

proposed rule change to modify its Price Improvement Mechanism ("PIM") auction eligibility requirements to eliminate the requirement that there be at least three market makers quoting in the relevant series. The proposed rule change was published for comment in the **Federal Register** on August 27, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange's PIM auction process currently allows Electronic Access Members ("EAMs") to enter two-sided orders ("Crossing Transaction") to provide better prices than the ISE best bid or offer to agency orders.⁴ The customer side of these orders is then exposed to other members to give them an opportunity to participate in the trade at the proposed cross price or better. ISE's current rules require, among other things, that an EAM enter an order into the PIM only when there are at least three market makers quoting in the options series.⁵ The Exchange is now proposing to eliminate this requirement.

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 and, in particular, with Section 6(b)(5) of the Act,⁶ 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.⁷

ISE's current requirement that there must be at least three market makers quoting in the option series at the time an EAM enters an order into the PIM

³ See Securities Exchange Act Release No. 58401 (August 21, 2008), 73 FR 50663.

⁴ See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (approving rules implementing the PIM). See also Securities Exchange Act Release No. 57847 (May 21, 2008), 73 FR 30987 (May 29, 2008) (approving a proposed rule change to permit a member to enter an agency order into the PIM at a price that is equal to the national best bid or offer ("NBBO") when the ISE's best bid or offer is inferior to the NBBO).

⁵ See ISE Rule 723(b)(1).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 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).

was designed, in part, to increase the likelihood of competition in the auction. In approving ISE's proposal to establish the PIM, the Commission stated that it believed that the three market maker requirement would "improve the opportunity for an [agency] order to be exposed to a competitive auction."⁸

ISE rules permit all members to enter improvement orders into the PIM for their own account or for the account of a public customer.⁹ Because of this opportunity for broad participation in PIM auctions, the Commission believes that orders submitted to the PIM will continue to be exposed to a meaningful, competitive auction, even without the three market maker requirement. For this reason, the Commission finds that ISE's proposal to eliminate the three market maker requirement is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-ISE-2008-63) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58646; File No. SR-NASDAQ-2008-074]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The NASDAQ Stock Market LLC To Remove Rule 6800 From the Nasdaq Rules

September 25, 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 September 17, 2008, 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, which Items have been

⁸ See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093, 75096 (December 15, 2004).

⁹ See ISE Rule 723(c)(2).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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 remove from the Nasdaq rule book Rule 6800 pertaining to Nasdaq's Mutual Fund Quotation Service ("MFQS"). The Commission recently approved Nasdaq's proposal to remove MFQS-related rules from the Nasdaq rule book, but reference to Rule 6800 was inadvertently omitted from Nasdaq's proposal.⁴ Nasdaq proposes to implement the proposed rule change immediately.

Nasdaq proposes to delete in its entirety Rule 6800 (titled Mutual Fund Quotation Service), showing this Rule in the rule book as "Reserved." The text of the proposed rule change is available on NASDAQ's Web site (<http://nasdaqomx.cchwallstreet.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

The Commission recently approved Nasdaq's proposal to remove MFQS-related rules from the Nasdaq rule book.⁵ In its proposal, Nasdaq stated its view that its rule book should not contain rules that do not pertain to "facilities" of the exchange and that

³ 17 CFR 240.19b-4(f)(6).

⁴ Securities Exchange Act Release No. 34-58392 (August 20, 2008), 73 FR 50382 (August 26, 2008) (approving SR-NASDAQ-2008-019).

⁵ *Id.*

MFQS is not a "facility" within the meaning of the Act. In approving Nasdaq's proposal, the Commission found, based on representations made by Nasdaq, that MFQS does not appear to be a facility of a national securities exchange.

While Nasdaq's intent was to remove from its rule book all MFQS-related rules, provisions of Rule 6800, which describe MFQS, were inadvertently omitted from the list of provisions marked for deletion. As a result, the fee-related provisions were removed, but the service description in Rule 6800 remained. Given Nasdaq's view that its rule book should not contain rules that do not pertain to "facilities" and given that all MFQS fee provisions have already been removed, Nasdaq proposes to delete Rule 6800. This proposal will have the effect of conforming Nasdaq's rule book to Nasdaq's stated policy regarding MFQS.⁶

2. Statutory Basis

Nasdaq believes that MFQS is not a facility of a national securities exchange within the meaning of the Act and the terms of MFQS use are not rules that must be filed with the Commission under Section 19(b)(1) of the Act⁷ and Rule 19b-4 thereunder.⁸ Therefore, removing the applicable provisions from the Nasdaq rule book would be consistent with the provisions of Section 6(b) of the Act.⁹

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.

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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ Nasdaq has requested that the Commission waive the 30-day pre-operative period for "non-controversial" proposals because removing Rule 6800 from the Nasdaq rule book is consistent with the recently approved removal of other MFQS-related provisions from the rule book. Waiving the 30-day pre-operative period contained in Exchange Act Rule 19b-4(f)(6)(iii)¹² will allow Nasdaq to implement this change without unnecessary 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.¹³ 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 Act,¹⁴ and Rule 19b-4(f)(6) thereunder,¹⁵ with no operative delay.

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. Please include File Number SR-NASDAQ-2008-074 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-2008-074. 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 the Exchange. 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-2008-074 and should be submitted on or before October 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon,
Acting Secretary.

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⁶ As stated in the Commission's order approving removal of the other MFQS provisions from the rule book, if Nasdaq were to propose to modify the operation of MFQS such that it would fall within the definition of a facility of an exchange in the Act (or to tie MFQS pricing to an exchange activity), Nasdaq would file a proposed rule change with the Commission. *Id.*

⁷ 15 U.S.C. 78s(b)(1).

⁸ 17 CFR 240.19b-4.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² *Id.*

¹³ For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 200.30-3(a)(12).