

with Section 6(b) of the Act<sup>8</sup> and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>9</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, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.<sup>10</sup>

The Commission believes that the Nasdaq's proposal to append an Aberrant Report Indicator to certain trade reports is a reasonable means to alert investors and others that the Nasdaq believes that the trade price for a trade executed in its market does not accurately reflect the prevailing market for the security. In addition, the Commission notes that Nasdaq will use objective numerical thresholds in determining whether a trade report is eligible to have an Aberrant Trade Indicator appended to it. The Commission further notes that the Nasdaq's appending the Aberrant Trade Indicator to a trade report has no effect on the validity of the underlying trade. The Commission previously found a similar proposal by the NYSE to be consistent with the Act.<sup>11</sup> Finally, the Commission notes that the retroactive application of this proposal to September 1, 2008 is substantially similar to the retroactive period approved for the NYSE.<sup>12</sup>

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the Act.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NASDAQ-2008-101) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

[FR Doc. E9-3095 Filed 2-12-09; 8:45 am]  
BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59369; File No. SR-NASDAQ-2008-097]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change To Adopt a Limited Exemption from OATS Order Data Recordation Requirements for Registered Options Market Makers

February 6, 2009.

On December 12, 2008, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to adopt a limited exemption from OATS order data recordation requirements for registered options market makers. The proposed rule change was published in the *Federal Register* on January 2, 2009.<sup>3</sup> The Commission received one comment letter expressing support for the proposal.<sup>4</sup> This order approves the proposed rule change.

The Exchange proposes to amend the definition of "Order" contained in Nasdaq Rule 6951 to create a limited exemption from OATS order recordation requirements for bona fide hedging transactions in Nasdaq-listed equity securities originated by a trading desk in the ordinary course of the member's market making activity in options. The proposal applies to an options transaction on any options market in any standardized option made available for clearing through the Options Clearing Corporation.

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, in particular, with Section 6 of the Act<sup>5</sup> and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the Exchange's proposal be 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.<sup>7</sup>

OATS is an integrated audit trail of order, quote, and trade information for Nasdaq-listed equity securities used to recreate events in the life cycle of orders and more completely monitor the trading practices of member firms. OATS was designed to provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an equity order at the first point of contact between the broker-dealer and the customer or counterparty and further documenting the life of the equity order through the process of execution. Thus, OATS captures information that can be used to surveil for trading abuses that would undermine the integrity of the market and harm investors.<sup>8</sup> There is an exemption from the OATS requirements for instructions to effect proprietary transactions originated by a trading desk in the ordinary course of a member's market making activities.<sup>9</sup> Further, the Nasdaq rules provide an exemption from OATS transmission requirements for orders entered by proprietary trading firms.<sup>10</sup>

The Commission notes that Nasdaq believes that because bona fide hedging transactions in equity securities are undertaken by an options market maker to hedge against the firm risk that it creates through its conduct as a registered options market maker, submitting bona fide hedging transactions to OATS recording requirements provides no customer protection or equivalent regulatory benefit. Additionally, the Commission notes that Nasdaq believes that it is very expensive for firms that are not currently FINRA members or that do not currently trade NASDAQ equities to develop and maintain the compliance systems and compliance staff required to continuously monitor the daily transmission of OATS data.

Similarly to the aforementioned OATS exemptions, the Commission

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

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

<sup>10</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).

<sup>11</sup> See *supra* note 4.

<sup>12</sup> *Id.*

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<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> See Securities Exchange Act Release No. 59163 (December 24, 2008), 74 FR 160.

<sup>4</sup> See letter from Greg O'Connor, Compliance Manager, Wolverine Execution Services, LLC to Florence E. Harmon, Acting Secretary, Commission, dated January 23, 2009.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> In approving the 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).

<sup>8</sup> See Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998).

<sup>9</sup> See Nasdaq Rule 6951(i).

<sup>10</sup> See Nasdaq Rule 6955(b).

does not believe that the limited exemption proposed in this filing by Nasdaq would negatively impact the objectives of OATS. The Commission therefore believes that it is consistent with the Act to adopt a limited exemption from the OATS order recordation requirement for bona fide hedging transactions in Nasdaq-listed equity securities that are part of a Nasdaq's member's market making activity in options.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NASDAQ-2008-097) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-3096 Filed 2-12-09; 8:45 am]

**BILLING CODE 8011-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #11645 and #11646]**

**Arkansas Disaster #AR-00028**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arkansas (FEMA-1819-DR), dated 02/06/2009.

*Incident:* Severe Winter Storm.  
*Incident Period:* 01/26/2009 and continuing.

*Effective Date:* 02/06/2009.  
*Physical Loan Application Deadline Date:* 04/07/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 11/06/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:**

A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 02/06/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address

listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Baxter, Benton, Boone, Carroll, Clay, Craighead, Franklin, Fulton, Greene, Independence, IZard, Jackson, Johnson, Lawrence, Madison, Marion, Mississippi, Newton, Searcy, Sharp, Stone, Van Buren, Washington.

The Interest Rates are:

|  | Percent |
|--|---------|
| Other (Including Non-Profit Organizations) with Credit Available Elsewhere ..... | 4.500   |
| Businesses and Non-Profit Organizations without Credit Available Elsewhere ..... | 4.000   |

The number assigned to this disaster for physical damage is 11645B and for economic injury is 11646B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E9-3146 Filed 2-12-09; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #11643 and #11644]**

**Kentucky Disaster #KY-00019**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kentucky (FEMA-1818-DR), dated 02/05/2009.

*Incident:* Severe Winter Storm and Flooding.

*Incident Period:* 01/26/2009 and continuing.

*Effective Date:* 02/05/2009.  
*Physical Loan Application Deadline Date:* 04/06/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 11/05/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:**

A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 02/05/2009, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:*

Allen, Anderson, Ballard, Barren, Bath, Bourbon, Boyd, Boyle, Bracken, Breathitt, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Campbell, Carlisle, Carroll, Carter, Christian, Clark, Clay, Crittenden, Daviess, Edmonson, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Fulton, Garrard, Grant, Graves, Grayson, Green, Greenup, Hardin, Harrison, Hart, Henderson, Hickman, Hopkins, Jackson, Jefferson, Jessamine, Johnson, Larue, Lawrence, Lee, Lewis, Lincoln, Livingston, Logan, Lyon, Madison, Magoffin, Marion, Marshall, Martin, Mason, Mccracken, Mclean, Meade, Menifee, Mercer, Metcalfe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Owsley, Pendleton, Perry, Powell, Robertson, Rockcastle, RowanScott, Shelby, Spencer, Todd, Trigg, Union, Warren, Washington, Webster, Woodford.

The Interest Rates are:

|  | Percent |
|--|---------|
| Other (Including Non-Profit Organizations) with Credit Available Elsewhere ..... | 4.500   |
| Businesses and Non-Profit Organizations without Credit Available Elsewhere ..... | 4.000   |

The number assigned to this disaster for physical damage is 11643B and for economic injury is 11644B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E9-3148 Filed 2-12-09; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #11430 and #11431]**

**Texas Disaster Number TX-00308**

**AGENCY:** U.S. Small Business Administration.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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