

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) have the effect of limiting the access to or availability of an existing order entry or trading system of the Exchange, the foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(5)<sup>12</sup> thereunder. 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 the 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-CHX-2007-01 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-CHX-2007-01. 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. Copies of such filing also will be available for inspection and copying at the principal offices of CHX. 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-CHX-2007-01 and should be submitted on or before March 20, 2007.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-55323; File No. SR-NASDAQ-2007-009]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Intermarket Sweep Orders**

February 21, 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 February 16, 2007, 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, below, which Items have been substantially prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a "non-

controversial" rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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 the Substance of the Proposed Rule Change**

Nasdaq is proposing to modify Rule 4759 to permit Nasdaq members to submit Intermarket Sweep Orders ("ISOs") to Nasdaq if they have simultaneously sent an ISO (or comparable order) for the full displayed size of the top of the book of every other ITS participant displaying a better-priced quotation. The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and <http://nasdaq.complinet.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**

As part of its rollout of its new Single Book execution system, Nasdaq is preparing to launch additional features of its compliance with Regulation NMS ("Reg. NMS"). Specifically, Nasdaq is preparing to accept ISOs. Like other markets, Nasdaq is proposing to accept ISOs prior to the Trading Phase Date, currently March 5, 2007, in order to ensure a smooth transition to the Single Book System functionality for compliance with Reg. NMS.

Like other markets that have received approval to accept ISOs prior to the Trading Phase Date,<sup>5</sup> Nasdaq seeks to

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

<sup>12</sup> 17 CFR 240.19b-4(f)(5).

<sup>13</sup> For the purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on February 20, 2007, when Amendment No. 1 was filed.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</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).

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

<sup>5</sup> See, e.g., Securities Exchange Act Release No. 55210 (January 31, 2007), 72 FR 5777 (February 7, 2007) (SR-NYSE-2007-08). Nasdaq notes that its proposed rule change is identical to the New York Stock Exchange LLC's rule change.

amend its rules to require member organizations that send ISOs to Nasdaq prior to the Trading Phase Date of Reg. NMS to simultaneously send an ISO (or comparable order) for the full displayed size of the top of the book of every other ITS participant displaying a better-priced quotation. The proposed temporary rule is intended to mirror the requirement, which will be operative after the Trading Phase Date, that all incoming ISOs meet the requirements as described in Rule 600(b)(30) of Reg. NMS,<sup>6</sup> and is designed to ensure that member organizations honor better-priced quotes of other ITS participants when submitting ISOs to Nasdaq prior to the Trading Phase Date. Nasdaq expects that this temporary rule will be in effect only until the Trading Phase Date, at which time it will be deleted from its rulebook. Nasdaq represents that, during the applicability of this rule, Nasdaq will conduct surveillance to assure that its Participants are in compliance with its rules on the use of ISOs.

In addition, Nasdaq notes that it has requested an exemption from certain provisions of the Intermarket Trading System Plan and Nasdaq Rules 4756 and 4759 to allow Nasdaq to implement the Reg. NMS compliance aspects of the Single Book rollout prior to the Trading Phase Date.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(5) of the Act,<sup>8</sup> 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. The proposed rule change is designed to permit Nasdaq to implement functionality required for compliance with Regulation NMS in an orderly fashion and to permit Nasdaq members to gain experience with that functionality prior to its full implementation.

## 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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder<sup>10</sup> because the proposal 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.<sup>11</sup> Nasdaq has requested that the Commission waive the 30-day operative delay and designate the proposed rule change to be operative upon filing with the Commission. The Commission hereby grants the request.<sup>12</sup> The Commission believes that such waiver is consistent with the protection of investors and the public interest because immediate effectiveness of the proposed rule change will assist Nasdaq in its efforts to ensure that its member organizations honor better-priced quotations of other ITS participants when they send ISOs to Nasdaq for execution and also will allow Nasdaq members to gain experience with the new ISO order type and functionality prior to its full implementation on the Trading Phase date. In addition, the Commission notes that the Nasdaq's proposal is based upon a proposed rule

change recently adopted by the New York Stock Exchange LLC.<sup>13</sup>

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.<sup>14</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-NASDAQ-2007-009 in 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-2007-009. 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 Room. Copies of the 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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> Rule 19b-4(f)(6)(iii) under the Act 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. Nasdaq has satisfied the pre-filing requirement.

<sup>12</sup> For purposes only of waiving the 30-day operative delay of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

<sup>13</sup> *See supra* note 5 (citing to SR-NYSE-2007-08).

<sup>14</sup> *See* 15 U.S.C. 78s(b)(3)(C).

<sup>6</sup> 17 CFR 242.600(b)(30).

<sup>7</sup> 15 U.S.C. 78f.

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

information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2007–009 and should be submitted on or before March 20, 2007.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55325; File No. SR–NASDAQ–2007–011]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a New NASD Trade Reporting Facility Established in Conjunction with NYSE Market, Inc.

February 21, 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 February 1, 2007, the National Association of Securities Dealers, Inc. (“NASD”) 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 prepared substantially by the NASD. The NASD has filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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

The NASD proposes to adopt rules relating to a new Trade Reporting Facility (the “NASDAQ/NYSE TRF”) to be established by the NASD in conjunction with NYSE Market, Inc. (“NYSE”),<sup>5</sup> that will provide members with an additional mechanism for reporting

trades in exchange-listed securities effected otherwise than on an exchange. The proposed NASD/NYSE TRF functionality and rules are substantially similar to the functionality and rules of the Trade Reporting Facilities established by the NASD and the Nasdaq Stock Market, Inc. (the “NASDAQ/Nasdaq TRF”), the NASD and the National Stock Exchange, Inc. (the “NASDAQ/NSX TRF”), and the NASD and the Boston Stock Exchange, Inc. (the “NASDAQ/BSE TRF”) (collectively, the “Approved NASD Trade Reporting Facilities”), which were subject to notice and comment and approved by the Commission.<sup>6</sup> The text of the proposed rule change is available at the NASD, in the Commission’s Public Reference Room, and at <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, the NASD 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. The NASD 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 proposed rule change would establish the new NASD/NYSE TRF on substantially the same terms as the Approved NASD Trade Reporting Facilities. The NASD/NYSE TRF will provide members with an additional mechanism, which has been developed by the NYSE, for reporting locked-in transactions in exchange-listed securities executed otherwise than on an exchange. Members will match and/or execute orders internally or through proprietary systems and submit these trades to the NASD/NYSE TRF with the

appropriate information and modifiers. All trades submitted to the NASD/NYSE TRF must be locked-in prior to entry into the system and the NASD/NYSE TRF will have no trade comparison functionality. Participants wishing to report to the NASD/NYSE TRF on behalf of another NASD member may do so only pursuant to a valid give-up agreement, as specified in the proposed rules.

The NASD/NYSE TRF will report the trades to the appropriate exclusive securities information processor (“SIP”).<sup>7</sup> As with trades reported to the Approved NASD Trade Reporting Facilities, NASD/NYSE TRF transactions disseminated to the media will include a modifier indicating the source of such transactions that would distinguish them from transactions executed on or through the NYSE or another NASD Trade Reporting Facility. In addition, the NASD/NYSE TRF will provide the NASD with a real-time copy of each trade report for regulatory review purposes. Unlike the Approved NASD Trade Reporting Facilities, the NASD/NYSE TRF will not at this time submit transactions to clearing.

Like the Approved NASD Trade Reporting Facilities, the NASD/NYSE TRF will be a facility of the NASD, subject to regulation by the NASD and the NASD’s registration as a national securities association. It will not be a service “for the purpose of effecting or reporting a transaction” on the NYSE; rather, it will be a service for the purpose of reporting over-the-counter (“OTC”) transactions in exchange-listed securities to the NASD.<sup>8</sup> Thus, members that meet all applicable requirements will have the option of reporting transactions in exchange-listed securities executed otherwise than on an exchange to the NASD/NYSE TRF, one of the Approved NASD Trade Reporting Facilities, the NASD’s Alternative Display Facility (“ADF”),<sup>9</sup> or the NASD’s Intermarket Trading

<sup>7</sup> The NASD/NYSE TRF will have controls in place to ensure that transactions that are reported to the NASD/NYSE TRF, but that are priced significantly away from the current market, will not be submitted to the SIP. The NASD represents that this is consistent with current practice, in that neither the NASD’s Alternative Display Facility nor the Approved NASD Trade Reporting Facilities currently submit such trades to the SIP. According to the NASD, this practice is designed to preserve the integrity of the tape.

<sup>8</sup> See NASD/Nasdaq TRF Approval Order, *supra* note 6.

<sup>9</sup> The Commission approved a proposed rule change that expanded the ADF’s functionality to all exchange-listed securities. See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (order approving File No. SR–NASDAQ–2006–091).

<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).

<sup>4</sup> 17 CFR 240.19b–4(f)(6).

<sup>5</sup> NYSE Market, Inc. is the entity to which the New York Stock Exchange LLC, a self-regulatory organization, has delegated all non-regulatory functions involved in conducting the activities of a national securities exchange, including the trading functions, the listings functions, and market data.

<sup>6</sup> See Securities Exchange Act Release Nos. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving File No. SR–NASDAQ–2005–087) (the “NASDAQ/Nasdaq TRF Approval Order”); 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006) (order approving File No. SR–NASDAQ–2006–108); and 54931 (December 13, 2006), 71 FR 76409 (December 20, 2006) (order approving File No. SR–NASDAQ–2006–115). See also Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving File No. SR–NASDAQ–2006–104) (the “Phase II Approval Order”).