

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59421; File No. SR-NASDAQ-2009-005)

February 19, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 Thereto to Reduce Certain Order Exposure Periods on the NASDAQ Options Market from Three Seconds to One Second

I. Introduction

On January 23, 2009, The NASDAQ Stock Market LLC (“NASDAQ”), filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to reduce certain order exposure periods on the NASDAQ Options Market (“NOM”) from three seconds to one second. NASDAQ filed Amendment 1 to the proposed rule change on January 27, 2009. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on February 3, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

The purpose of the proposed rule change is to reduce the exposure time during which Options Participants⁴ may not execute as principal against orders they represent as agent from three seconds to one second. Specifically, NASDAQ proposes to amend Chapter VII, Section

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59310 (January 28, 2009), 74 FR 5952.

⁴ Pursuant to Chapter I, Section 1(a)(40) of the NOM Rules, the term "Options Participant" means a firm, or organization that is registered with the Exchange for purposes of participating in options trading on NOM as a "Nasdaq Options Order Entry Firm" or "Nasdaq Options Market Maker".

12, which currently provides that an Options Participant may not execute as principal against orders on the limit order book they represent as agent unless: (a) agency orders are first exposed on NOM for at least three seconds, or (b) the Options Participant has been bidding or offering on NOM for at least three seconds prior to receiving an agency order that is executable against such bid or offer. In addition, Options Participants must expose orders they represent as agent for at least three seconds before such orders may be automatically executed, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders. Under the proposal, these exposure periods would be reduced to one second.

III. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,⁷ which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(8).

The Commission believes that, given the electronic environment of NASDAQ, reducing each of these exposure periods from three seconds to one second could facilitate the prompt execution of orders, while continuing to provide market participants with an opportunity to compete for exposed bids and offers. To substantiate that NASDAQ members could receive, process, and communicate a response back to NASDAQ within one second, NASDAQ stated that it distributed a survey to all NOM Options Participants. NASDAQ stated that the survey results indicated that it typically takes not more than 250 milliseconds for members to receive, process, and respond to broadcast messages that would be affected by the proposal. NASDAQ also stated that all eight members that responded to the survey indicated that reducing the exposure period to one second would not impair their ability to participate in orders affected by the proposal. Based on NASDAQ's statements regarding the survey results, the Commission believes that market participants should continue to have opportunities to compete for exposed bids and offers within a one second exposure period. Accordingly, the Commission believes that it is consistent with the Act for NASDAQ to reduce the order handling and exposure times discussed herein from three seconds to one second.

The Commission finds good cause to approve the proposed rule change prior to the thirtieth day after publication for comment in the Federal Register. The Commission notes that the proposed rule change was noticed for a fifteen-day comment period, and no comments were received. The Commission believes that NASDAQ has provided reasonable support for its belief that its market participants would continue to have an opportunity to compete for exposed bids and offers if the exposure periods were reduced to one second as proposed. Finally, the Commission also notes that the proposed rule change is similar to recently approved proposals submitted by the Chicago Board Options Exchange, Incorporated, the International Securities

Exchange, LLC, and NASDAQ OMX PHLX, Inc.⁸ Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,⁹ to approve the proposed rule change on an accelerated basis.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NASDAQ-2009-005), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

⁸ See Securities Exchange Act Release Nos. 58088 (July 2, 2008), 73 FR 39747 (July 10, 2008)(SR-CBOE-2008-16); 58224 (July 25, 2008), 73 FR 44303 (July 30, 2008) (SR-ISE-2007-94); and 59081 (December 11, 2008), 73 FR 76432 (December 16, 2008).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).