

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58209; File No. SR-NASDAQ-2008-064)

July 22, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Allow The NASDAQ Options Market to Participate in the Quarterly Options Series Pilot Program

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 18, 2008, 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 and II below, which Items have been prepared by NASDAQ. NASDAQ has designated the proposed rule change as constituting a non-controversial rule change under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ 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 the NASDAQ Options Market (“NOM”) to participate in the Quarterly Options Series pilot program on the terms and conditions that currently apply to other national securities exchanges that trade standardized options. The text of the proposed rule change is available on NASDAQ’s Web site (<http://nasdaqomx.cchwallstreet.com>), at NASDAQ’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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

The Exchange is proposing to establish, until July 10, 2009, a pilot program to list options series that would expire at the close of business on the last business day of a calendar quarter ("Quarterly Options Pilot Program"). Under the proposal, the Exchange could select up to five approved options classes on which Quarterly Options series could be opened. A series could be opened on any business day and would expire at the close of business on the last business day of a calendar quarter. The Exchange also could list and trade Quarterly Options series on any options class that is selected by another exchange that employs a similar pilot program. For each class selected for the Pilot Program, the Exchange could list series that expire at the end of the next four consecutive calendar quarters, as well as the fourth quarter of the following calendar year. NASDAQ's Pilot Program will cover exchange traded fund ("ETF") options only.⁵

⁵ See electronic mail sent July 21, 2008 from Jeffrey Davis, Exchange, to Heidi Pilpel, Attorney, Division of Trading and Markets, Commission.

Quarterly Options series listed on currently approved options classes would be P.M. settled and, in all other respects, would settle in the same manner as do the monthly expiration series in the same options class. The strike price for each series would be fixed at a price per share, with two strike prices above and two strike prices below the value of the underlying security at about the time that a Quarterly Options series is opened for trading on the Exchange. The interval between strike prices on Quarterly Options series would be the same as the interval between strike prices for series in the same options class that expire in accordance with the normal monthly expiration cycles. Series listed by the Exchange under the Pilot Program at the time of initial listing would have strike prices that are within \$5.00 from the closing price of the underlying security on the preceding trading day.

The proposal would permit the Exchange to open for trading additional Quarterly Options series of the same class when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the market price of the underlying security moves substantially from the initial exercise price or prices.

On August 7, 2007, the Chicago Board Options Exchange (“CBOE”) filed a proposal to revise the terms of their Quarterly Options Series Pilot Program. As part of this filing, the CBOE proposed to implement new policies related to the listing and delisting of additional strike prices for Quarterly Options Series. The proposal was approved, as amended, by the Commission on March 3, 2008.⁶

Nasdaq proposes to adopt the revised terms of the CBOE’s Pilot Program, for use in its own Pilot Program. Specifically, Nasdaq proposes to amend Chapter IV, Section 6 and Commentary .04 to permit the Exchange to list additional strike prices for Quarterly Option

⁶ See Securities Exchange Act Release No. 57410 (March 3, 2008), 73 FR 12483 (March 7, 2008) (SR-CBOE-2007-96).

Series in ETF options that fall within a percentage range (30%) above and below the price of the underlying ETF.

Additionally, upon demonstrated customer interest, the Exchange also will be permitted to open additional strike prices of Quarterly Option Series in ETF options that are more than 30% above or below the current price of the underlying ETF. Market Makers trading for their own account will not be considered when determining customer interest under this provision. In addition to the initial listed series, the proposal will permit the Exchange to list up to sixty (60) additional series per expiration month for each Quarterly Option Series in ETF options. The proposed policies regarding the listing of new strikes are identical to those in place as part of the CBOE's Quarterly Options Series Pilot Program.

The Exchange also proposes to amend Chapter IV, Section 6, Commentary .04 in order to adopt the same policy presently in place at the CBOE, regarding the delisting of inactive strikes in Quarterly Options Series. Under the proposed delisting policy, the Exchange will, on a monthly basis, review Quarterly Option Series that are outside a range of five (5) strikes above and five (5) strikes below the current price of the underlying ETF, and delist series with no open interest in both the put and the call series having a strike price: (i) higher than the highest strike price with open interest in the put and/or call series for a given expiration month; or (ii) lower than the lowest strike price with open interest in the put and/or call series for a given expiration month. Notwithstanding the proposed delisting policy, the Exchange will grant customer requests to add strikes and/or maintain strikes in Quarterly Options Series eligible for delisting.

The delisting policy proposed by the Exchange is designed to mitigate the number of options series with no open interest, which would reduce quote traffic accordingly. If during the life of the Pilot Program the Exchange identifies series for delisting, the Exchange will notify

other options exchanges with similar delisting policies, and shall work with such other exchanges to develop a uniform list of securities to be delisted, also as to help to ensure uniform series delisting of multiply listed Quarterly Options Series in ETF options.

Lastly, the Exchange notes that the delisting policy, once approved, would become part of the Pilot Program and, going forward, would be considered by the Commission when the Exchange seeks to renew or make permanent the Pilot Program in the future. The proposed policies regarding the delisting of inactive strikes are identical to those in place as part of the CBOE's Quarterly Options Series Pilot Program.

In support of this proposed rule change, and as currently in place for the Pilot Program as approved for other exchanges, the Exchange will submit to the Commission a report (the "Quarterly Options Series Pilot Program Report") detailing the Exchange's experience with the Quarterly Options Pilot Program. Specifically, the Quarterly Options Series Pilot Program Report submitted by current exchange participants contains data and written analysis regarding the five options classes included in the Quarterly Options Pilot Program.⁷

⁷ Specifically, the Exchange acknowledges that its Quarterly Options Pilot Program Report shall include: (1) data and written analysis on the open interest and trading volume in the classes for which Quarterly Options Series were opened; (2) an assessment of the appropriateness of the option classes selected for the Pilot; (3) an assessment of the impact of the Pilot on the capacity of Nasdaq, OPRA, and on market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot and how Nasdaq addressed such problems; (5) any complaints that Nasdaq received during the operation of the Pilot and how Nasdaq addressed them; (6) any additional information that would assist in assessing the operation of the Pilot; (7) the impact of additional series on the Exchange's market and quote capacity; and (8) the implementation and effects of the delisting policy, including the number of series eligible for delisting during the period covered by the report, the number of series actually delisted during that period (pursuant to the delisting policy or otherwise), and documentation of any customer requests to maintain Quarterly Options Series strikes that were otherwise eligible for delisting. See electronic mail sent July 21, 2008 from Jeffrey Davis, Exchange, to Heidi Pilpel, Attorney, Division of Trading and Markets, Commission.

The Exchange believes there is sufficient investor interest and demand to adopt the Quarterly Options Pilot Program for the coming year. The Exchange further believes that the Quarterly Options Series Pilot Program has provided investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. The Exchange notes that no participating exchange has detected any material proliferation of illiquid options series resulting from the introduction of the Quarterly Options Pilot Program. Finally, the Exchange represents that it has the necessary systems capacity to support new options series that result from the continued listing and trading of Quarterly Options series.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general and with Section 6(b)(5) of the Act,⁹ 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 encouraging participants to provide liquidity in Quarterly Options Series. If the proposal succeeds in attracting liquidity, Nasdaq

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

expects that quoted spreads in Quarterly Options Series will decrease and execution speeds and efficiency will increase.

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, as amended. 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

The Exchange has designated the proposed rule change as one that: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 fulfilled this requirement.

with the protection of investors and the public interest and will promote competition because such waiver will allow Nasdaq to begin immediately to list and trade Quarterly Options Series in competition with the other exchanges that trade Quarterly Options Series under similar pilot programs.¹² The Commission notes that Nasdaq has represented that it expects its entry into the Quarterly Options Pilot Program to benefit investors by narrowing spreads and increasing execution speed and efficiency. Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, 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. Please include File No. SR-NASDAQ-2008-064 on the subject line.

¹² 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).

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-2008-064. 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 10:00 a.m. and 3:00 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 available publicly. All submissions should refer to File No. SR-NASDAQ-2008-064 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Acting Secretary

¹³ 17 CFR 200.30-3(a)(12).