

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56291; File No. SR-CHX-2006-42]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Modify Provisions Relating to Cross With Yield Orders

August 20, 2007.

#### I. Introduction

On December 22, 2006, the Chicago Stock Exchange, Inc. ("CHX" 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 permit participants submitting "cross with yield" orders to elect to yield to undisplayed interest in the Exchange's central matching engine ("Matching System"). On July 6, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on July 20, 2007.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

The Exchange permits participants to submit "cross with yield" orders into its Matching System. A cross with yield order is an order that contains an instruction to execute a cross transaction at a specific price, together with an instruction to yield interest on the buy, sell or either side of the order, as specified in the order, to any order already displayed in the Matching System at the same or better price, to the extent necessary to allow the cross transaction to occur.<sup>4</sup> The proposed rule change would amend the Exchange's definition of a "cross with yield" order to permit a CHX participant to elect to yield to undisplayed interest in the Matching System, including undisplayed portions of reserve size orders and any undisplayed orders, in addition to bids and offers that are displayed in the Matching System.

#### III. Discussion

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,<sup>5</sup> which requires, among other things, that the rules of a national securities exchange be designed 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.<sup>6</sup>

The Commission notes that cross with yield orders are intended to provide an efficient means to execute a cross transaction at a particular price, yielding interest to orders in the Matching System that have priority. The Commission believes that the proposed rule change will expand the flexibility of this order type by providing a greater opportunity for orders being crossed to interact with all available market interest in the Exchange's Matching System. Accordingly, 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>7</sup> that the proposed rule change (SR-CHX-2006-42), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56294; File No. SR-NASDAQ-2007-024]

### Self-Regulatory Organization; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Provide Additional Transparency To How Nasdaq Applies Its Public Interest Authority

August 21, 2007.

On March 16, 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 clarify how Nasdaq applies its public interest authority. On June 26, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on July 17, 2007.<sup>3</sup> The Commission received no comments regarding the proposal.

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>4</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>5</sup> which requires that the rules of the an exchange be designed 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 securities system, and, in general, to protect investors and the public interest.

Nasdaq IM-4300 states that Nasdaq may use its authority under Nasdaq Rule 4300 to deny initial or continued listing when an individual with a history of regulatory misconduct is associated with an issuer. Nasdaq proposes to amend Nasdaq IM-4300 to provide additional transparency to how Nasdaq may use this authority pursuant to Nasdaq Rule 4300. Specifically, Nasdaq proposes to provide additional guidance to issuers by clarifying existing factors in Nasdaq IM-4300 that it will consider in applying such

<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. 56044 (July 11, 2007), 72 FR 39108.

<sup>4</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>5</sup> 15 U.S.C. 78f(b)(5).

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

<sup>6</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>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</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. 56064 (July 13, 2007), 72 FR 39865.

<sup>4</sup> See CHX Rules, Article 1, Rule 2(h) and Article 20, Rules 4(b)(7) and 8(e).

authority. Nasdaq also proposes to add new language highlighting Nasdaq staff's willingness to discuss remedial measures with issuers. The Commission believes that this proposal is reasonably designed to enhance the transparency and integrity of the Nasdaq's initial or continued listing denial process.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-NASDAQ-2007-024), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56290; File No. SR-NYSE-2007-75]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adjust the Earnings of Companies for Purposes of its Earnings Standard by Reversing the Income Statement Effects of Changes in Fair Value of Financial Instruments Extinguished at the Time of Listing on a Six Month Pilot Basis

August 20, 2007.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Exchange Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on August 13, 2007, New York Stock Exchange LLC (the "NYSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule changes as described in Items I and II below, which items have been prepared by the Exchange. NYSE has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4,<sup>4</sup> which renders the proposal effective upon receipt of this filing by 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 Exchange proposes to amend the earnings standard of Section 102.01C(I) of the Exchange's Listed Company Manual (the "Manual") on a six-month pilot program basis. The amendment will enable the Exchange to adjust the earnings of companies by reversing the income statement effects for all periods of any changes in fair value of financial instruments classified as a liability recorded by the company in earnings, provided such financial instrument is either being redeemed with the proceeds of an offering occurring in conjunction with the listing or converted into or exercised for common stock of the company at the time of listing.

The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary, 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, the Exchange 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 NYSE 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 Exchange proposes to amend the earnings standard of Section 102.01C(I) of the Manual on a six-month pilot program basis (the "Pilot Program"). The amendment will enable the Exchange to adjust the earnings of companies listing in conjunction with an IPO by reversing the income statement effects for all periods of changes in fair value of financial instruments classified as a liability recorded by the company in earnings, provided such financial instrument is either being redeemed with the proceeds of an offering occurring in conjunction with the listing or converted into or exercised for common

stock of the company at the time of listing.

Nonpublic companies engaging in pre-IPO financings often raise capital through the sale of preferred stock and warrants to purchase preferred stock. Preferred stock and preferred stock warrants are also sometimes issued by pre-IPO companies to service providers in lieu of cash compensation. Typically, at the time of the company's IPO, the preferred stock is converted into common stock and the preferred stock warrants are automatically exercised and the underlying preferred stock is converted into common stock of the company. In some cases, companies may also redeem some or all of the outstanding preferred stock with a portion of the proceeds from the IPO.

Some pre-IPO companies have determined that they must record in earnings changes in the fair value of certain financial instruments classified as liabilities. As the fair value of a pre-IPO company's equity often increases as the company gets closer to its IPO, many companies have had to record significant reductions in earnings associated with increases in the fair value of the preferred stock warrant liability. In certain cases, the impact on the company's earnings as reported under generally accepted accounting principles ("GAAP") of the preferred stock liability causes otherwise qualified companies to fail to qualify under the Exchange's earnings standard. Under the Exchange's current rules, the Exchange cannot list these companies even though the preferred stock warrant liability will be extinguished at the time of the IPO by conversion into common stock or redemption out of the proceeds of the IPO.

The Exchange believes that it is appropriate to exclude the effects of changes in fair value of a financial instrument classified as a liability from a company's earnings where the financial instrument is being retired at the time of a company's listing either out of the proceeds of a concurrent offering or by conversion into common stock at the time of listing. The Exchange believes that adjusting company earnings for charges arising out of the changes in fair value of financial instruments that are retired with the proceeds of an offering occurring in conjunction with the listing or converted into common stock at the time of listing is consistent with the adjustments that are currently permitted under Section 102.01C for a number of other nonrecurring charges to earnings that are included in net income as recorded under GAAP, such as the exclusion of impairment charges on

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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