

comments from members or other interested parties.

### 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 foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>11</sup>

The Exchange has asked the Commission to waive the 30-day operative delay and designate the proposed rule change as operative upon filing. The Commission hereby grants the Exchange's request and believes that doing so is consistent with the protection of investors and the public interest.<sup>12</sup> The Exchange's proposed rule change is based on a similar proposal that was previously approved by the Commission<sup>13</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2008-62 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-ISE-2008-62. 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-ISE-2008-62 and should be submitted on or before September 2, 2008.

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

**Florence E. Harmon,**

*Acting Secretary.*

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58282; File No. SR-NASDAQ-2008-067]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Letters of Guarantee for Options Participants

August 1, 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 July 29, 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 by Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</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 filing a proposed rule change for the NASDAQ Options Market ("NOM") to modify Chapter VII, Section 8 of its options rules to require Letters of Guarantee for each options participant, rather than each market maker.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.<sup>4</sup>

\* \* \* \* \*

#### Chapter VII Market Participants

\* \* \* \* \*

#### Sec. 8 Letters of Guarantee

(a) Required of Each *Options Participant* [Market Maker]. No *Options Participant* [Market Maker] shall make any transactions on NOM unless a Letter of Guarantee has been issued for such Participant by a Clearing Participant and filed with Nasdaq Regulation, and unless such Letter of Guarantee has not

<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> Changes are marked to the rule text that appears in the electronic manual of The NASDAQ Stock Market, LLC found at <http://nasdaq.cchwallstreet.com/>.

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

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. ISE has satisfied this requirement.

<sup>12</sup> For purposes only of waiving the operative delay for 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>13</sup> See Securities Exchange Act Release No. 58119 (July 8, 2008), 73 FR 40646 (July 15, 2008) (SR-CBOE-2008-53).

been revoked pursuant to paragraph (c) of this Section.

(b)–(c) No change.

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## 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 has determined that requiring a Letter of Guarantee for each options participant would decrease the individual risk exposure of each options participant as well as the systemic risk of exposure to Nasdaq's options marketplace. Requiring a Letter of Guarantee of market makers provides a measure of protection but it does not provide protection with respect to options participants that enter orders and liquidity into the market in the same fashion as market makers but to a lesser degree. It will also provide incremental protection to clearing brokers by providing advanced notice and requiring acknowledgment that a new firm will be using their clearing services.

Nasdaq's determination is based in part on conversations with current options participants as well as potential options participants. It is also based on Rule 3.28 of the Chicago Board Options Exchange which requires letters of guarantee for all trading activity on that exchange regardless of whether the firm is a registered specialist or not. In addition, all options participants are required by Chapter VI, Section 15 of Nasdaq's options rules to document its relationship with a clearing firm by submitting one of several documents, including a Letter of Guarantee.

Nasdaq will work with its membership to ensure full and timely compliance with this proposed rule change. While many members are familiar with Letters of Guarantee through, for example, compliance with Chapter VI, Section 15 or their membership at other exchanges, Nasdaq

will provide all members 45 days from the date of filing of the proposed rule change to comply with the new requirement. In addition, Nasdaq will issue an Options Trader Alert to members explaining the new requirement and providing notice of the compliance date.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934, in general and with Section 6(b)(5) of the Act, in particular, in that it is designed 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange. The proposed changes are consistent with the statute in that they are designed to facilitate transactions in options on the Nasdaq Options Market by minimizing counter-party risk and encouraging participants to provide liquidity in Quarterly Options Series.

### 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. To the contrary, the proposal is designed to enhance competition and is based upon the rules of another national securities exchange that trades standardized options.

### 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 proposed 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder.<sup>6</sup> Nasdaq will make the proposed rule change operative 45 days from the date of filing this proposal.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2008-067 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-2008-067. 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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

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

Nasdaq's principal office. 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-2008-067, and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58299; File No. SR-NYSE-2008-68]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Enable the Exchange To Determine That a Company Meets the Exchange's Market Value Requirements by Relying on a Third-Party Valuation of the Company

August 4, 2008.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Exchange Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on July 31, 2008, New York Stock Exchange LLC (the "NYSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend sections 102.01B and 102.01C of the Exchange's Listed Company Manual (the "Manual") to provide that the Exchange will, on a case by case basis, exercise discretion to list a company whose stock is not previously registered under the Exchange Act, where such a company is listing without a related underwritten offering upon effectiveness of a registration statement

registering only the resale of shares sold by the company in earlier private placements. The proposed amendment would permit the Exchange to determine that such a company has met its market value requirements by relying on a third-party valuation of the company.

The text of the proposed rule change is available at <http://www.nyse.com>, the NYSE, 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, 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 these statements may be examined at the places specified in Item IV below. The NYSE 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

The Exchange proposes to amend sections 102.01B and 102.01C of the Manual to provide that the Exchange will, on a case by case basis, exercise discretion to list a company whose stock is not previously registered under the Exchange Act, where such a company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements. The proposed amendment would allow the Exchange to determine that such a company has met its market value requirements by relying on a third-party valuation of the company.

Section 102.01B of the Manual requires that companies listing on the Exchange in connection with their initial public offering ("IPO") or as a result of a spin-off or under the Affiliated Company standard must have \$60 million in market value of publicly-held shares at the time of listing and all other companies must have a market value of publicly-held shares of \$100 million.<sup>4</sup> In addition, the Valuation/Revenue with Cash Flow, Pure

Valuation/Revenue, and Affiliated Company standards of Section 102.01C require global market capitalization of \$500 million, \$750 million, and \$500 million, respectively. Sections 102.01B and 102.01C provide that, in connection with a company's IPO, the Exchange will rely on a written commitment from the underwriter to represent the anticipated value of the company's offering in order to determine a company's compliance with this listing standard. In the case of a spin-off, the company may rely on a letter from the parent company's investment banker or other financial adviser.

The Exchange has in recent years been approached by a number of private companies that would like to list upon the effectiveness of a selling shareholder registration statement. These private companies typically have sold a significant amount of their common stock to qualified institutional buyers in one or more private placements and, as a condition to those sales, will have agreed to file a registration statement to facilitate the resale of the privately-placed shares. These companies may meet all of the financial criteria for listing on the Exchange, except that they have not had any prior public market for their common stock and they are not contemplating an underwritten offering in connection with their selling shareholder registration statement. As such, the Exchange cannot rely on trading on any predecessor public market to evaluate the company's market value, as would be possible with a company transferring from another market. Nor is there a public offering whose price would provide the basis for a letter of the type provided by underwriters for companies listing in conjunction with an IPO.

The Exchange believes that a company of this sort which otherwise meets the Exchange's listing criteria should not be barred from listing. As such, the Exchange proposes to list such companies if there is available an independent third-party valuation of the company (a "Valuation") and information regarding trading in a private placement trading market that, taken together, provide evidence that the company meets the relevant market value tests.

Therefore, the Exchange proposes to amend sections 102.01B and 102.10C to provide that, in the case of a company whose stock is not previously registered under the Exchange Act that is listing upon effectiveness of a registration statement without a related underwritten offering, the Exchange will have the discretion to determine that such company has met the applicable

<sup>7</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.

<sup>4</sup> Shares held by directors, officers, or their immediate families and other concentrated holding of 10 percent or more are excluded in calculating the number of publicly-held shares.