

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58102; File No. SR-NASDAQ-2008-019]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto To Remove From the Nasdaq Rules Fee Provisions Relating to Nasdaq's Mutual Fund Quotation Service

July 3, 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 March 12, 2008, The NASDAQ Stock Market LLC ("Nasdaq") 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 prepared substantially by Nasdaq. On July 3, 2008, Nasdaq filed Amendment No. 1 to the proposed rule change. 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 is proposing to remove from the Nasdaq rules fee provisions relating to Nasdaq's Mutual Fund Quotation Service ("MFQS"). Nasdaq's rule book contains rules pertaining to "facilities" of the exchange, and MFQS is not a "facility" within the meaning of the Act. The text of the proposed rule change is available at <http://www.complinet.com/nasdaq>, the principal offices of Nasdaq, and 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, 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

Developed by the National Association of Securities Dealers ("NASD") in the 1980s, MFQS receives daily price-related information from participating money market funds, mutual funds and unit investment trusts ("UITs"). Nasdaq disseminates the MFQS-collected information (as well as certain related publicly-available information) to the public on a daily basis through its Mutual Funds Dissemination Service ("MFDS"). Neither MFQS nor MFDS includes either "last sale" reports or other "real time" information. Both members and non-members of Nasdaq are able to participate in MFQS and to receive the information.

Services similar to MFQS/MFDS can be provided by other entities, including entities that are not national securities exchanges. The ease with which money market, mutual fund and UIT information can be collected and transmitted over the Internet makes the environment in which MFQS and MFDS operate potentially highly competitive.

Nasdaq included MFQS in its rule book when Nasdaq was registered as a national securities exchange in 2006.<sup>3</sup> Current Nasdaq Rules 7033 (a) through (d) contain charges paid by funds and UITs for participating in MFQS. Rules 7033(e) and 7019(b) contain charges paid by subscribers for the MFQS information provided to them via the MFDS.<sup>4</sup>

Nasdaq believes that by operating MFQS and MFDS, it facilitates the distribution of information regarding non-exchange activity. As such, Nasdaq does not believe that either MFQS or MFDS is a facility of a national securities exchange within the meaning of the Act or that the applicable charges are rules that need to be filed with the

<sup>3</sup> As Nasdaq prepared to begin operating as an independent national securities exchange in 2006, it replicated sections of the NASD rule manual and proposed that they be included in the new Nasdaq rule manual in the same form. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

<sup>4</sup> The language of the current Rule 7033(e), which had been approved for inclusion in the NASD rule manual prior to Nasdaq's separation, was inadvertently omitted from the form of the Nasdaq rule manual approved by the Commission in 2006. See *supra*. Since at that time no substantive changes to these provisions were intended, the omitted language was subsequently reinserted in the Nasdaq rule manual with retroactive effect to the 2006 separation date. See Securities Exchange Act Release No. 57347 (February 19, 2008), 73 FR 10080 (February 25, 2008) (SR-NASDAQ-2007-100).

Commission under Section 19(b)(1) of the Act<sup>5</sup> and Rule 19b-4 thereunder.<sup>6</sup>

If, at a later date, Nasdaq proposed to modify the operation of MFQS (or MFDS) in a manner that would cause this service to fit within the definition of a facility of the exchange, or if Nasdaq proposed to tie the fees for this service to fees for or usage of exchange services, Nasdaq would file a proposed rule change with the Commission.<sup>7</sup>

##### 2. Statutory Basis

Nasdaq believes that MFQS is not a facility of a national securities exchange within the meaning of the Act and the terms of MFQS use are not rules that must be filed with the Commission under Section 19(b)(1) of the Act<sup>8</sup> and Rule 19b-4 thereunder.<sup>9</sup> Therefore, removing the applicable provisions from the Nasdaq rule book would be consistent with the provisions of Section 6(b) of the Act.<sup>10</sup>

#### 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

<sup>5</sup> 15 U.S.C. 78s(b)(1).

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

<sup>7</sup> See Securities Exchange Act Release No. 56237 (August 9, 2007), 72 FR 46118 (August 16, 2007) (SR-NASDAQ-2007-043) (approving removal from Nasdaq rule book of provisions governing operation of the ACES system).

<sup>8</sup> 15 U.S.C. 78s(b)(1).

<sup>9</sup> 17 CFR 240.19b-4.

<sup>10</sup> 15 U.S.C. 78f(b).

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

<sup>2</sup> 17 CFR 240.19b-4.

#### 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-2008-019 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-2008-019. 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 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2008-019 and should be submitted on or before August 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58112; File No. SR-NSX-2008-11]

#### **Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment Nos. 1, 2, and 3 Thereto Relating to the Termination of the Intermarket Trading System Plan and to a Technical Change to Rule 8.15**

July 7, 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 19, 2008, the National Stock Exchange ("NSX" 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 27, 2008, the Exchange filed Amendment Nos. 1 and 2 to the proposal. On July 2, 2008, the Exchange filed Amendment No. 3 to the proposal. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder, which renders the proposal 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**

Due to the termination of the Intermarket Trading System ("ITS") Plan, the Exchange is proposing to eliminate all references to the ITS Plan in its Rules and Fee Schedules, and to otherwise make technical and conforming changes related to the termination of ITS, as well as a minor technical change to Rule 8.15 ("Imposition of Fines for Minor Violation(s) of Rules").

The text of the proposed rule change is available on the Exchange's Web site

at <http://www.nsx.com>, at the principal office of the Exchange, 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

Chapter XIV ("Intermarket Trading System Plan") of the NSX Rules provides the rules relating to the ITS Plan under which the Exchange conducted intermarket trading in exchange-listed equity securities with those market centers that were linked under the ITS Plan.<sup>3</sup> In connection with the implementation of Regulation NMS,<sup>4</sup> the ITS Plan was officially eliminated.<sup>5</sup> Because elimination of ITS has rendered Chapter XIV obsolete, the Exchange now proposes to eliminate Chapter XIV, the Fee Schedule for ITS Transactions, and all other references to Chapter XIV and the ITS Plan in the NSX Rules.

In addition, the Exchange proposes to make a technical and conforming change to Interpretation .01 to Rule 8.15, which has been renumbered due to the deletion of ITS related provisions. The Exchange also proposes that the Rule cited in this Interpretation be changed from Rule 11.9(c) to Rule 11.8(a)(1). This change is required as Rule 11.9(c), relating to the Exchange's legacy trading system, has been functionally replaced by Rule 11.8(a)(1) relating to the Exchange's new trading system, NSX BLADE.<sup>6</sup>

Finally, the Exchange proposes to amend NSX Rule 11.3(a)(ii) to allow

<sup>3</sup> See Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983)(File No. 4-208).

<sup>4</sup> 17 CFR 242.600 *et al.*

<sup>5</sup> See Securities Exchange Act Release No. 55397 (March 5, 2007), 72 FR 11066 (March 12, 2007)(File No. 4-208).

<sup>6</sup> See Securities Exchange Act Release No. 54391 (August 31, 2006), 71 FR 52836 (September 7, 2006) (SR-NSX-2006-08).

<sup>11</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.