaq officer. In addition, in instances where Nasdaq, on behalf of a member, requests a determination by another market center that a transaction is clearly erroneous, Nasdaq will pass any resulting charges through to the relevant member.]

(d) No change.

*(e) Fees*

*(1) Filing Fees*

*No fee shall be assessed to a member for filing two or fewer unsuccessful clearly erroneous complaints pursuant to paragraph (a)(2) during a calendar month. A member shall be assessed a fee of $250.00 for each additional unsuccessful complaint filed thereafter during the calendar month. An unsuccessful complaint is one in which Nasdaq does not break any of the trades included in the complaint. Each security filed on is considered a separate complaint. In cases where the member files on multiple securities at the same time, Nasdaq calculates the fee separately for each security depending upon whether Nasdaq breaks any trades filed on by the member in that security. Adjustments or voluntary breaks negotiated by Nasdaq to trades executed at prices that meet the percentage thresholds in IM–11890–4 count as breaks by Nasdaq for purposes of this paragraph. A member is defined by each unique broker Web CRD Number. All MPIDs associated with that Web CRD Number shall be included when calculating the number of unsuccessful clearly erroneous complaints for that member during the calendar month. No fee pursuant to this paragraph (e)(1) shall be assessed for a complaint that is (A) successful, where the final decision by Nasdaq (including after appeal, if any) is to break at least one of the trades filed on by the member, (B) not timely filed under the parameters in paragraph (a)(2)(A), (C) withdrawn by the complainant within five (5) minutes of filing and before Nasdaq has performed any substantial work on the complaint, or (D) adjudicated by Nasdaq on its own motion under Rule 11890(b).*

*(2) Appeal Fees*

*The party initiating an appeal shall be assessed a $500.00 fee if the MORC upholds the decision of the Nasdaq officer.*

*(3) Fees Charged By Another Market Center*

*In instances where Nasdaq, on behalf of a member, requests a determination by another market center that a transaction is clearly erroneous, Nasdaq will pass any resulting charges through to the relevant member.*

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

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

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

1. Purpose

Nasdaq is amending Rule 11890, which covers the breaking of trades determined to be clearly erroneous, to add a new Rule 11890(e) that would consolidate Nasdaq's existing appeal fee, without substantive change, with a new fee of $250.00 for the filing of certain unsuccessful clearly erroneous adjudication complaints.

Self-regulatory organizations like Nasdaq have authority to adjudicate trade disputes and break trades in appropriate circumstances to maintain a fair and orderly market. This authority is codified in Nasdaq Rule 11890. Nasdaq believes that this authority provides an important protection to the market by preventing trading errors and system problems from distorting the price discovery process. Rule 11890 also provides a number of procedural steps intended to protect the integrity of the adjudicatory process.

While these steps are a necessary part of the process, they require significant staff time to process each complaint. This benefits all market participants, including Nasdaq members. Despite this, Nasdaq historically has not charged members for this process.

The costs to Nasdaq of providing this service to members have increased in recent years as the number of

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made clarifying changes to the proposed rule text and the purpose section of the filing.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at *http://nasdaq.complinet.com.*