

#### IV. Discussion and Findings

After careful review of the proposed rule change, the comments and FINRA's response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.<sup>23</sup> In particular, the Commission believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>24</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change would enhance the efficiency of the forum in processing claims, by clarifying the terms of the agreement and improving its readability. Moreover, the Commission believes the proposed rule change is consistent with FINRA's statutory obligations under the Act to prevent fraudulent and manipulative practices by requiring that signers of the agreement indicate in what capacity they are signing, so that FINRA can ensure that signers of the agreement are authorized to do so.

The Commission believes that FINRA has adequately responded to the comments regarding removal of references to certain rules and corporate documents. As stated above, one of the purposes of the proposed rule change is to convert the USA to a FINRA-specific document. In order to do this, FINRA proposed to remove language that is overly broad or that is generic to encompass the rules of the various self-regulatory organizations. By citing to relevant provisions of its By-Laws, FINRA has sufficiently explained why the removal of the requirement that the arbitration be conducted pursuant to the "Constitution, By-Laws, Rules and Regulations" of the sponsoring organization would not eliminate FINRA's authority to enforce or collect on an arbitration settlement or award.

The Commission carefully considered the comment suggesting that the agreement should contain an explicit definition of the "procedures and rules" to which the parties agree to be bound, under paragraph two of the agreement. However, as noted above, another principal goal of the proposed rule

change is to make the agreement easier to read. Since the Commission's oversight of the securities arbitration process is directed at ensuring that it is fair and efficient, the Commission agrees with FINRA's determination that inserting a detailed list of all rules and procedures that might possibly apply to any arbitration proceeding would make the agreement unduly lengthy and complex for the average user of the dispute resolution forum, and consequently, would hinder the goals of fairness and efficiency. Furthermore, the Commission believes that the commenter's concerns are addressed by the fact that, as FINRA pointed out, claimants can refer to the Code of Arbitration Procedure and the packet of materials provided for claimants to find all the necessary rules and procedures applicable to their arbitration proceedings.

With respect to the comments regarding the alleged disparate treatment of claimants and respondents with regard to executing an agreement, the Commission believes that FINRA has adequately responded, by highlighting the rules, procedures, and arbitrator training programs that address the instances in which respondents fail to submit an agreement.

#### V. Conclusions

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>25</sup> that the proposed rule change (SR-FINRA-2008-031) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59087; File No. SR-NASDAQ-2008-093]

#### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Bid Price Required for Initial Listing on the Nasdaq Global and Global Select Markets from \$5 to \$4

December 11, 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 December 1, 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 III below, which Items have been prepared by Nasdaq. Nasdaq has filed this proposal pursuant to Exchange Act Rule 19b-4(f)(6)<sup>3</sup> and requests that the Commission waive the 30-day pre-operative waiting period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>4</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 proposes to modify the bid price required for initial listing on the Nasdaq Global and Global Select Markets from \$5 to \$4.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.<sup>5</sup>

#### 4420. Quantitative Listing Criteria

In order to be listed on the Nasdaq National Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n) or (o) below. Nasdaq may extend unlisted trading privileges to any security for which Nasdaq has in effect rules providing for transactions in such class or type of security. Provisions of Rule 4420 that govern trading hours and surveillance procedures, and that relate to information circulars and prospectus delivery, shall apply to securities traded on an unlisted trading privileges basis.

(a) Entry Standard 1—First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts

- (1)–(3) No change.
- (4) The bid price per share is [\$5] \$4 or more.
- (5)–(7) No change.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>5</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

<sup>23</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>24</sup> 15 U.S.C. 78o-3(b)(2).

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> 17 CFR 200.30-3(a)(12).

(b) Entry Standard 2—First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts

(1)–(3) No change.

(4) The bid price per share is [\$5] \$4 or more.

(5)–(7) No change.

(c) Entry Standard 3—First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts

An issuer listed under this paragraph does not also need to be in compliance with the quantitative criteria for initial listing in the Rule 4300 series.

(1)–(2) No change.

(3) The bid price per share is [\$5] \$4 or more.

(4)–(6) No change.

(d)–(j) No change.

(k) Quantitative Listing Criteria—Preferred Stock and Secondary Classes of Common Stock

For initial listing, if the common stock or common stock equity equivalent security of the issuer is listed on Nasdaq or another national securities exchange, the issue shall have:

(1)–(2) No change.

(3) A minimum bid price per share of [\$5] \$4;

(4)–(5) No change.

Alternatively, in the event the issuer's common stock or common stock equivalent security is not listed on either Nasdaq or another national securities exchange, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.

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4426. Nasdaq Global Select Market Listing Requirements

(a)–(c) No change.

(d) Price. For inclusion in the Nasdaq Global Select Market, an issuer not listed on the Nasdaq Global Market shall have a minimum bid price of [\$5] \$4 per share.

(e)–(f) 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 proposes to change the minimum bid price required for initial listing on the Nasdaq Global and Global Select Markets from \$5 to \$4. Nasdaq believes that this change will permit the listing of more companies on Nasdaq, thereby enhancing investor protection by allowing these companies, and their investors, to benefit from Nasdaq's liquid and transparent marketplace, supported by strong regulation including Nasdaq's listing and market surveillance and FINRA's independent regulation.

Nasdaq believes that companies satisfying the proposed minimum \$4 price requirement, along with all of Nasdaq's other listing requirements, are suitable for listing. Nasdaq notes that the proposed \$4 minimum price meets the criteria from the definition of a penny stock contained in Rule 3a51-1 under the Act.<sup>6</sup> In addition, the proposed \$4 price is the same as the requirement recently adopted for listing on the New York Stock Exchange.<sup>7</sup>

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general and with Sections 6(b)(5) of the Act,<sup>9</sup> 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 removes an

impediment for certain otherwise qualified companies to list on Nasdaq, and thereby benefit from Nasdaq's liquid and transparent marketplace and strong regulation.

### 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.

### 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 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 after the date of this 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<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of filing.<sup>12</sup> However, Rule 19b-4(f)(6)(iii)<sup>13</sup> 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 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. In making this determination, the Commission notes that it recently approved a substantially similar rule proposal for the NYSE.<sup>14</sup> The

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, 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. The Exchange has satisfied this notice requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> *Id.*

<sup>14</sup> See *supra* note 7.

<sup>6</sup> See 17 CFR 240.3a51-1(a)(2)(i)(C).

<sup>7</sup> See Section 102.01B (applicable to domestic companies) and Section 103.01A (applicable to non-U.S. companies) of the NYSE Listed Company Manual, which require a \$4 minimum price for initial listing. Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (approving SR-NYSE-2008-17).

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

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

Commission believes that the Nasdaq's proposed rule change raises no new regulatory issues that were not previously considered by the Commission in approving the NYSE's similar proposal. In approving the NYSE proposal, the Commission found that adopting a \$4 price requirement for initial listing was consistent with the requirements of the Act and that this requirement meets the criteria from the definition of penny stock contained in Rule 3a51-1 under the Act.<sup>15</sup> Further, the Commission notes that the NYSE's proposal was subject to full notice and comment, and the Commission received no comments on the price requirement portion of the NYSE's rule proposal. Accordingly, for the reasons discussed above, the Commission finds that the Exchange's proposal is consistent with the protection of investors and the public interest and therefore designates the proposed rule change operative immediately upon filing.<sup>16</sup>

At any time within 60 days of the filing of such 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-2008-093 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-2008-093. 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 the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-093 and should be submitted on or before January 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59082; File No. SR-NYSEArca-2008-135]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Rule 6.47A To Reduce the Order Exposure Period from Three Seconds to One Second

December 11, 2008.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 9, 2008, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been

prepared by the self-regulatory organization. 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

The Exchange proposes to amend its rules governing order exposure requirements on the OX system. This proposal will revise Rule 6.47A. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office 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 self-regulatory organization 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 those 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to reduce the exposure period contained in Rule 6.47A, Order Exposure Requirements—OX, from three seconds to one second.

Rule 6.47A provides that with respect to orders routed to OX, Users may not execute as principal orders they represent as agent unless (i) Agency orders are first exposed on the Exchange for at least three (3) seconds or (ii) the User has been bidding or offering on the Exchange for at least three (3) seconds prior to receiving an agency order that is executable against such bid or offer.

Specifically, order entry firms may not execute as principal, orders they represent as agent unless: (i) the agency order has first exposed on the NYSE Arca OX trading system for at least three seconds; (ii) the order entry firm has been bidding or offering for at least three seconds prior to receiving the agency order that is executable against such bid or offer. During this three-second exposure period, other market participants may enter orders to trade

<sup>15</sup> *Id.*

<sup>16</sup> For the 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>17</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

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