

available investment options. In this regard, the proposed Substitutions retain for Contract owners and participants the investment flexibility which is a central feature of the Contracts.

8. Moreover, the section 26 Applicants will offer Contract owners and participants the opportunity to transfer amounts out of the affected subaccounts without any cost or other penalty (other than with respect to implementing policies and procedures designed to prevent disruptive transfer and other market timing activity) that may otherwise have been imposed for a period beginning on the date of the supplement notifying Contract owners and participants of the proposed Substitutions (which supplement has been delivered to Contract owners and participants at least thirty (30) days before the Substitutions) and ending no earlier than thirty (30) days after the proposed Substitutions. The Substitutions, therefore, will not result in the type of costly forced redemption that section 26(c) was designed to prevent.

9. The section 26 Applicants also note that the proposed Substitutions are also unlike the type of substitution that section 26(c) was designed to prevent in that by purchasing a Contract or participating in a group Contract, Contract owners and participants select much more than a particular underlying fund in which to invest their Contract values. They also select the specific type of insurance coverage offered by the section 26 Applicants under the applicable Contract, as well as numerous other rights and privileges set forth in the Contract. Contract owners and participants also may have considered the Insurance Company's size, financial condition, and its reputation for service in selecting their Contract. These factors will not change as a result of the proposed Substitutions, nor will the annuity, life or tax benefits afforded under the Contracts held by any of the affected Contract owners or participants.

10. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the same persons, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

11. Section 17(b) of the 1940 Act provides that the Commission may, upon application, issue an order

exempting any proposed transaction from the provisions of Section 17(a) if: (i) the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) the proposed transactions are consistent with the policy of each registered investment company concerned; and (iii) the proposed transactions are consistent with the general purposes of the 1940 Act.

12. The section 17 Applicants request an order pursuant to section 17(b) of the 1940 Act exempting them from the provisions of section 17(a) of the 1940 Act to the extent necessary to permit them to carry out the In-Kind Transactions in connection with the proposed Substitutions.

13. The section 17 Applicants submit that the terms of the proposed In-Kind Transactions, including the consideration to be paid and received, as described in the application, are reasonable and fair and do not involve overreaching on the part of any person concerned. The In-Kind Transactions will be effected at the respective net asset values of each of the relevant Removed Portfolios and each of the relevant Replacement Portfolios, as determined in accordance with the procedures disclosed in the registration statement for the relevant investment company and as required by Rule 22c-1 under the 1940 Act. The In-Kind Transactions will not change the dollar value of any Contract owner's or participant's investment in any of the Separate Accounts, the value of any Contract, the accumulation value or other value credited to any Contract, or the death benefit payable under any Contract. After the proposed In-Kind Transactions, the value of a Separate Account's investment in a Replacement Portfolio will equal the value of its investments in the corresponding Removed Portfolio (together with the value of any pre-existing investments in the Replacement Portfolio) before the In-Kind Transactions.

14. The section 17 Applicants state they will assure themselves that the In-Kind Transactions will be in substantial compliance with the conditions of Rule 17a-7 under the 1940 Act. The section 17 Applicants will assure themselves that the investment companies will carry out the proposed In-Kind Transactions in conformity with the conditions of Rule 17a-7 (or, as applicable, a Removed Portfolio's and a Replacement Portfolio's normal valuation procedures, as set forth in the relevant investment company's registration statement), except that the consideration paid for the securities

being purchased or sold will not be cash.

15. The section 17 Applicants also assert that the proposed In-Kind Transactions do not involve overreaching on the part of any person concerned. Furthermore, the section 17 Applicants represent that the proposed In-Kind Transactions will be consistent with the policies of the Removed and corresponding Replacement Portfolios, as recited in their respective current registration statements, and that the proposed In-Kind Transactions are consistent with the general purposes of the 1940 Act and do not present any conditions or abuses that the 1940 Act was designed to prevent.

### Conclusion

For the reasons set forth in the application, the Applicants each respectively request that the Commission issue an order of approval pursuant to section 26(c) of the 1940 Act and an order of exemption pursuant to section 17(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-14663 Filed 7-27-07; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56120; File No. SR-NASDAQ-2007-060]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Extend Nasdaq's Authority Under Its Cease and Desist Pilot Program

Date: July 24, 2007.

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 19, 2007, 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 as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the

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

<sup>2</sup> 17 CFR 240.19b-4.

Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. On July 20, 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 a rule change to extend for a two-year period, to June 23, 2009, Nasdaq's authority under its cease and desist pilot program. At this time, Nasdaq is not proposing any substantive changes to the rules covered by the pilot program. The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and <http://nasdaq.complinet.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**

In May 2003, the Commission approved, on a pilot basis, a rule change that gave the National Association of Securities Dealers, Inc. ("NASD") the authority to issue temporary cease and desist orders and made explicit NASD's ability to impose permanent cease and desist orders as a remedy in disciplinary cases.<sup>5</sup> When Nasdaq registered as a national securities exchange, it also adopted a cease and desist program. Because NASD is Nasdaq's regulatory services provider and administers Nasdaq's disciplinary program under contract, Nasdaq generally seeks to maintain comparability between its disciplinary procedure rules and NASD's. NASD recently extended the

above mentioned pilot rule through June 23, 2009.<sup>6</sup> Accordingly, Nasdaq is proposing a comparable extension. Although Nasdaq has not had occasion to use the authority to date, the pilot extension will ensure that the authority remains available for the next two years. The authority under the rule will expire after the additional two-year period unless the pilot program is further extended or adopted on a permanent basis with Commission approval. Nasdaq is also amending Nasdaq Rules 9556 and 9800 to delete erroneous cross-references.

##### **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 sections 6(b)(5) and (6) of the Act,<sup>8</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, and, in general, to protect investors and the public interest, and is further designed to provide that Nasdaq members, or persons associated with its members, are appropriately disciplined for violations of any provisions of the Act or Nasdaq rules. The extension of the pilot program is consistent with Nasdaq's obligations under the Act, because cease and desist orders are designed to stop violative conduct that is likely to cause dissipation or conversion of assets or other significant harm to investors.

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

Nasdaq does not believe that the proposed rule change will impose 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.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change 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, it 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> 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.

Nasdaq has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay of the proposal. Nasdaq represents that such waivers will allow Nasdaq to implement the proposed rule change prior to the time of the expiration of the current pilot. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 5-day pre-filing notice requirement and 30-day operative delay and make this proposed rule change immediately effective.<sup>11</sup> The Commission believes that the waiver will allow Nasdaq to continue, without interruption, the existing operation of the pilot until June 23, 2009.

### **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-2007-060 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-NASDAQ-2007-060. This file number should be included on the subject line if e-mail is used. To help the

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<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. 47925 (May 23, 2003), 68 FR 33548 (June 4, 2003) (SR-NASD-98-80).

<sup>6</sup> See Securities Exchange Act Release No. 55819 (May 25, 2007), 72 FR 30895 (June 4, 2007) (SR-NASD-2007-033).

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

<sup>8</sup> 15 U.S.C. 78f(b)(5) and (6).

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 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-2007-060 and should be submitted on or before August 20, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-14605 Filed 7-27-07; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56119; File No. SR-NYSEArca-2007-70]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Quarterly Options Series Pilot

Date: July 24, 2007.

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 July 23, 2007, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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 the Exchange. The Exchange has designated this proposal as non-controversial under section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change 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

The Exchange is proposing to extend the Quarterly Options Series pilot program ("Pilot Program") through July 10, 2008. The text of the proposed rule change is available on the Exchange's Web site (<http://www.nysearca.com>), at the Exchange's principal office, 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, the Exchange 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. The Exchange 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 July 12, 2006, the Exchange filed with the Commission a proposed rule change that allowed it to establish the Pilot Program, pursuant to which the Exchange lists and trades Quarterly Options Series.<sup>5</sup> The rule change was effective upon filing. The Pilot Program, which was originally due to expire on July 10, 2007, was extended for a two-week interim period through July 24, 2007, while the Exchange finalized its Pilot Program Report ("Report").<sup>6</sup> The

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

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

<sup>5</sup> See Securities Exchange Act Release No. 54166 (July 18, 2006), 71 FR 42151 (July 25, 2006) (File No. SR-NYSEArca-2006-45).

<sup>6</sup> See Securities Exchange Act Release No. 56040 (July 10, 2007), 72 FR 39112 (July 17, 2007) (File No. SR-NYSEArca-2007-67) ("Interim Extension Release").

Exchange hereby proposes to extend the Pilot Program through July 10, 2008.

In the Interim Extension Release, the Exchange stated that it would submit the Report in connection with this proposal to extend the Pilot Program through July 10, 2008. The Report provides an analysis of the Pilot Program covering the entire period for which the program was in effect. The Exchange has submitted its Report as Exhibit 3 to the Form 19b-4 filed with the Commission. The Report may be examined at the places specified in Item IV below. The Report includes: (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 Program; (3) an assessment of the impact of the Pilot Program on the capacity on the Exchange, OPRA, and 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 Program and how the Exchange addressed such problems; (5) any complaints that the Exchange received during the operation of the Pilot Program and how the Exchange addressed them; and (6) any additional information that would assist the Commission in assessing the operation of the Pilot Program.

The Exchange represents that the Report supports its belief that extension of the Pilot Program is proper. Among other things, the Report shows the strength of the Pilot Program as reflected by the overall volume and open interest of Quarterly Options Series traded on the both NYSE Arca and other national options exchanges. The Report shows that the Pilot Program has not created, and in the future should not create, any capacity, operational, or regulatory problems attributable to Quarterly Option Series.

Finally, NYSE Arca represents that the Exchange has the necessary system capacity to support any additional series listed as part of the Pilot Program.

###### 2. Statutory Basis

The Exchange believes that the continuation of the Quarterly Options Series Pilot Program will stimulate customer interest in options by creating greater trading opportunities and flexibility in investment choices. The Exchange further believes that continuation of the Pilot Program will provide the ability to more closely tailor investment strategies and provide a valuable hedging tool for investors. For these reasons, the Exchange believes the

<sup>12</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.