

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57977; File No. SR-NASDAQ-2008-052]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Opening of Trading on the NASDAQ Options Market

June 17, 2008.

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 June 12, 2008, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") 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 substantially prepared by the Exchange. Nasdaq has filed the proposal pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(5) 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

Nasdaq proposes to modify the opening of trading on the NASDAQ Options Market ("NOM") as set forth in Chapter VI, section 8 of the Nasdaq Rules governing options trading. 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, 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 Exchange 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

Nasdaq proposes to modify Chapter VI, section 8 of the rules governing NOM, and in particular governing the opening of trading in that market. Since Nasdaq launched NOM on March 31, 2008, Nasdaq has monitored the operation of the market to identify instances where market efficiency can be enhanced. On May 13, 2008, Nasdaq filed SR-NASDAQ-2008-045, a rule change designed to enhance the opening by delaying the opening until such time as the execution of the Opening Cross or, where no Opening Cross will occur, the opening print is in line with the overall marketplace.<sup>5</sup>

Currently, the opening is delayed if the Nasdaq Best Bid and Offer ("Nasdaq BBO") after execution of the opening print would be wider than pre-determined authorized trading thresholds as prescribed in the obvious error guidelines set forth in Chapter V, Sec. 6 of the NOM rules. This change has reduced the instances of erroneous trades occurring at the beginning of the trading day.

While Nasdaq believes that the opening of the market is quite effective, it also believes that it can be further enhanced in instances where there is insufficient trading interest to conduct an Opening Cross. Specifically, Nasdaq proposes to allow the opening of trading in those instances where trading interest at the National Best Bid and Offer ("NBBO"), which includes the non-firm Nasdaq BBO, is within the currently authorized trading thresholds. Except for executions arising from the Opening Cross, executions shall only be permitted if they will not result in a trade-through violation of the NBBO as described in Chapter VI, Sec. 7(b)(3)(C) of the NOM rules. Nasdaq believes that this change will allow it to open more series earlier in the trading day without risk of additional erroneous trades.

Nasdaq believes that analyzing both NBBO and Nasdaq BBO when determining to open trading will enhance the opportunities for market participants to execute trades at the beginning of the trading day and encourage the addition of additional potentially executable trading interest.

##### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the

provisions of section 6(b) of the Act,<sup>6</sup> in general, and with section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is 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. Nasdaq believes that the proposal is consistent with this standard because the proposed rule change is designed to improve execution quality at the critical opening of the market.

#### 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. To the contrary, Nasdaq believes that by enhancing NOM's opening of trading, the proposed rule change will require competing markets to improve their opening processes and thereby enhance competition between the markets.

#### 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

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>8</sup> and Rule 19b-4(f)(5) thereunder.<sup>9</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.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

<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)(5).

<sup>5</sup> See Securities Exchange Act Release No. 57822 (May 15, 2008), 73 FR 29800 (May 22, 2008).

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(5).

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-2008-052 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2008-052. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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 information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2008-052 and should be submitted on or before July 14, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57973; File No. SR-NASDAQ-2008-050]

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Regarding Nasdaq Last Sale Data Feeds**

June 16, 2008.

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 June 2, 2008, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") 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 the Exchange. On June 12, 2008, Nasdaq submitted Amendment No. 1 to the proposed rule change. The Exchange has designated the proposed rule change as a "non-controversial" rule change 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 proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Nasdaq proposes to establish a one-month free service for those data feeds for which Nasdaq has separately proposed fees on a four-month pilot basis in Amendment No. 2 to SR-NASDAQ-2006-060.<sup>5</sup> Specifically, Nasdaq is proposing to offer the "Nasdaq Last Sale for Nasdaq" and "Nasdaq Last Sale for NYSE/Amex" data feeds ("Nasdaq Last Sale Data Feeds") containing last sale activity in U.S. equities within the Nasdaq Market Center and reported to the jointly-operated FINRA/Nasdaq Trade Reporting Facility ("FINRA/Nasdaq TRF") during the month of June 2008 without charge to data distributors. The availability of the products following June 2008 will be subject to Commission approval of the fees proposed in SR-NASDAQ-2006-060.<sup>6</sup> Accordingly, SR-

NASDAQ-2008-050 does not propose fees or charges and will be operative only for June 2008. There is no proposed rule text.

#### **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. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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**

Currently, investors that wish to view market data to monitor their portfolios generally have two choices: (1) Pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. In SR-NASDAQ-2006-060, Nasdaq has proposed to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data via the Internet and television at no cost to millions of internet users and television viewers. In Amendment No. 2 to SR-NASDAQ-2006-060, Nasdaq proposes to charge certain fees described in that filing for a four-month pilot period.<sup>7</sup> In SR-NASDAQ-2008-050, Nasdaq proposes to offer free of charge during the month of June 2008 the same data feeds for which Nasdaq has proposed fees on a four-month pilot basis in SR-NASDAQ-2006-060. The availability of the products following June 2008 will be subject to Commission approval of the fees proposed in SR-NASDAQ-2006-060.

Nasdaq proposes to create two separate "Level 1" products containing last sale activity within the Nasdaq market and reported to the jointly-operated FINRA/Nasdaq TRF. First, the Nasdaq Last Sale for Nasdaq data product is a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the Nasdaq system as well as those reported to the FINRA/Nasdaq TRF. Second, Nasdaq will also create the Nasdaq Last Sale for NYSE/Amex data product that provides real-time last sale information

<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> See Securities Exchange Act Release No. 57965 (June 16, 2008).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>10</sup> 17 CFR 200.30-3(a)(12).