

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54957; File No. SR-FICC-2006-07]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change Relating To Providing Certain Reports to Its Members

December 18, 2006.

On April 21, 2006, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on October 4, 2006.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### I. Description

The proposed rule change clarifies the frequency of certain reports that FICC will provide to its members. FICC conforms the rules of both its divisions, the Government Securities Division and the Mortgage Backed Securities Division ("MBSD"), regarding FICC's providing financial reports to members to the equivalent rule of FICC's affiliated clearing agency, The Depository Trust Company ("DTC").<sup>3</sup> FICC's revised rules will state that quarterly unaudited financial statements will only be provided to members/participants for the first three quarters of the calendar year.<sup>4</sup> In addition, in conformity to DTC's rules, FICC is deleting the time frames from its rules for providing the financial reports to its members/participants. Nevertheless, FICC will attempt to continue to make its annual audited financial statements available to its members within 60 days of the fiscal year end and will attempt to continue to make its quarterly unaudited financial statements available within 30 days of the quarter end.

FICC is also changing the time frame in Article V, Rule 5, Section 3 of MBSD's Clearing Rulebook and EPN Rulebook regarding providing its participants with the independent auditors' annual study and evaluation of MBSD's internal accounting controls. While FICC will delete these rule

provisions in their entirety, FICC will make this study and evaluation available to its members within a reasonable time after it receives it from its independent accountants, which is DTC's practice.

#### II. Discussion

Section 17A(b)(3)(F) of the Act<sup>5</sup> requires that the rules of a clearing agency to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission finds that the proposed rule change is consistent with this obligation because the proposed rule change conforms FICC's rules regarding providing unaudited quarterly financial statements and the independent auditor's annual study of internal controls with those of DTC and as such should promote the national clearance and settlement system.

#### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>6</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-FICC-2006-07) be, and hereby is, approved.<sup>7</sup>

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54968; File No. SR-NASDAQ-2006-058]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Permit Orders to Peg to the Midpoint of the Best Bid and Best Offer

December 19, 2006.

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange

Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The NASDAQ Stock Market LLC ("Nasdaq") is filing 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 Nasdaq. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</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 proposing to enable orders to peg to the midpoint between the best bid and best offer ("Midpoint Peg"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.nasdaq.com/plinet.com>), at the Exchange's Office of the Secretary, 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 proposes to modify the rule language pertaining to pegged orders ("Pegged Orders") to enable orders to peg to the midpoint of the best bid and best offer. Nasdaq currently offers pegged functionality, adjusting the price of the order based upon changes in the best bid and offer in the national market system ("National Market System").

A market participant entering a Pegged Order currently can specify that its price will equal the inside quote on

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

<sup>2</sup> Securities Exchange Act Release No. 54570 (Oct. 4, 2006), 71 FR 60591.

<sup>3</sup> DTC Rule 15.

<sup>4</sup> An annual audited financial statement is provided to members after the last calendar quarter of each year.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>6</sup> 15 U.S.C. 78q-1.

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

<sup>8</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> 15 U.S.C. 78s(b)(3)(A).

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

the same side of the market ("Primary Peg") or the opposite side of the market ("Market Peg"). The Primary Peg and Market Peg Orders may establish their pricing relative to the appropriate bids or offers by the selection of one or more offset amounts that will adjust the price of the order by the offset amount selected. Additionally, a new timestamp is created for the order each time it is automatically adjusted.

The proposed rule change is in accordance with Rule 612 of Regulation NMS,<sup>5</sup> which governs sub-penny quoting of National Market System stocks<sup>6</sup> (the "Sub-Penny Rule"). The proposed rule change would not result in the display, rank, or acceptance of a bid or offer, an order, quotation, or indication of interest in any NMS stock that is priced in an increment smaller than \$0.01 per share, unless the price of the bid or offer, order, indication of interest is priced less than \$1.00 per share.<sup>7</sup>

The following examples illustrate how the proposed rule change would operate (note that the price of the order updates in response to changes in the best bid and best offer, excluding the order's own impact on the best bid or best offer):

#### Example 1

The best bid is \$20.00 and the best offer is \$20.06.

The Midpoint Peg Order to buy will be priced at \$20.03.

The best offer updates to \$20.08.

The price of the Midpoint Peg Order will update to \$20.04.

#### Example 2

The best bid is \$20.00 and the best offer is \$20.03.

The price of the Midpoint Peg Order to buy will be \$20.01. The true midpoint would be \$20.015, but to avoid pricing the order in a sub-penny increment the bid is rounded down. However, if the order instead was a sell order the offer would be rounded up.

The best offer updates to \$20.08.

The price of the Midpoint Peg Order will be \$20.04.

## 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 Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that the proposal 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.

### 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

The foregoing 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> in that it: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing.<sup>12</sup>

A proposed rule changed filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>13</sup> However, Rule 19b-4(f)(6)(iii)<sup>14</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day operative

delay, which would make the rule change operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change provides a potentially useful enhancement for investors to utilize in executing their trades.<sup>15</sup>

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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-2006-058 in 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-NASDAQ-2006-058. 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

<sup>15</sup> For 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>5</sup> 17 CFR 242.600 *et seq.* See also Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) ("Regulation NMS Adopting Release").

<sup>6</sup> An NMS stock is any non-option security for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan. See 17 CFR 242.600(b)(46) and (47).

<sup>7</sup> If the bid or offer, order, or indication of interest is priced less than \$1.00 per share, the minimum allowable increment is \$0.0001 per share. See 17 CFR 242.612(b).

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

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

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> As required by Rule 19b-4(f)(6)(iii), on November 28, 2006, Nasdaq provided 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.

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> *Id.*

available for inspection and copying in the Commission's Public Reference Room. 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 available publicly. All submissions should refer to File Number SR-NASDAQ-2006-058 and should be submitted on or before January 17, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54965; File No. SR-NASDAQ-2006-052]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Waive Distributor Fee for Specific Data Element

December 19, 2006.

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 7, 2006, The NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. Nasdaq has filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</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 Substance of the Proposed Rule Change

Nasdaq proposes to allow for the unlimited, free distribution of Nasdaq's aggregate best bid and offer quotation

for Nasdaq's quoting in stocks listed on the New York Stock Exchange LLC ("NYSE") and the American Stock Exchange LLC ("Amex"). Below is the text of the proposed rule change. Proposed new language is *italicized*.

#### 7023. Nasdaq TotalView

(a)-(b) No change.

(c) OpenView

(1) The OpenView entitlement package consists of all individual Nasdaq Market Center participant quoting quotes and orders in *non-Nasdaq* exchange-listed securities in the system. There shall be a charge of \$6 per month per controlled device for OpenView.

(2) *The OpenView Top-of-File ("OpenView TOF") entitlement package consists of the Nasdaq aggregate best bid and offer quotation for non-Nasdaq exchange-listed securities in the system. There shall be no fee for the distribution of the OpenView TOF.*

(d) 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

To encourage more competition in the trading and quoting of NYSE- and Amex-listed stocks, as well as to encourage subscribers to Nasdaq's full-depth products, Nasdaq proposes new Nasdaq Rule 7023(c)(2) to institute a fee waiver for firms wishing to distribute the OpenView Top-of-File, which consists of Nasdaq's aggregate real-time best bid and offer quote for NYSE- and Amex-listed stocks. The aggregate best bid and offer is a single data element within Nasdaq OpenView. That element can be extracted from OpenView and, under this proposal, can be separately distributed free of charge. Nasdaq believes that this will promote wider distribution of data and benefit investors wishing to use that data in

making investment decisions. Nasdaq has filed this proposal as a change to the rule manual of The NASDAQ Stock Market LLC. As such, it will be operative when Nasdaq begins operating as an exchange with respect to the trading of NYSE- and Amex-listed securities.<sup>5</sup>

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Sections 6(b)(5) of the Act,<sup>7</sup> in particular, in that waiving the distribution fee for Nasdaq's aggregate best bid and offer in NYSE and Amex securities will encourage broader dissemination of that data and thereby increase transparency in those securities.

##### 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

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder<sup>9</sup> because the proposal: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 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; provided that Nasdaq has given 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

<sup>5</sup> Telephone conversation among John Roeser, Assistant Director, Division of Market Regulation ("Division"), Commission, David Liu, Special Counsel, Division, Commission, and Jeffrey Davis, Vice President-Deputy General Counsel, Nasdaq, on December 18, 2006.

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</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> 15 U.S.C. 78s(b)(3)(A).

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