

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58201; File No. SR-NASDAQ-2008-043]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the Definition of "Non-Industry Director" in the By-Laws of The NASDAQ OMX Group, Inc. and The NASDAQ Stock Market LLC

July 21, 2008.

On May 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, a proposed rule change to amend the definition of "Non-Industry Director" in The NASDAQ OMX Group, Inc.'s by-laws ("NASDAQ OMX By-Laws") and Nasdaq's by-laws ("Nasdaq By-Laws"). On May 28, 2008, Nasdaq filed Amendment No. 1. The proposed rule change was published for comment in the **Federal Register** on June 9, 2008.<sup>2</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

Nasdaq proposes to amend NASDAQ OMX By-Laws and Nasdaq By-Laws to clarify that a director of an issuer of securities may be considered an "issuer representative" for purposes of provisions in these by-laws that require issuer representation on NASDAQ OMX's board of directors ("NASDAQ OMX Board") and Nasdaq's board of directors ("Nasdaq Board"), respectively.

Section 4.3 of the NASDAQ OMX By-Laws currently provides that the number of Non-Industry Directors,<sup>3</sup> including at least one issuer representative, must equal or exceed the number of Industry Directors,<sup>4</sup> unless the NASDAQ OMX Board consists of ten or more directors, in which case at least two directors must be issuer representatives. Likewise, Article III, Section 2(a) of the Nasdaq By-Laws provides that the number of Non-Industry Directors,<sup>5</sup> including at least one issuer representative, must equal or exceed the number of Industry Directors<sup>6</sup> and Member Representative

Directors,<sup>7</sup> unless the Nasdaq Board consists of ten or more directors, in which case at least two directors shall be issuer representatives.

The term "issuer representative," however, is not defined in either the NASDAQ OMX By-Laws or the Nasdaq By-Laws. Instead, NASDAQ OMX By-Laws provide that "Non-Industry Director" means a director who is a Public Director,<sup>8</sup> an officer or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary,<sup>9</sup> or any other individual who would not be an Industry Director or Industry committee member. Similarly, Nasdaq By-Laws provide that "Non-Industry Director" means a director who is a Public Director,<sup>10</sup> an officer or employee of an issuer of securities listed on the national securities exchange operated by Nasdaq, or any other individual who would not be an Industry Director.

Because these definitions of Non-Industry Director could be construed to require that an issuer representative must be an officer or employee of an issuer but not a director, Nasdaq proposes to clarify the NASDAQ OMX By-Laws' and Nasdaq By-Laws' definitions of Non-Industry Director to include a reference to "director" so that these definitions could not preclude a director of an issuer from serving as an issuer representative.

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.<sup>11</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(3) of the Act,<sup>12</sup> which requires that the rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission believes that the proposed rule change is appropriate, because it would clarify that the director of a Nasdaq issuer could serve as an issuer representative on the NASDAQ OMX Board and Nasdaq Board.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NASDAQ-2008-043), 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>14</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-17210 Filed 7-25-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58203; File No. SR-NYSEArca-2008-57]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change Amending NYSE Arca Rule 5.3 and Rule 5.4 To Enable the Listing and Trading of Options on Index-Linked Securities

July 22, 2008.

On May 29, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder to amend NYSE Arca Rules 5.3 and 5.4 to list and trade options on equity index-linked securities, commodity-linked securities, currency-linked securities, fixed income index-linked securities, futures-linked securities, and multifactor index-linked securities (collectively referred to as "Index-Linked Securities")<sup>3</sup> that are principally traded on a national securities exchange and an "NMS stock" as defined in Rule 600 of Regulation NMS.<sup>4</sup> The proposed rule change was published for comment in the **Federal Register** on June 18, 2008 for a 21-day comment period.<sup>5</sup> The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> See Securities Exchange Act Release No. 57911 (June 3, 2008), 73 FR 32615.

<sup>3</sup> See Article I(m), NASDAQ OMX By-Laws.

<sup>4</sup> See Article I(j), NASDAQ OMX By-Laws.

<sup>5</sup> See Article I(v), Nasdaq By-Laws.

<sup>6</sup> See Article I(l), Nasdaq By-Laws.

<sup>7</sup> See Article I(q), Nasdaq By-Laws.

<sup>8</sup> See Article I(n), NASDAQ OMX By-Laws.

<sup>9</sup> See Article I(o), NASDAQ OMX By-Laws.

<sup>10</sup> See Article I(y), Nasdaq By-Laws.

<sup>11</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>12</sup> 15 U.S.C. 78f(b)(5).

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

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

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>16</sup> 17 CFR 240.19b-4.

<sup>17</sup> See NYSE Arca Equities Rule 5.2(j)(6).

<sup>18</sup> See 17 CFR 242.600(b)(47).

<sup>19</sup> See Securities Exchange Act Release No. 57950 (June 11, 2008), 73 FR 34815.

market indexes of the foregoing. Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one year but not greater than thirty years. Despite the fact that Index-Linked Securities are linked to at least one underlying index or asset ("Reference Asset"), each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options would apply to options on Index-Linked Securities.

After careful consideration, 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<sup>6</sup> and, in particular, the requirements of Section 6 of the Act.<sup>7</sup> Specifically, the Commission 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 the rules of a national securities exchange be designed 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.

#### Listing and Trading of Options on Index-Linked Securities

As set out more fully in the Exchange's notice of its proposal, NYSE Arca's proposed rules include requirements regarding initial and continued listing standards, the creation/redemption process for Index-Linked Securities, and trading halts. Index-Linked Securities must be traded through a national securities exchange or through the facilities of a national securities association, and must be "NMS stock" as defined under Rule 600 of Regulation NMS.<sup>9</sup>

The Commission notes that, pursuant to the proposed NYSE Arca Rules 5.3(j)(3) and 5.4(m), Index-Linked Securities will be subject to the initial and continuing eligibility standards for underlying securities provided in NYSE Arca Rules 5.3 and 5.4, as applicable. In particular, to be options eligible, an Index-Linked Security must either meet the criteria and guidelines for underlying securities set forth in NYSE Arca Rule 5.3(a), or alternately, the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the

issuer at a price related to the applicable underlying Reference Asset, and the issuing company must be obligated to issue or repurchase the securities in aggregation units for cash or cash equivalents satisfactory to the issuer of Index-Linked Securities which underlie the option as described in the Index-Linked Securities prospectus.

To continue to be options eligible, the Index-Linked Security must remain an NMS stock listed on a national securities exchange. The Exchange will also consider the suspension of opening transactions in any series of options of the class covering Index-Linked Securities where the Index-Linked Security does not satisfy the requirements set out in proposed NYSE Arca Rule 5.4(m). These include: (1) Continued compliance with NYSE Arca Rule 5.3(j); (2) compliance with NYSE Arca 5.4(b) or, for options covering Index-Linked Securities approved pursuant to NYSE Arca Rule 5.3(j)(3)(B), continuing to be an NMS stock listed on a national securities exchange; and (3) the value of the underlying Reference Asset continues to be calculated and available. In addition, the Exchange retains discretion to suspend opening transactions in options on Index-Linked Securities where conditions make further dealings in such options inadvisable.

The Exchange represented that the addition of options on Index-Linked Securities will not have any effect on Exchange rules pertaining to position and exercise limits<sup>10</sup> or margin.<sup>11</sup>

#### Surveillance

The Commission notes that Exchange has represented that it will implement surveillance procedures for options on Index-Linked Securities, including adequate comprehensive surveillance sharing agreements with markets trading in non-U.S. components, as applicable. NYSE Arca further represented that these procedures will be adequate to properly monitor Exchange trading of options on Index-Linked Securities and to deter and detect violations of Exchange rules. This order is based on these representations.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NYSEArca-2008-57) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-17211 Filed 7-25-08; 8:45 am]

**BILLING CODE 8010-01-P**

#### SMALL BUSINESS ADMINISTRATION

##### [Disaster Declaration #11311 and #11312]

##### Missouri Disaster Number MO-00030

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

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Missouri (FEMA-1773-DR), dated 06/28/2008.

*Incident:* Severe Storms and Flooding.  
*Incident Period:* 06/01/2008 and continuing.

*Effective Date:* 07/18/2008.

*Physical Loan Application Deadline Date:* 08/27/2008.

*EIDL Loan Application Deadline Date:* 03/30/2009.

**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:** The notice of the Presidential disaster declaration for the State of Missouri, dated 06/28/2008 is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Counties: (Physical Damage and Economic Injury Loans):*

Andrew, Cass, Greene, Holt, Johnson, Nodaway, Stone, Taney, Vernon, Webster.

*Contiguous Counties: (Economic Injury Loans Only):*

Missouri: Atchison, Barry, Barton, Bates, Buchanan, Cedar, Christian, Dade, Dallas, Douglas, Henry, Jackson, Laclede, Lafayette, Lawrence, Ozark, Pettis, Polk, Saint Clair, Wright.

Arkansas: Boone, Carroll, Marion.

Iowa: Page, Taylor.

Kansas: Bourbon, Crawford,

Doniphan, Johnson, Linn, Miami.

Nebraska: Nemaha, Richardson.

All other information in the original declaration remains unchanged.

<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.

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

<sup>9</sup> 17 CFR 242.600(b)(47).

<sup>10</sup> See NYSE Arca Rules 6.8 and 6.9.

<sup>11</sup> See NYSE Arca Rule 5.25.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).