

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54421; File No. SR-NASDAQ-2006-011]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Granting Approval to Proposed Rule Change To Modify the Cure Period Available to an Issuer That Loses an Independent Director or Audit Committee Member

September 11, 2006.

On May 23, 2006, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify the cure period available to a listed issuer that loses an independent director or audit committee member. The proposed rule change was published for comment in the **Federal Register** on June 14, 2006.<sup>3</sup> The Commission received two comment letters on the proposal.<sup>4</sup> This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>5</sup> and, in particular, Section 6(b)(5) of the Act.<sup>6</sup>

Nasdaq Rule 4350, among other things, requires each listed issuer to have a majority of independent directors on its board and an audit committee that consists of at least three independent members and meets other composition requirements. The rule also includes provisions affording a cure period for an issuer that fails to comply with the majority independent board requirement, either because a vacancy arises on the board or because a board member ceases to be independent for reasons outside the member's reasonable control, as well as for an issuer that fails to comply with the audit

committee composition requirement because a vacancy arises on the audit committee. The cure period lasts until the earlier of the company's next annual shareholders' meeting or one year from the date of the event that caused the non-compliance.<sup>7</sup> The proposed rule change would provide that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply with the majority independent board requirement or the audit committee composition requirement, the issuer will instead have 180 days from the event to regain compliance.

The Commission notes that, under the current rule, an issuer that falls out of compliance shortly after its annual meeting is granted a cure period of nearly one year to regain compliance, and believes that the proposal to grant a cure period of 180 days to an issuer that falls out of compliance within 180 days before its annual meeting helps to address an anomaly in Nasdaq's qualitative listing requirements and should afford such an issuer a reasonable amount of time to find a new director.<sup>8</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-NASDAQ-2006-011) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Nancy M. Morris,**  
*Secretary.*

[FR Doc. E6-15446 Filed 9-15-06; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>7</sup> This cure period comports with language in Rule 10A-3 under the Act, 17 CFR 240.10A-3, which states that a national securities exchange may provide a cure period to allow a member of an audit committee who ceases to be independent through reasons outside the member's reasonable control to remain on the audit committee "until the earlier of the next annual shareholders meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent," subject to the condition that the issuer notify the applicable exchange. 17 CFR 240.10A-3(a)(3).

<sup>8</sup> The Commission notes that, as indicated by Nasdaq in its proposal, the 180-day period would not apply to allow a director on an issuer's audit committee who ceases to be independent to remain on the committee beyond the period contemplated in Rule 10A-3(a)(3) under the Act, 17 CFR 240.10A-3(a)(3), and codified in Nasdaq Rule 4350(d)(4)(A).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54425; File No. SR-NYSEArca-2006-57]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exchange Fees and Charges

September 11, 2006.

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 September 7, 2006, the NYSE Arca, Inc. ("NYSE Arca" or "Exchange") 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 by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) 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

The Exchange proposes to amend its Schedule of Fees and Charges in order to modify the fee that applies to Option Strategy Executions.<sup>5</sup> The text of the proposed rule change is available on NYSE Arca's Web site at (<http://www.nysearca.com>), at the Office of the Secretary at NYSE Arca, 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 proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in

<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)(ii).

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

<sup>5</sup> Fees on Options Strategy Executions are applicable through a Pilot Program until March 1, 2007.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 53941 (June 5, 2006), 71 FR 34408.

<sup>4</sup> See letters to Nancy M. Morris, Secretary, Commission, from Sharon H. Lachman, Regulatory Counsel, America's Community Bankers, dated July 5, 2006, and from Society of Corporate Secretaries and Governance Professionals, Carol Hayes, Chair, Listing Standards Committee, received by e-mail July 5, 2006. Both comment letters supported the proposed rule change.

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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 represents that the purpose of this proposed rule change is to modify the fee that applies to Option Strategy Executions. These transactions include reversals and conversions,<sup>6</sup> dividend spreads,<sup>7</sup> and box spreads<sup>8</sup> and merger spreads.<sup>9</sup> Because the referenced Options Strategy Transactions are generally executed by professionals whose profit margins are generally narrow, the Exchange caps the transaction fees associated with such executions at \$1,000 per strategy execution that are executed on the same trading day in the same option class. In addition, the Exchange has a monthly fee cap of \$50,000 per initiating firm for all strategy executions. At this time, the Exchange is proposing lowering the monthly fee cap in order to stay competitive with other national options exchanges. The Exchange proposes lowering the monthly fee cap to \$25,000 per month. The daily cap of \$1,000 will remain unchanged. NYSE Arca believes that by keeping fees on strategy executions low, the Exchange will be able to attract additional liquidity by accommodating these transactions.

OTP Holders and OTP Firms who wish to benefit from the fee cap will be required to submit to the Exchange forms with supporting documentation (e.g., clearing firm transaction data) to qualify for the cap.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b)

of the Act,<sup>10</sup> in general, and section 6(b)(4),<sup>11</sup> in particular, in that it provides for the equitable allocation of dues, fees, and other charges among its members.

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

The Exchange 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**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>12</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>13</sup> because it establishes or changes a due, fee, or other charge. 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.

**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-NYSEArca-2006-57 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.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-NYSEArca-2006-57. 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. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. 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-NYSEArca-2006-57 and should be submitted on or before October 10, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-15405 Filed 9-15-06; 8:45 am]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-54424; File No. SR-Phlx-2006-55]

**Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Its Dividend, Merger, and Short Stock Interest Strategy Program**

September 11, 2006.

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 August 31, 2006, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange")

<sup>14</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.

<sup>6</sup> Reversals and conversions are transactions that employ calls, puts and the underlying stock to lock in a nearly risk free profit. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration.

<sup>7</sup> Dividend spreads are trades involving deep in the money options that exploit pricing differences arising around the time a stock goes ex-dividend.

<sup>8</sup> Box Spreads is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively.

<sup>9</sup> A merger spread is a transaction executed pursuant to a strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices followed by the exercise of the resulting long option position.