

the rule, broker-dealers participating in a securities offering must keep accurate records of persons who have indicated interest in an IPO or requested a prospectus, so that they know to whom they must send a prospectus.

The Commission estimates that broker-dealers will spend a total of 78,800 hours complying with the collection of information required by the rule. The Commission estimates that the total number of responses required by the rule is 7,764. The Commission estimates that the total annualized cost burden (copying and postage costs) is \$157,600,000.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

*Comments should be directed to:* Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted within 60 days of this notice.

Dated: February 9, 2009.

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-3097 Filed 2-12-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

**The Jockey Club, Inc., Juina Mining Corp., Inc. (n/k/a AC Energy, Inc.), Jumbosports, Inc., Just Like Home, Inc., and Just Toys, Inc. (n/k/a Pachinko, Inc.); Order of Suspension of Trading**

February 11, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of The Jockey

Club, Inc. because it has not filed any periodic reports since the period ended July 31, 1995.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Juina Mining Corp., Inc. (n/k/a AC Energy, Inc.) because it has not filed any periodic reports since October 1, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Jumbosports, Inc. because it has not filed any periodic reports since the period ended July 30, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Just Like Home, Inc. because it has not filed any periodic reports since the period ended June 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Just Toys, Inc. (n/k/a Pachinko, Inc.) because it has not filed any periodic reports since the period ended September 30, 2000.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on February 11, 2009, through 11:59 p.m. EST on February 25, 2009.

By the Commission.

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-3252 Filed 2-11-09; 4:15 pm]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59370; File No. SR-NASDAQ-2008-101]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change To Adopt a Policy Relating to Its Treatment of Trade Reports That It Determines To Be Inconsistent With the Prevailing Market Retroactive to September 1, 2008**

February 6, 2009.

### I. Introduction

On December 19, 2008, The NASDAQ Stock Market LLC ("Nasdaq") filed with

the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to adopt a policy relating to its treatment of trade reports that it determines to be inconsistent with the prevailing market and to make such policy retroactive to September 1, 2008. The proposed rule change was published for comment in the **Federal Register** on January 2, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

### II. Description of the Proposal

Trades in listed securities occasionally occur at prices that deviate from prevailing market prices and those trades sometimes establish a high, low or last sale price for a security that does not reflect the true market for the security. Nasdaq seeks to address such instances of "aberrant" trades by adopting a policy that is substantially similar to a policy of the New York Stock Exchange ("NYSE").<sup>4</sup> On December 19, 2008, Nasdaq also filed a proposed rule change, which it designated as eligible for immediate effectiveness pursuant to Rule 19b-4(f)(6) under the Act,<sup>5</sup> to adopt a policy relating to Nasdaq's treatment of trade reports that it determines to be inconsistent with the prevailing market.<sup>6</sup> The policy proposed in the instant rule change is identical to the policy set forth in Release No. 34-59151, except that the instant proposal is retroactive to September 1, 2008.

The Exchange proposes that its policy in this regard shall be to contact the listing exchange (if Nasdaq is not the listing exchange) and other markets (in the case of executions that take place across multiple markets) to determine if any erroneous trade reports were filed. If Nasdaq determines the trade price of a trade through Nasdaq is inconsistent with the prevailing market for the security after considering the factors outlined herein, the Exchange may make the determination to append an indicator (an "Aberrant Report Indicator") to the trade.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 59149 (December 23, 2008), 74 FR 155.

<sup>4</sup> See Securities Exchange Act Release No. 59064 (December 5, 2008), 73 FR 76082 (December 15, 2008) (order approving SR-NYSE-2008-91).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> See Securities Exchange Act Release No. 59151 (December 23, 2008), 74 FR 158 (January 2, 2009) (SR-NASDAQ-2008-100) ("Release No. 34-59151").

Nasdaq trades stocks listed on its own market and trades on an unlisted trading privilege ("UTP") basis securities listed on other markets. Nasdaq operates the securities information processor ("SIP"), which processes trade and quote information for the Nasdaq UTP Plan ("Nasdaq SIP"). The Securities Industry Automation Corporation ("SIAC") serves as the securities information processor for the CTA Plan and processes trade and quote information for trades in non-Nasdaq listed securities. The Nasdaq SIP and the Consolidated Tape Association ("CTA") offer each participant in the Nasdaq UTP and CTA Plan the discretion to append to the Aberrant Report Indicator to a trade report to indicate that the market believes that the trade price in a trade executed on that market does not accurately reflect the prevailing market for the security.<sup>7</sup>

During the course of surveillance by the Exchange or as a result of notification by another market, listed company or market participant, the Exchange may become aware of trade prices that do not accurately reflect the prevailing market for a security. In such a case, the Exchange proposes to adopt as policies that it:

- i. May determine to append an Aberrant Report Indicator to any trade report with respect to any trade executed on the Exchange that the Exchange determines to be inconsistent with the prevailing market; and
- ii. Shall discourage vendors and other data recipients from using prices to which the Exchange has appended the Aberrant Report Indicator in any calculation of the high, low or last sale price of a security.

Nasdaq believes that retroactive application of its aberrant trade policy is warranted because of unprecedented market volatility and trade reporting issues that all market centers experienced beginning in September 2008. Therefore, the Exchange believes that it should be permitted to act retroactively to append the Aberrant Report Indicator to trades that do not accurately reflect the prevailing market for a security commencing as of September 1, 2008.

The Exchange will urge vendors to disclose the exclusion from high, low or last sale price data of any trades with an Aberrant Report Indicator and exclude them from high, low or last sale price information that they disseminate and to provide to data users an explanation

<sup>7</sup> The CTA recommends that data recipients should exclude the price of any trade to which the Aberrant Report Indicator has been appended from any calculation of the high, low and last sale prices for the security.

of the parameters used in the Exchange's aberrant trade policy. Upon initial adoption of the Aberrant Report Indicator, the Exchange will contact all of its listed companies via a Head Trader Alert to explain the aberrant trade policy and that the underlying trades remain valid and will clear. In the event the trade relates to a Nasdaq-listed security, Nasdaq's Market Intelligence Desk will inform the affected listed company that these are still valid trades in that they were executed and not unwound as in the case of a clearly erroneous trade.

While SIAC, on behalf of the CTA Plan, and the Nasdaq SIP, on behalf of the Nasdaq UTP Plan, disseminate their own calculations of high, low and last sale prices, vendors and other data recipients—and not the Exchange—frequently determine their own methodology by which they wish to calculate high, low and last sale prices. Therefore, the Exchange represents that it will endeavor to explain to those vendors and other data recipients the deleterious effects that can result from including in the calculations a trade to which the Aberrant Report Indicator has been appended.

In making the determination to append the Aberrant Report Indicator, the Exchange will consider all factors related to a trade, including, but not limited to, the following:

- Material news released for the security;
- Suspicious trading activity;
- System malfunctions or disruptions;
- Locked or crossed markets;
- A recent trading halt or resumption of trading in the security;
- Whether the security is in its initial public offering;
- Volume and volatility for the security;
- Whether the trade price represents a 52-week high or low for the security;
- Whether the trade price deviates significantly from recent trading patterns in the security;
- Whether the trade price reflects a stock-split, reorganization or other corporate action;
- The validity of consolidated tape trades and quotes in comparison to national best bids and offers; and
- The general volatility of market conditions.

In determining whether trade prices are inconsistent with the prevailing market, the Exchange proposes that its policy shall be to follow the following general guidelines: The Exchange will review whether a trade price does not reflect the prevailing market for a security if the trade occurs during

regular trading hours (*i.e.*, 9:30 a.m. to 4 p.m.) and occurs at a price that deviates from the "Reference Price" by an amount that meets or exceeds the following thresholds:

Trade price	Numerical threshold (percent)
Between \$0 and \$15.00 .....	7
Between \$15.01 and \$50.00	5
In excess of \$50.00 .....	3

The "Reference Price" refers to (a) if the primary market for the security is open at the time of the trade, the national best bid or offer for the security, or (b) if the primary market for the security is not open at the time of the trade, the first executable quote or print for the security on the primary market after execution of the trade in question. However, if the circumstances suggest that a different Reference Price would be more appropriate, the Exchange will use the different Reference Price. For instance, if the national best bid and offer for the security are so wide apart as to fail to reflect the market for the security, the Exchange might use as the Reference Price a trade price or best bid or offer that was available prior to the trade in question.

If Nasdaq determines that a trade price does not reflect the prevailing market for a security and the trade represented the last sale of the security on the Exchange during a trading session, the Exchange may also determine to remove that trade's designation as the last sale and the preceding last sale eligible trade would become the new last sale. Nasdaq may do so either on the day of the trade or at a later date, so as to provide reasonable time for the Exchange to conduct due diligence regarding the trade, including the consideration of input from markets and other market participants.

The Exchange advises that it proposes to use the Aberrant Report Indicator in accordance with the guidelines set forth above and that it may apply the Aberrant Report Indicator on a retroactive basis commencing September 1, 2008.

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular,

with Section 6(b) of the Act<sup>8</sup> and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>9</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.<sup>10</sup>

The Commission believes that the Nasdaq's proposal to append an Aberrant Report Indicator to certain trade reports is a reasonable means to alert investors and others that the Nasdaq believes that the trade price for a trade executed in its market does not accurately reflect the prevailing market for the security. In addition, the Commission notes that Nasdaq will use objective numerical thresholds in determining whether a trade report is eligible to have an Aberrant Trade Indicator appended to it. The Commission further notes that the Nasdaq's appending the Aberrant Trade Indicator to a trade report has no effect on the validity of the underlying trade. The Commission previously found a similar proposal by the NYSE to be consistent with the Act.<sup>11</sup> Finally, the Commission notes that the retroactive application of this proposal to September 1, 2008 is substantially similar to the retroactive period approved for the NYSE.<sup>12</sup>

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the Act.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NASDAQ-2008-101) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E9-3095 Filed 2-12-09; 8:45 am]  
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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59369; File No. SR-NASDAQ-2008-097]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change To Adopt a Limited Exemption from OATS Order Data Recordation Requirements for Registered Options Market Makers

February 6, 2009.

On December 12, 2008, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to adopt a limited exemption from OATS order data recordation requirements for registered options market makers. The proposed rule change was published in the *Federal Register* on January 2, 2009.<sup>3</sup> The Commission received one comment letter expressing support for the proposal.<sup>4</sup> This order approves the proposed rule change.

The Exchange proposes to amend the definition of "Order" contained in Nasdaq Rule 6951 to create a limited exemption from OATS order recordation requirements for bona fide hedging transactions in Nasdaq-listed equity securities originated by a trading desk in the ordinary course of the member's market making activity in options. The proposal applies to an options transaction on any options market in any standardized option made available for clearing through the Options Clearing Corporation.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, in particular, with Section 6 of the Act<sup>5</sup> and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the Exchange's proposal be 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.<sup>7</sup>

OATS is an integrated audit trail of order, quote, and trade information for Nasdaq-listed equity securities used to recreate events in the life cycle of orders and more completely monitor the trading practices of member firms. OATS was designed to provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an equity order at the first point of contact between the broker-dealer and the customer or counterparty and further documenting the life of the equity order through the process of execution. Thus, OATS captures information that can be used to surveil for trading abuses that would undermine the integrity of the market and harm investors.<sup>8</sup> There is an exemption from the OATS requirements for instructions to effect proprietary transactions originated by a trading desk in the ordinary course of a member's market making activities.<sup>9</sup> Further, the Nasdaq rules provide an exemption from OATS transmission requirements for orders entered by proprietary trading firms.<sup>10</sup>

The Commission notes that Nasdaq believes that because bona fide hedging transactions in equity securities are undertaken by an options market maker to hedge against the firm risk that it creates through its conduct as a registered options market maker, submitting bona fide hedging transactions to OATS recording requirements provides no customer protection or equivalent regulatory benefit. Additionally, the Commission notes that Nasdaq believes that it is very expensive for firms that are not currently FINRA members or that do not currently trade NASDAQ equities to develop and maintain the compliance systems and compliance staff required to continuously monitor the daily transmission of OATS data.

Similarly to the aforementioned OATS exemptions, the Commission

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> In approving this proposed rule change, 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> See *supra* note 4.

<sup>12</sup> *Id.*

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</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.

<sup>3</sup> See Securities Exchange Act Release No. 59163 (December 24, 2008), 74 FR 160.

<sup>4</sup> See letter from Greg O'Connor, Compliance Manager, Wolverine Execution Services, LLC to Florence E. Harmon, Acting Secretary, Commission, dated January 23, 2009.

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> In approving the proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> See Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998).

<sup>9</sup> See Nasdaq Rule 6951(i).

<sup>10</sup> See Nasdaq Rule 6955(b).