

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act²⁴ that the proposed rule change (SR-CBOE-2007-103), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁵

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56585; File No. SR-FINRA-2007-008]

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Amending the Definition of Office of Supervisory Jurisdiction in NASD Rule 3010(g)(1) To Exempt Locations That Solely Conduct Final Approval of Research Reports

October 1, 2007

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 30, 2007, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a the National Association of Securities Dealers, Inc. ("NASD")) 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 substantially prepared by FINRA. 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

FINRA is proposing to amend the definition of Office of Supervisory Jurisdiction ("OSJ") in NASD Rule 3010(g)(1) to exempt locations that solely conduct final approval of research reports. The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and <http://www.finra.org>.

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

In its filing with the Commission, FINRA 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. FINRA 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

NASD Rule 3010(g)(1) defines OSJ to mean any office of a member at which any one or more of the following functions takes place: (a) Order execution and/or market making; (b) structuring of public offerings or private placements; (c) maintaining custody of customers' funds and/or securities; (d) final acceptance (approval) of new accounts on behalf of the member; (e) review and endorsement of customer orders, pursuant to paragraph (d) above; (f) final approval of advertising or sales literature for use by persons associated with the member, pursuant to NASD Rule 2210(b)(1); or (g) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member.

In July 2006, amendments to the branch office definition under NASD Rule 3010(g)(2) went into effect ("Uniform Branch Office Definition").³ The Uniform Branch Office Definition was developed collectively by FINRA (then known as NASD), the New York Stock Exchange ("NYSE") and the North American Securities Administrators Association ("NASAA") to establish a broad national standard. In conjunction with the new Uniform Branch Office Definition, a new Form BR was introduced to provide a more efficient, standardized method for members to register branch office locations.

Although FINRA (then NASD) and NYSE sought to adopt consistent interpretations of the new Uniform Branch Office Definition, there are nevertheless different classifications of a location where final approval by a principal of research reports occurs.

Under NASD rules, final review of advertising or sales literature (which includes research reports) makes a location an OSJ, and therefore a branch office. The NYSE rules, however, do not include an OSJ definition,⁴ and NYSE stated in *Information Memo* 06-13 that it deems a location where a member stations a Series 16 qualified supervisory analyst solely to review research reports as a "non-sales location," which is an express exclusion from the Uniform Branch Office Definition.⁵ Because of the definition of OSJ set forth in NASD Rule 3010(g)(1), FINRA cannot classify such locations as "non-sales locations" under NASD rules.⁶

This inconsistency led an NYSE/NASD rule harmonization industry committee to recommend that FINRA consider eliminating the OSJ definition to prevent such locations from being treated differently under NASD and NYSE rules. As a result, FINRA published *Notice to Members* 07-12 in February 2007 seeking comment on a rule harmonization proposal to eliminate the definition of OSJ from the NASD manual. In its place, FINRA proposed to adopt express definitions for the terms "supervisory branch office," "limited supervisory branch office," "non-supervisory branch office," and "non-branch location."⁷

FINRA received twenty comments on the original proposal set forth in its *Notice to Members* 07-12. After reviewing the commenters' concerns, FINRA has determined not to move forward with the broad proposal to eliminate the definition of OSJ and adopt new classifications for office locations. Instead, consistent with many commenters' recommendation, FINRA is proposing a more streamlined proposal to amend the definition of OSJ in the NASD rules to exclude locations that solely conduct final approval of research reports, thereby enabling FINRA to deem such locations to be

⁴ See NYSE Rule 342 (Offices—Approval, Supervision and Control), which contains the Uniform Branch Office Definition.

⁵ See NYSE *Information Memo* 06-13 (March 22, 2006) (Joint Interpretive Guidance from NYSE and NASD Relating to the Uniform Branch Office Definition, Question and Answer #5).

⁶ The FINRA rulebook currently consists of both NASD rules and certain NYSE rules that FINRA has incorporated, including NYSE Rule 342 (Offices—Approval, Supervision and Control). The incorporated NYSE rules apply solely to members of FINRA that are also members of NYSE on or after July 30, 2007, referred to as "Dual Members." Dual Members also must comply with NASD rules.

⁷ FINRA also sought comment in *Notice to Members* 07-12 on a proposal to amend NASD Rule 2711 to define the term "initial public offering" consistent with the definition of such term in NYSE Rule 472.

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (SR-NASD-2003-104) (order approving Uniform Branch Office Definition).

“non-sales locations.” FINRA believes that the limited nature of such activity does not necessitate supervision of such a location as an OSJ, and that the revised proposal will further accomplish the goals of harmonization while minimizing the potential burdens on firms.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be the date of publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ 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. FINRA believes that the proposed rule change is consistent with the provisions of the Act noted above in that it will exempt locations that solely conduct final approval of research reports from being designated as OSJs because the limited nature of such activity does not necessitate supervision as an OSJ. Moreover, this would harmonize the designation of such locations under NASD rules with NYSE rules, which permit such locations to be deemed “non-sales locations” under the Uniform Branch Office Definition..

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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

As discussed above, a broader version of the proposed rule change was published for comment in *Notice to Members* 07-12 (February 2007). Twenty comment letters were received in response. All commenters generally favored consolidation efforts that foster rule simplification and efforts to harmonize the application of the Uniform Branch Office Definition. However, of the 20 comment letters received with respect to the proposal in February of 2007, two supported the

specific proposal to eliminate the definition of OSJ, and 18 generally were opposed to the proposal or requested additional exclusions from the Uniform Branch Office Definition.

One commenter supporting the proposed amendments to NASD Rule 3010(g) stated that it viewed the proposed amendments as a critical step in reducing regulatory inefficiency and unnecessary cost burdens to member firms. Moreover, the commenter stated that the proposed OSJ amendments were necessary to realize fully the underlying objectives of the Uniform Branch Office Definition. A second commenter supporting the proposal noted that locations where final approval of research reports occurs do not require the level of oversight of an OSJ.

Those commenters opposing the OSJ proposal raised several key concerns: (1) Commenters were concerned that firms had devoted substantial resources and time in reclassifying locations and registering branch offices pursuant to the adoption of the Uniform Branch Office Definition and that subsequent reclassifications would be unduly burdensome; (2) commenters noted that the proposal would cause widespread and significant changes to the supervisory systems of firms by requiring new forms, training, updating of procedure manuals and other materials, etc.; (3) commenters, including NASAA, recommended that the two conflicting provisions of the NASD and NYSE rules be harmonized in a less cumbersome manner by amending the OSJ definition to exclude locations where final review of research reports occurs; and (4) commenters were concerned about inconsistency with the states that follow NASD's OSJ terminology. Some commenters also urged FINRA to consider additional exclusions from the Uniform Branch Office Definition, for example, for personal residences of certain mutual fund distributors that also are used to supervise the activities of wholesalers (associated persons) at another location.

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 the self-regulatory organization 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.

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. Please include File Number SR-FINRA-2007-008 on 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.

All submissions should refer to File Number SR-FINRA-2007-008. 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 FINRA. 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-FINRA-2007-008 and should be submitted on or before October 26, 2007.

⁸ 15 U.S.C. 78o-3(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56581; File No. SR-NASDAQ-2007-068]

Self-Regulatory Organizations; The NASDAQ Stock Market, LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the Limited Liability Company Agreement of The NASDAQ Stock Market, LLC

September 28, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 20, 2007, The NASDAQ Stock Market, LLC ("Nasdaq" or "Exchange") 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 September 26, 2007, 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 proposes to amend its Limited Liability Company Agreement ("LLC Agreement"). Nasdaq will implement the proposed rule change immediately upon approval by the Commission. The text of the proposed rule change is available at Nasdaq's Web site <http://nasdaq.complinet.com>, at Nasdaq, 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, 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 is modifying its LLC Agreement (including its By-Laws, which are a part of the LLC Agreement) to adopt a range of enhancements and clarifications. First, Nasdaq is amending the procedures for election of Member Representative Directors. Section 6(b)(3) of the Act³ requires a national securities exchange to establish rules that assure a fair representation of its members in the selection of its directors. To address this requirement, the LLC Agreement provides that twenty percent of Nasdaq's directors are selected through direct election by Nasdaq's members. Under the current By-Laws, a slate of candidates is nominated by a Member Nominating Committee composed of registered representatives of Nasdaq members. In addition, there is a petition process through which Nasdaq members may nominate alternate candidates. The Nasdaq Board establishes a Record Date⁴ and an Election Date,⁵ and provides notice of both dates through a communication to members that also includes the List of Candidates⁶ developed through the nomination and petition process. After receiving the notice, firms that were Nasdaq members on the Record Date are entitled to cast ballots at any time prior to 5 pm on the Election Date. The candidates receiving the most votes are then elected to the open positions.

Nasdaq held its first election of Member Representative Directors in January 2007, and although the election concluded successfully, Nasdaq faced some difficulty in educating members about the purpose of the election and the desirability of participating. Notably, many members were not interested in voting and therefore Nasdaq had to retain the services of a

proxy solicitation firm to obtain a quorum, and only obtained the quorum in the days immediately prior to the Election Date. In reviewing the experience of the first election process, Nasdaq has noted that the New York Stock Exchange, LLC, the primary U.S. exchange subsidiary of NYSE Euronext, has a similar nomination process for a percentage of its directors, but conducts a direct member election only if there is a contested election (*i.e.*, if there is more than one candidate for a particular Board seat).⁷ Accordingly, Nasdaq proposes to adopt a comparable limit on the use of the direct member election.

As amended, the election process would work as follows: On an annual basis, the Member Nominating Committee would nominate a slate of candidates. Although the Member Nominating Committee would have authority to nominate a number of candidates in excess of the number of Board seats up for election, the Member Nominating Committee would likely nominate a number of candidates equal to the number of seats. At about the same time, the Nasdaq Board would determine the Election Date and the Record Date.⁸ Promptly after selection of the Election Date, Nasdaq would distribute (via regular mail and/or e-mail) and post on its Web site a Notice to Members (i) announcing the Election Date and the List of Candidates, and (ii) describing the procedures for Nasdaq Members to nominate candidates for election at the next annual meeting. The process and timeframes for members to nominate additional candidates for election would be the same as provided under the current By-Laws. If, by the date on which a Nasdaq member may no longer submit a timely nomination, there is only one candidate for each Member Representative Director seat, the Member Representative Directors would be elected by The Nasdaq Stock Market, Inc., Nasdaq's sole "member" within the meaning of the Delaware Limited Liability Company Act, directly from the list of candidates nominated by the Member Nominating Committee. If, however, there is more than one candidate for a seat (*i.e.*, if there is a contested election), the full list of candidates will be submitted for a member vote, just as it is under the

³ 15 U.S.C. 78f(b)(3).

⁴ Article I(aa) of Nasdaq's current By-Laws defines "Record Date" as a date selected by the Board for the purpose of determining the Nasdaq Members entitled to vote for the election of Member Representative Directors on an Election Date.

⁵ Article I(j) of Nasdaq's current By-Laws defines "Election Date" as a date selected by the Board for the election of Member Representative Directors.

⁶ Article I(o) of Nasdaq's current By-Laws defines "List of Candidates" as the list of candidates for Member Representative Director positions to be elected by Nasdaq Members on an Election Date.

⁷ See Second Amended and Restated Operating Agreement of New York Stock Exchange LLC at <http://www.nyse.com/pdfs/SecondAmendedandRestatedOperatingAgreementofNewYorkStockExchangeLLC.pdf>.

⁸ As amended, Article I(aa) of Nasdaq's By-Laws would define "Record Date" as a date selected by the Board for the purpose of determining the Nasdaq Members entitled to vote for the election of Member Representative Directors on an Election Date in the event of a Contested Election.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.