rule change is based on a similar proposal that was previously approved by the Commission[13] and does not raise any novel or significant issues. Therefore, the Commission designates the proposed rule change operative upon filing.

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*. Please include File Number SR–BSE–2008–44 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–BSE–2008–44. 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 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–BSE–2008–44 and should be submitted on or before November 13, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E8–25239 Filed 10–22–08; 8:45 am]

BILLING CODE 8011–01–P

[13] *See* Securities Exchange Act Release No. 58119 (July 8, 2008), 73 FR 40646 (July 15, 2008) (SR–CBOE–2008–53). *See also* Securities Exchange Act Release No. 58289 (August 1, 2008), 73 FR 46667 (August 11, 2008) (SR–ISE–2008–62).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58809; File No. SR–NASDAQ–2008–082]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Temporarily Suspend, Through January 16, 2009, the Continued Listing Requirements Related to Bid Price and Market Value of Publicly Held Shares

October 17, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 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 the proposed rule change as effecting a change described under Rule 19b–4(f)(6) under the Act,[3] 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 temporarily suspend, through January 16, 2009, the application of the continued listing requirements related to bid price and market value of publicly held shares.

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

Given current market conditions, Nasdaq proposes to provide issuers of common stock, preferred stock, secondary classes of common stock, shares or certificates of beneficial interest of trusts, limited partnership interests, American Depositary Receipts, and their equivalents temporary relief from the continued inclusion bid price[4] and market value of publicly held shares requirements.[5]

In the past several weeks, U.S. and world financial markets have faced

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Nasdaq's continued listing requirements relating to bid price are set forth in Rules 4310(c)(4), 4320(e)(2)(E)(ii), 4450(a)(5), 4450(b)(4), and 4450(h)(3) and the related compliance periods are set forth in Rules 4310(c)(8)(D), 4320(e)(2)(E)(ii), and 4450(e)(2). Under these rules, a security is considered deficient if it fails to achieve at least a $1 closing bid price for a period of 30 consecutive business days. Once deficient, Capital Market issuers are provided one automatic 180-day period to regain compliance. Thereafter, these issuers can receive an additional 180-day compliance period if they comply with all Capital Market initial inclusion requirements except bid price. Global Market issuers are also provided one automatic 180-day period to regain compliance, after which they can transfer to the Capital Market, if they comply with all Capital Market initial inclusion requirements except bid price, to take advantage of the second 180-day compliance period. A company can regain compliance by achieving a $1 closing bid price for a minimum of ten consecutive business days.

[5] Nasdaq's continued listing requirements relating to market value of publicly held shares are set forth in Rules 4310(c)(7), 4320(e)(5), 4450(a)(2), 4450(b)(3) and 4450(h)(2) and the related compliance periods are set forth in Rules 4310(c)(8)(B) and 4450(e)(1). Under these rules, a security is considered deficient if it fails to achieve the minimum market value of publicly held shares requirement for a period of 30 consecutive business days. Thereafter, companies have a compliance period of 90 calendar days to achieve compliance by meeting the applicable standard for a minimum of ten consecutive business days.

almost unprecedented turmoil, and the Commission has acknowledged in several recent emergency Orders that this turmoil has resulted in a crisis in investor confidence and concerns about the proper functioning of the securities markets.[6] As a result, the number of securities trading below $1 has increased dramatically. For example, as of September 30, 2007, there were 64 securities trading below $1 on Nasdaq. By September 30, 2008, that number had increased to 227 and by October 9, 2008, there were 344 securities trading below $1 on Nasdaq and over another 300 Nasdaq-listed securities trading between $1 and $2.[7] Nasdaq believes that during this time there was no fundamental change in the underlying business model or prospects for many of these companies, but the decline in general investor confidence has resulted in depressed pricing for companies that otherwise remain suitable for continued listing. These same conditions make it difficult for companies to successfully implement a plan to regain compliance with the price or market value of publicly held shares tests.

Given these extraordinary market conditions, Nasdaq has determined that the bid price and market value of publicly held shares requirements should be temporarily suspended through January 16, 2009.[8] Under this proposal, companies would not be cited for new bid price or market value of publicly held shares deficiencies during the suspension period, and the time allowed to companies already in a compliance period or in the hearings process for bid price or market value of publicly held shares deficiencies would be suspended with respect to those requirements.[9] Following the temporary suspension, any new deficiencies with the bid price or market value of publicly held shares requirements would be determined using data starting on January 19, 2009.[10] Companies that were in a compliance period prior to the suspension would receive the balance of any pending compliance periods in effect at the time of the suspension.[11] Similarly, companies that were in the Hearings process prior to the suspension would resume in that process at the same stage they were in when the suspension went into effect. Nasdaq will continue to monitor securities to determine if they regain compliance during the temporary suspension.

Nasdaq believes that this temporary suspension will permit companies to focus on running their businesses, rather than satisfying market-based requirements that are largely beyond their control in the current environment. Moreover, this temporary suspension would allow investors to buy shares of some of these lower-priced securities without fear that the company will receive a delisting notification or be delisted in the very near term.[12] During the temporary suspension, Nasdaq will consider whether it is appropriate to propose further revisions to these requirements.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general and with Sections 6(b)(5) of the Act,[14] in particular in that it 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 remove uncertainty regarding the ability of companies to remain listed on Nasdaq during this especially turbulent market environment, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open 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, 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

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[17] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has

[6] *See, e.g.*, Securities Exchange Act Release No. 58588 (September 18, 2008), 73 FR 55174 (September 24, 2008) (''The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Given the importance of confidence in our financial markets as a whole, we have also become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.'').

[7] Similarly, from January 1, 2008, to September 30, 2008, the number of companies deficient in the market value of publicly held shares requirement more than doubled.

[8] In late 2001, in response to a continuing decline in the market, which was exacerbated by the tragic events of September 11th, Nasdaq imposed a similar temporary suspension on delisting securities which were deficient in the bid price and market value of publicly held shares requirements. Securities Exchange Act Release No. 44857 (September 27, 2001), 66 FR 50485 (October 3, 2001) (SR–NASD–2001–61).

[9] Nasdaq would continue to identify companies in a compliance period or in the hearings process as not satisfying the continued listing standards, unless the company regains compliance during the suspension. A company would continue to be subject to delisting for failure to comply with other listing requirements.

[10] Nasdaq would not consider the bid price or market value of publicly held shares for the period before or during the suspension with respect to a company that is not yet non-compliant with those requirements at the start of the suspension.

[11] For example, if a company is 120 days into its first 180-day compliance period for a bid price deficiency when the suspension starts and the company does not regain compliance during the suspension, the company would have an additional sixty days starting on January 19, 2009, to regain compliance. The company may be eligible for the second 180-day compliance period if it satisfies the conditions for the second compliance period at the conclusion of the first compliance period.

[12] As noted above, following the suspension, companies presently in the compliance process will remain at that same stage of the process.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give 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. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow Nasdaq to immediately implement a temporary measure to suspend its continued listing requirements relating to bid price and market value of publicly held shares to respond to recent market volatility and conditions. The Commission notes that this will provide certain companies with immediate relief from receiving a deficiency or delisting notification, or from being delisted, as a result of the current market conditions. The Commission notes that this action is temporary in nature, and that following the suspension, companies currently in the compliance process or in the hearings process will resume at the same stage of the process if they remain non-compliant with these standards. This will ensure that the temporary suspension addresses the concerns to companies and investors caused by the current market conditions, and that may result in a company's securities becoming non-compliant with the bid price and market value of publicly held shares requirements, or unable to cure such a deficiency, due to these market conditions. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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*. Please include File Number SR–NASDAQ–2008–082 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–2008–082. 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, 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 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–2008–082 and should be submitted on or before November 13, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Lynn Taylor,

Assistant Secretary.

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[19] 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. 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58779; File No. SR–NYSE–2008–78]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change Amending NYSE Rule 18 To Allow NYSE Alternext US LLC To Participate in the Compensation Fund Established by NYSE To Reimburse Claimants for Losses Associated With NYSE-Operated System Failures

October 14, 2008.

I. Introduction

On August 26, 2008, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending NYSE Rule 18 to allow NYSE Alternext US LLC (''NYSE Alternext''[3]) to participate in the compensation fund established by NYSE to reimburse claimants for losses associated with a malfunction of the Exchange's physical equipment, devices, and/or programming which results in an incorrect execution or no execution of an order that was received in Exchange systems (an ''Exchange systems malfunction''). The proposed rule change was published for comment in the **Federal Register** on September 9, 2008.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Through a series of mergers (the ''Mergers''), the American Stock Exchange LLC (''Amex'') has become a subsidiary of NYSE Euronext and was renamed NYSE Alternext US LLC.[5] In connection with the Mergers, NYSE Alternext will relocate all equities trading currently conducted on or through the Amex legacy trading systems and facilities located at 86

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYSE Alternext US LLC will be a self-regulatory organization distinct from NYSE Euronext's European-market subsidy, NYSE Alternext. When used throughout this order, ''NYSE Alternext'' refers to NYSE Alternext US LLC.

[4] *See* Securities Exchange Act Release No. 58450 (September 2, 2008), 73 FR 52439 (September 9, 2008) (SR–NYSE–2008–78) (''Notice'').

[5] *See* Securities Exchange Act Release No. 58284 (August 1, 2008), 73 FR 46086 (August 7, 2008) (SR–Amex–2008–62) and Securities Exchange Act Release No. 58673 (September 29, 2008) (SR–Amex–2008–62).