

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57579; File No. SR-NASDAQ-2008-026)

March 28, 2008

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

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 March 25, 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 substantially prepared by Nasdaq. The Exchange filed the proposal as a “non-controversial” 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 rendered 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 is planning to commence trading on its recently-approved NASDAQ Options Market<sup>5</sup> on March 31, 2008, and to participate from that date in the Options Penny Pilot Program by trading in penny increments all 63 options currently scheduled to be traded in penny

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<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).

<sup>5</sup> See Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080).

increments on the six existing options exchanges.<sup>6</sup> Nasdaq's participation in the pilot will commence at the start of trading on the NASDAQ Options Market on March 31, 2008, and continue until March 27, 2009.

The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and <http://www.nasdaq.com>.

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

On March 12, 2008, the Commission approved SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080, proposals to create the NASDAQ Options Market ("NOM"). Chapter VI, Section 5 of the approved rules states that Nasdaq may trade options in penny increments pursuant to the Commission's pilot program for options ("Penny Pilot Program"). Through this filing, Nasdaq proposes to establish the parameters of its participation in the Penny Pilot Program.

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<sup>6</sup> The following options will be traded on The NASDAQ Options Market beginning March 31, 2008: QQQQ and AMAT. See Options Trader Alert #2008-4 at <http://www.nasdaqtrader.com/TraderNews.aspx?id=OTA2008-004>.

Prior to the Penny Pilot Program, options were quoted in nickel and dime increments. The minimum price variation for quotations in options series that are quoted at less than \$3 per contract is \$0.05 and the minimum price variation for quotations in options series that are quoted at \$3 per contract or greater is \$0.10.

Under the Penny Pilot Program, beginning on January 26, 2007, market participants were able to begin quoting in penny increments in certain series of option classes. The Penny Pilot Program originally included the following thirteen options: Ishares Russell 2000 (IWM); NASDAQ-100 Index Tracking Stock (QQQQ); SemiConductor Holders Trust (SMH); General Electric Company (GE); Advanced Micro Devices, Inc. (AMD); Microsoft Corporation (MSFT); Intel Corporation (INTC); Caterpillar, Inc. (CAT); Whole Foods Market, Inc. (WFMI); Texas Instruments, Inc. (TXN); Flextronics International Ltd. (FLEX); Sun Microsystems, Inc. (JAVA); and Agilent Technologies, Inc. (A).

On September 28, 2007, the following twenty-two options classes were added: SPDRs (SPY); Apple, Inc. (AAPL); Altria Group Inc. (MO); Dendreon Corp. (DNDN); Amgen Inc. (AMGN); Yahoo! Inc. (YHOO); QUALCOMM Inc. (QCOM); General Motors Corporation (GM); Energy Select Sector (XLE); DIAMONDS Trust, Series 1 (DIA); Oil Services HOLDRs (OIH); NYSE Euronext, Inc. (NYX); Cisco Systems, Inc. (CSCO); Financial Select Sector SPDR (XLF); AT&T Inc. (T); Citigroup Inc. (C); Amazon.com Inc. (AMZN); Motorola Inc. (MOT); Research in Motion Ltd. (RIMM); Freeport-McMoRan Copper & Gold Inc. (FCX); ConocoPhillips (COP); and Bristol-Myers Squibb Co. (BMY). These thirty-five options classes are among the most actively-traded, multiply-listed options classes.

The next phase of the Penny Pilot Program is scheduled to commence on March 28, 2008, with the addition of the following 28 options classes: Goldman Sachs Group, Inc. (GS);

Countrywide Financial Corporation (CFC); Bank of America Corporation (BAC); iShares MSCI Emerging Mkts. Index Fund (EEM); Merrill Lynch & Co., Inc. (MER); Vale (RIO); EMC Corporation (EMC); Exxon Mobil Corporation (XOM); Wal-Mart Stores, Inc. (WMT); The Home Depot, Inc. (HD); Valero Energy Corporation (VLO); Alcoa Inc. (AA); Dell Inc. (DELL); SanDisk Corporation (SNDK); The Bear Stearns Companies, Inc. (BSC); Pfizer Inc. (PFE); eBay Inc. (EBAY); Halliburton Company (HAL); Lehman Brothers Holdings Inc. (LEH); JPMorgan Chase & Co. (JPM); Washington Mutual, Inc. (WM); Ford Motor Company (F); Target Corporation (TGT); American International Group, Inc. (AIG); Newmont Mining Corporation (NEM); Verizon Communications Inc. (VZ); Mini-NDX Index Options (MNX); and Starbucks Corporation (SBUX).

The minimum price variation for all classes included in the Penny Pilot Program, except for the QQQQs, will be \$0.01 for all quotations in option series that are quoted at less than \$3 per contract and \$0.05 for all quotations in option series that are quoted at \$3 per contract or greater. The QQQQs will be quoted in \$0.01 increments for all options series.

During the extended and expanded Pilot Program, Nasdaq commits to deliver two reports to the Commission. Each report will analyze the impact of penny pricing on market quality and options system capacity. The first report will analyze the results from March 31, 2008 through July 31, 2008, and the second report will examine the results from August 1, 2008 through January 31, 2009. These reports will be provided to the Commission within thirty days of the conclusion of the reporting period.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed 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; 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.

Analysis of the current Penny Pilot Program has shown that the reduction in the minimum quoting increment has resulted in narrowing the average quoted spreads in all classes in the Pilot. A reduction in quoted spreads means that customers and other market participants may be able to trade options at better prices. Nasdaq's participation in the Penny Pilot Program as proposed by Nasdaq will allow further analysis of the impact of penny quoting in the Pilot classes over a longer period of time on, among other things: (1) spreads; (2) peak quote rates; (3) quote message traffic; (4) displayed size; (5) "depth of book" liquidity; and (6) market structure. Nasdaq's unique options market structure will add to the analysis delivered by the existing options markets to date.

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.

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<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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 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 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 if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30-days after the date of filing.<sup>11</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.<sup>12</sup> Nasdaq has requested that the Commission waive the 30-day operative delay. Nasdaq has represented that it has carefully planned a detailed and thorough testing and roll-out schedule for the NOM market, and has coordinated that schedule with numerous industry participants. Waiving the 30-day operative delay will allow Nasdaq to participate in the ongoing industry-wide Penny Pilot Program upon commencement of trading on the Nasdaq Options Market on March 31, 2008. Furthermore, the proposed rule change is

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<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. Nasdaq has satisfied the five-day pre-filing requirement.

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

substantially similar to the Pilot programs of the other six options exchanges, which were approved by the Commission after notice and comment, and does not present any novel regulatory issues.<sup>13</sup> For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposal to be operative upon filing with the Commission.<sup>14</sup>

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.<sup>15</sup>

#### 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-2008-026 on the subject line.

##### Paper comments:

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<sup>13</sup> See, e.g., Securities Exchange Act Release No. 56568 (September 27, 2007), 72 FR 56422 (October 3, 2007) (SR-NYSEArca-2007-88).

<sup>14</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. 15 U.S.C. 78c(f).

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

- 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-2008-026. 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 am and 3:00 pm. Copies of the 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-2008-026 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Florence E. Harmon  
Deputy Secretary

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