

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>33</sup> that the proposed rule change (SR–NASDAQ–2006–056), as modified by Amendment No. 2 be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–6146 Filed 3–20–09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59580; File No. SR–NASDAQ–2007–006]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change as Modified by Amendment No. 1 Thereto To Establish the Nasdaq Daily Share Volume Service and To Establish Fees for the Service

March 13, 2009.

On February 7, 2007, The NASDAQ Stock Market LLC (“Nasdaq”) 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 establish the Nasdaq Daily Share Volume Service (“Service”) and to establish fees for the Service. The Service will provide the volume of shares traded each day by issue for participating market participants on a T+1 basis. The volume data will consist of trades from the Nasdaq Execution System.<sup>3</sup> Subscribers will have File Transfer Protocol (“FTP”) access to the full underlying data set to create custom reports. Subscribers will also be able to redistribute the data, although the subscriber will be required to enter into a distributor agreement.

Nasdaq proposes to charge \$2,500 per month for the Service. Participation by eligible market participants will be voluntary, and eligible market participants who choose to participate will be able to decide whether to

advertise their trade volume by market participant ID code and issue.

The proposed rule change was published in the **Federal Register** on March 16, 2007.<sup>4</sup> The Commission received no comments on the proposal. On March 6, 2009, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>5</sup>

The Commission has reviewed carefully the proposed rule change and 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<sup>6</sup> and, in particular, Section 6(b)(4) of the Act,<sup>7</sup> which requires, among other things, that Nasdaq’s rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that Nasdaq’s rules are not designed to unfairly discriminate between customers, issuers, brokers or dealers.

The Commission finds that the proposed rule change is consistent with these statutory standards. Use of the Service is optional, and the fee associated with the Service will be imposed on all subscribers equally. The fee for the Service is intended to cover the costs of establishing and maintaining the Service.<sup>9</sup>

In addition, the proposal meets the criteria, formulated by the Commission<sup>10</sup> in connection with the petition filed by NetCoalition,<sup>11</sup> for approval of proposed rule changes

concerning the distribution of non-core market data.<sup>12</sup> In its order issued in connection with the NetCoalition petition, the Commission stated that “reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory.”<sup>13</sup> As such, the “existence of significant competition provides a substantial basis for finding that the terms of an exchange’s fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.”<sup>14</sup> If an exchange “was subject to significant competitive forces in setting the terms of a proposal,” the proposal will be approved unless the Commission determines that “there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder.”<sup>15</sup>

In its order approving NYSEArca–2006–21, the Commission also stated that the terms of a proposed rule change to distribute market data for which the exchange is the exclusive processor must provide for an equitable allocation of fees under Section 6(b)(4) of the Act,<sup>16</sup> not be designed to permit unfair discrimination under Section 6(b)(5) of the Act,<sup>17</sup> be fair and reasonable under Rule 603(a)(1),<sup>18</sup> and not be unreasonably discriminatory under Rule 603(a)(2).<sup>19</sup> If the proposal involves non-core market data, an analysis of competitive forces may be used, and that analysis will apply to findings

<sup>12</sup> The Commission’s order distinguishes between core market data, which is defined as “the best-priced quotations and last sale information of all markets in U.S.-listed equities that Commission rules require to be consolidated and distributed to the public by a single central processor,” and non-core market data. See 73 FR at 74771. Because the Service, which provides daily traded share volume for trades executed by, or reported to, Nasdaq systems, does not involve core market data, this proposed rule change is properly categorized as a non-core market data proposal.

<sup>13</sup> *Id.* at 74781.

<sup>14</sup> *Id.* at 74781–82.

<sup>15</sup> *Id.* at 74781. In approving NYSEArca–2006–21, the Commission found that the proposed rule change was consistent with Section 6(b)(4) of the Act, 15 U.S.C. 78f(b)(4). See 73 FR at 74779. The Commission also found that the proposal was consistent with Section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5), Section 6(b)(8) of the Act, 15 U.S.C. 78f(b)(8), and Rule 603(a) of Regulation NMS, 17 CFR 242.603(a). See 73 FR at 74779. The Commission noted that the presence of competitive forces guided its analysis under both Section 6 of the Act and Rule 603 of Regulation NMS. *Id.*

<sup>16</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> 17 CFR 242.603(a)(1).

<sup>19</sup> 17 CFR 242.603(a)(2). See 73 FR at 74782.

<sup>4</sup> See Securities Exchange Act Release No. 55444 (March 12, 2007), 72 FR 12648 (“Notice”).

<sup>5</sup> In Amendment No. 1, Nasdaq clarified certain aspects of the Service. For example, Nasdaq noted that it will not include any data in the Service that is received from the FINRA/Nasdaq TRF until FINRA has submitted a separate filing to include TRF data in the Service, and the Commission has acted favorably upon that filing. Nasdaq also noted that it is eliminating the individual access fee for web subscribers from the Service, and deleted the corresponding portion of the proposed rule text. Because the Amendment is technical in nature, it is not subject to notice and comment.

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See Notice at 12649.

<sup>10</sup> See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

<sup>11</sup> See Securities Exchange Act Release No. 55011 (December 27, 2006) (order granting petition for review of SR–NYSEArca–2006–21).

<sup>33</sup> 15 U.S.C. 78s(b)(2).

<sup>34</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> Nasdaq also proposed to include internalized prints from the FINRA/Nasdaq Trade Reporting Facility (“TRF”) in the Service. However, as part of Amendment No. 1, Nasdaq has represented that it will not include any TRF data in the Service until FINRA has submitted a separate filing to include TRF data in the Service, and the Commission has acted favorably upon that filing. See note 5 *infra*.

under Section 6 of the Act, and to findings under Rule 603.<sup>20</sup>

As noted above, use of the Service is voluntary, and the fee for the Service will be imposed equally on all purchasers. In addition, vendors and other exchanges currently make daily broker volume reports available. For example, the New York Stock Exchange LLC ("NYSE") provides a broker volume report in a database format on a T+1 basis, which compiles the trading volume of member firms based on trades reported to NYSE.<sup>21</sup> The cost of receiving the Service is comparable to the cost for receiving the NYSE broker volume report.<sup>22</sup>

In formulating the terms of the Service, Nasdaq was thus subject to significant competitive forces—specifically, the availability to market participants of alternatives to purchasing the Service. Because the proposed Service here involves the distribution of non-core market data, and significant competitive forces are present, the Service is thus consistent with both Section 6(b)(4)<sup>23</sup> and Section 6(b)(5) of the Act,<sup>24</sup> and with Rule 603(a).<sup>25</sup> There is not a substantial countervailing basis that would render the proposal inconsistent with the Act or the rules thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (SR-NASDAQ-2007-006), as modified by Amendment No. 1 be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

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

[FR Doc. E9-6147 Filed 3-20-09; 8:45 am]

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**SMALL BUSINESS ADMINISTRATION**

[License No. 02/02-0535]

**Argentum Capital Partners, LP; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest**

Notice is hereby given that Argentum Capital Partners, LP, 60 Madison Avenue, Suite 701, New York, NY 10010, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financials which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730 (2009)). Argentum Capital Partners, LP proposes to provide a bridge loan to M Cubed Technologies, Inc., 921 Main Street, Monroe, CT 06468. The financing is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Argentum Capital Partners II, LP, an Associate of Argentum Capital Partners, LP, owns more than ten percent of M Cubed Technologies, Inc.

Therefore, this transaction is considered a financing of an Associate requiring an exemption. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to the Acting Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

March 16, 2009.

**Harry Haskins,**

Acting Associate Administrator for Investment.

[FR Doc. E9-6189 Filed 3-20-09; 8:45 am]

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**SOCIAL SECURITY ADMINISTRATION**

**Agency Information Collection Activities: Proposed Request**

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104-13, the Paperwork Reduction Act of 1995,

effective October 1, 1995. This notice includes a revision and extensions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Reports Clearance Officer to the addresses or fax numbers listed below.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202-395-6974, e-mail address: *OIRA\_Submission@omb.eop.gov*.

(SSA) Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1332 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-965-6400, e-mail address: *OPLM.RCO@ssa.gov*.

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure that we consider your comments, we must receive them no later than May 22, 2009. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410-965-3758 or by writing to the e-mail address listed above.

**1. Surveys in Accordance With E.O. 12862 for the Social Security Administration—0960-0526**

Under the auspices of Executive Order 12862, Setting Customer Service Standards, SSA conducts multiple customer satisfaction surveys each year. These voluntary customer satisfaction assessments include paper, Internet, and telephone surveys; mailed questionnaires; focus groups; and customer comment cards. The purpose of these questionnaires is to assess customer satisfaction with the timeliness, appropriateness, access, and overall quality of existing SSA services and proposed modifications/new versions of services. The respondents are recipients of SSA services (including most members of the public), professionals, and parties who work on behalf of SSA beneficiaries.

*Type of Request:* Revision of an OMB-approved information collection.

<sup>20</sup> See 73 FR at 74779.

<sup>21</sup> See <http://www.nyxdata.com/page/584> (listing of NYSE data products, including NYSE Broker Volume Database).

<sup>22</sup> *Id.*

<sup>23</sup> 15 U.S.C. 78f(b)(4).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> 17 CFR 242.603(a).

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</sup> 17 CFR 200.30-3(a)(12).