

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55323; File No. SR-NASDAQ-2007-009)

February 21, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Intermarket Sweep Orders

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 February 16, 2007, 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 substantially prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a “non-controversial” rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) 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 the Substance of the Proposed Rule Change

Nasdaq is proposing to modify Rule 4759 to permit Nasdaq members to submit Intermarket Sweep Orders (“ISOs”) to Nasdaq if they have simultaneously sent an ISO (or comparable order) for the full displayed size of the top of the book of every other ITS participant displaying a better-priced quotation. The text of the proposed rule change is available at Nasdaq, the Commission’s Public Reference Room, and <http://nasdaq.complinet.com>.

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<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).

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

As part of its rollout of its new Single Book execution system, Nasdaq is preparing to launch additional features of its compliance with Regulation NMS ("Reg. NMS"). Specifically, Nasdaq is preparing to accept ISOs. Like other markets, Nasdaq is proposing to accept ISOs prior to the Trading Phase Date, currently March 5, 2007, in order to ensure a smooth transition to the Single Book System functionality for compliance with Reg. NMS.

Like other markets that have received approval to accept ISOs prior to the Trading Phase Date,<sup>5</sup> Nasdaq seeks to amend its rules to require member organizations that send ISOs to Nasdaq prior to the Trading Phase Date of Reg. NMS to simultaneously send an ISO (or comparable order) for the full displayed size of the top of the book of every other ITS participant displaying a better-priced quotation. The proposed temporary rule is intended to mirror the requirement, which will be operative after the Trading Phase Date, that all incoming ISOs meet

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<sup>5</sup> See, e.g., Securities Exchange Act Release No. 55210 (January 31, 2007), 72 FR 5777 (February 7, 2007) (SR-NYSE-2007-08). Nasdaq notes that its proposed rule change is identical to the New York Stock Exchange LLC's rule change.

the requirements as described in Rule 600(b)(30) of Reg. NMS,<sup>6</sup> and is designed to ensure that member organizations honor better-priced quotes of other ITS participants when submitting ISOs to Nasdaq prior to the Trading Phase Date. Nasdaq expects that this temporary rule will be in effect only until the Trading Phase Date, at which time it will be deleted from its rulebook. Nasdaq represents that, during the applicability of this rule, Nasdaq will conduct surveillance to assure that its Participants are in compliance with its rules on the use of ISOs.

In addition, Nasdaq notes that it has requested an exemption from certain provisions of the Intermarket Trading System Plan and Nasdaq Rules 4756 and 4759 to allow Nasdaq to implement the Reg. NMS compliance aspects of the Single Book rollout prior to the Trading Phase Date.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that the proposal 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 permit Nasdaq to implement functionality required for compliance with Regulation NMS in an orderly fashion and to permit Nasdaq members to gain experience with that functionality prior to its full implementation.

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<sup>6</sup> 17 CFR 242.600(b)(30).

<sup>7</sup> 15 U.S.C. 78f.

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

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder<sup>10</sup> because the proposal 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 if consistent with the protection of investors and the public interest.<sup>11</sup> Nasdaq has requested that the Commission waive the 30-day operative delay and designate the proposed rule change to be operative upon filing with the Commission. The Commission hereby grants the request.<sup>12</sup> The Commission believes that such waiver is consistent with the protection of investors and the public interest because immediate

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> Rule 19b-4(f)(6)(iii) under the Act requires that a self-regulatory organization submit to 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. Nasdaq has satisfied the pre-filing requirement.

<sup>12</sup> For purposes only of waiving the 30-day operative delay of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

effectiveness of the proposed rule change will assist Nasdaq in its efforts to ensure that its member organizations honor better-priced quotations of other ITS participants when they send ISOs to Nasdaq for execution and also will allow Nasdaq members to gain experience with the new ISO order type and functionality prior to its full implementation on the Trading Phase date. In addition, the Commission notes that the Nasdaq's proposal is based upon a proposed rule change recently adopted by the New York Stock Exchange LLC.<sup>13</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.<sup>14</sup>

#### 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-2007-009 in the subject line.

##### Paper comments:

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

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<sup>13</sup> See supra note 5 (citing to SR-NYSE-2007-08).

<sup>14</sup> See 15 U.S.C. 78s(b)(3)(C).

All submissions should refer to File Number SR-NASDAQ-2007-009. 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 Room. 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-2007-009 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).