

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 such filing also will be available for inspection and copying at the principal office of the Exchange. 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 publicly available. All submissions should refer to File Number SR-CHX-2008-13 and should be submitted on or before September 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58357; File No. SR-NASDAQ-2008-068]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change as Modified by Amendment No. 1 To Modify Rule 4770 To Enhance Trading in the NASDAQ Crossing Network

August 13, 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 August 11, 2008, 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 prepared by Nasdaq. Nasdaq has designated this proposal as non-controversial and provided the Commission with the notice required by Exchange Act Rule 19b-4(f)(6)(iii). This rule proposal, which is effective upon filing with the Commission, shall become operative on September 1, 2008. On August 13, 2008, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 is filing a rule proposal to modify Rule 4770 to enhance trading in the NASDAQ Crossing Network. Nasdaq proposes to implement the proposed rule change on September 1, 2008.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.<sup>4</sup>

\* \* \* \* \*

#### 4770. Nasdaq Crossing Network

(a) Definitions. For the purposes of this rule the term:

(1) "Nasdaq Reference Price Cross" shall mean the process for executing orders at a predetermined reference price at a randomly selected point in time during a *five-second* [one minute] trading window beginning at 10:45 a.m., 12:45 p.m. and 2:45 p.m. Eastern Time during the regular hours session and at 4:30 p.m. during the after hours session.

(2) No Change.

(3) No Change.

(b) No Change.

\* \* \* \* \*

#### 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

Nasdaq is filing a rule proposal to modify Rule 4770 to enhance trading in the NASDAQ Crossing Network. The Commission approved the Nasdaq Crossing Network on July 5, 2006.<sup>5</sup> The Nasdaq Crossing Network provides an execution option to market participants trading in Nasdaq and other exchange-listed securities that facilitates the execution of trades quickly and anonymously.

In order to minimize the opportunity for manipulation, Nasdaq executes the cross through an automated and random matching mechanism at a randomly selected time during the predetermined one-minute cross-trading window. Nasdaq introduced the randomization period in order to prevent market participants from entering or cancelling orders in the Nasdaq Crossing Network in an attempt to improperly influence the execution price of a cross. The randomization period was thought to protect both market participants and public investors from potential manipulation.

In response to input from our members and other market participants, Nasdaq proposes to modify the 60-second "randomization period" of [sic] that precedes the execution of all crosses within the Nasdaq Crossing Network. Based upon changing market conditions, Nasdaq has now determined that the full benefits of the randomization period can be realized through a shorter randomization period of five seconds rather than 60 seconds.

The speed of order routing and execution in the marketplace has increased substantially since the launch of the Nasdaq Crossing Network. As a result, a random period of five seconds is sufficient to create significant risk of a delayed execution outside the control of a market participant. In other words, there is little incremental benefit of a random period longer than five seconds.

<sup>5</sup> See Securities Exchange Act Release No. 54248 (July 31, 2006) (SR-NASDAQ-2006-019). Prior to the effective date of Nasdaq's operation as an exchange for Nasdaq-listed securities, the rule governing the Nasdaq Crossing Network had been approved as an NASD rule (NASD Rule 4716). Securities Exchange Act Release No. 54101 (July 5, 2006), 71 FR 39382 (July 12, 2006) (SR-NASD-2005-140).

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> The Commission considers the 60-day abrogation period to have commenced on August 13, 2008, the date the Exchange filed Amendment No. 1.

<sup>4</sup> Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://nasdaqomx.cchwallstreet.com>.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934,<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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange. The proposal satisfies this requirement in that it is designed to increase order interaction and the likelihood of execution in the Nasdaq Crossing Network while maintaining investor protection associated with a random delay to decrease the potential for manipulation.

### *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, the proposal is designed to enhance competition by making Nasdaq's trading mechanism more effective and competitive.

### *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 foregoing proposed rule change 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

Nasdaq has asked the Commission to waive the operative delay to permit the proposed rule change to become operative on September 1, 2008. The Commission has determined that allowing the filing to become operative on September 1, 2008, is consistent with the protection of investors and the public interest.<sup>10</sup> Nasdaq has represented that it intends to re-launch the Nasdaq Crossing Network on September 1, 2008. As part of the re-launch, Nasdaq has stated that it will educate members regarding the liquidity, transparency and execution quality available through the Nasdaq Crossing Network. Nasdaq intends to also reduce prices to encourage participants to participate in the Crossing Network and thereby create a deeper source of liquidity.<sup>11</sup> The Commission believes that allowing Nasdaq to introduce the reduced randomization period as part of its September 1, 2008 re-launch will assist market participants that utilize the Nasdaq Crossing Network in understanding how the system operates with the reduced randomization period in place.

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, 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-2008-068 on the subject line.

of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

<sup>10</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> The Commission notes that any proposed change in fees must be filed with the Commission pursuant to Rule 19b-4. See 17 CFR 240.19b-4.

## *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-2008-068. 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 Section, 100 F Street, NE., Washington, DC 20549-1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. 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-2008-068 and should be submitted on or before September 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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

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

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

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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

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