

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58093; File No. SR-NASDAQ-2008-057)

July 3, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Technical and Conforming Changes to NASDAQ Rules Governing Options Trading

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 June 24, 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 substantially by Nasdaq. Nasdaq has designated the proposed rule change 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 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 make minor and technical corrections to its rules for the NASDAQ Options Market (“NOM”).<sup>5</sup> The text of the proposed rule change is available at Nasdaq, the Commission’s Public Reference Room, and [www.complinet.com/nasdaq](http://www.complinet.com/nasdaq).

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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) (order approving SR-NASDAQ-2007-004 and 2007-080).

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 NOM. Nasdaq has identified six minor and technical modifications to the rules governing NOM.

(1) Nasdaq is proposing to modify the Table of Contents for the options rules to conform it to the titles of the previously approved rules.

(2) Nasdaq is proposing to modify Chapter IV, Section 3(i) to eliminate the limitation of underlying Fund Shares securities to those based on "broad based" indexes. Nasdaq is proposing to conform its rule to the rules of other options exchanges that permit them to trade Fund Shares (including exchange traded funds) based on any index.<sup>6</sup> The four conditions for listing underlying Fund Shares set forth in Section 3(i) will remain unchanged. Nasdaq represents that it has the necessary systems capacity to support the additional trading of Fund Shares that could potentially be listed pursuant to this provision. In addition, Nasdaq believes that the capacity

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<sup>6</sup> See, e.g., Philadelphia Stock Exchange Rule 1009.06.

required is well within the projections that Nasdaq has provided to the Options Price Reporting Authority (“OPRA”) and for which OPRA has provisioned.

To the extent that Nasdaq has incorporated by reference the rules of the Chicago Board Options Exchange, Incorporated pertaining to margin, position limits, and exercise limits, this proposal is not designed to change the application of those requirements. Members should be cognizant of the need to comply with those requirements and any amendments thereto as applied to different options classes (including options on Fund Shares).

(3) Nasdaq is proposing to modify Chapter IV, Section 6, Commentary .01 and Commentary .02, which describe the “\$1 Strikes” Pilot Program, to conform these provisions to the rules of other options exchanges. Specifically, Nasdaq proposes to expand and make permanent the \$1 Strikes Pilot Program to allow it to select a total of 10, instead of the current 5, individual stocks on which option series may be listed at \$1 strike price intervals. Additionally, Nasdaq proposes to expand the price range on which it may list \$1 strikes to \$3 - \$50, instead of the current \$3 - \$20. The proposed expanded and permanent \$1 Strikes Price Program would be known as the “\$1 Strike Price Program.” The existing restrictions on listing \$1 strikes would continue to apply (i.e., no \$1 strike price may be listed that is greater than \$5 from the underlying stock’s closing price in its primary market on the previous day or that would result in strike prices being \$0.50 apart).

This proposal is designed to respond to the requests of market participants for broader participation in the \$1 Strikes Price Program on Nasdaq. Nasdaq represents that it has the necessary systems capacity to support the potential additional trading that might arise from the proposed modification of the \$1 Strikes Price Program. In addition, Nasdaq believes that the

capacity required is well within the projections that Nasdaq has provided to OPRA and for which OPRA has provisioned.

(4) Nasdaq is proposing to modify Chapter V, Section 1(b)(vi) to eliminate cross-references to non-existent rule provisions. The cross-references were improperly included because Nasdaq modeled its rules upon the rules of another exchange but did not copy the specific rules that were cross-referenced in Section 1(b)(vi). The specific provisions that were cited are not included in the Nasdaq rule manual because they pertain to a price improvement mechanism that exists on another market that does not exist on Nasdaq. Nasdaq is proposing instead to cross-reference approved Nasdaq rules proscribing similar fraudulent misconduct that could occur on NOM.

(5) Nasdaq is proposing to modify Chapter XI, Sections 23 (Brokers' Blanket Bond) and 25 (Telephone Solicitation) to cross-reference existing Nasdaq member conduct rules rather than maintain two separate rules governing the same conduct. Specifically, Nasdaq proposes to replace Section 23 by instead cross-referencing to NASDAQ Rule 3020, which currently requires Nasdaq members to post Fidelity Bonds. Nasdaq also proposes to replace Section 25 by cross-referencing current NASDAQ Rule 2212 which prescribes members' conduct for telephone solicitation.

(6) Finally, Nasdaq is proposing to modify Chapter XIV, Section 10 to clarify that when a halt involving an index option is lifted, trading resumes as specified in Chapter V, Section 4 (Resumption of Trading After A Halt) rather than as specified in Chapter VI, Section 8. When Nasdaq first proposed its options trading rules, it planned to resume trading by operating a "Halt Cross," which it originally described in Chapter VI, Section 8. Nasdaq later amended the proposed rules to remove the Halt Cross and to make clear that trading after a halt would

“resume” rather than “open.” The cross-reference to the Halt Cross in Chapter XIV, Section 10 should have been removed, but was overlooked.

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.

The proposed changes are either technical in nature or are designed to conform the rules of Nasdaq’s options market to the rules of other options markets or to conform Nasdaq’s rules for options trading to its rules for equities trading. None of the proposed changes will impact the manner in which executions occur on NOM.

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 on the proposed rule change were neither solicited nor received.

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

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

### 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: (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 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 Commission expects Nasdaq to continue to monitor for options with little or no open interest and trading activity and to act promptly to delist such options. In addition, the Commission expects that Nasdaq will continue to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of Nasdaq's, OPRA's, and vendors' automated systems.

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.

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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> 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.

#### 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-2008-057 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-2008-057. 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 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2008-057 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>12</sup>

Florence E. Harmon  
Acting Secretary

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