

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 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

No written comments were either solicited or received.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ Because the 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 prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6)(iii) thereunder.¹⁷

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing.¹⁸ However, pursuant to Rule 19b-4(f)(6)(iii),¹⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that the proposed rule change is substantially similar to a proposal submitted by another options exchange that was recently approved by the Commission and also incorporates a change to the initial expansion date filed by the other exchange. The Exchange further states that waiving the 30-day operative delay

will allow the Pilot Program to continue uninterrupted and allow Nasdaq to adopt the same expansion schedule as other exchanges.

The Commission believes waiving the 30-day operative delay²⁰ is consistent with the protection of investors and the public interest because such waiver will allow Nasdaq to implement the 75 additional classes on November 2, 2009 and permit the Pilot Program to continue uninterrupted, consistent with other exchanges.²¹ For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.

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. Please include File Number SR-Phlx-2009-91 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2009-91. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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 No. SR-Phlx-2009-91 and should be submitted on or before November 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60880; File No. SR-NASDAQ-2009-090]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Permit Listing Option Series That Are Restricted to Closing Transactions if Such Series Are Listed and Restricted to Closing Transactions on Another National Securities Exchange

October 26, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on October 16, 2009, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal as

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the 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. The Exchange has satisfied this pre-filing requirement.

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

²⁰ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²¹ See Securities Exchange Act Release Nos. 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (SR-NYSEArca-2009-44); and 60833 (October 16, 2009), 74 FR 54617 (October 22, 2009) (SR-NYSEArca-2009-91).

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 filing a proposal for the NASDAQ Options Market (“NOM” or “Exchange”) to amend its Chapter IV, Section 4 (Withdrawal of Approval of Underlying Securities) to permit the Exchange to list option series that are restricted to closing transactions if such series are listed and restricted to closing transactions on another exchange. The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).⁵

The text of the proposed rule change is available from Nasdaq’s Web site at <http://nasdaq.cchwallstreet.com>, at Nasdaq’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, 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

The purpose of the proposed rule change is to amend NOM Chapter IV, Section 4 to permit the Exchange to list option series that are restricted to closing transactions if such series are listed and restricted to closing transactions on another exchange.

This filing is based on a similar immediately effective filing recently filed by another options exchange, Chicago Board Options Exchange (“CBOE”).⁶ In that filing, it was noted

that the impetus for the filing was a customer request for it to list a series of options that was previously delisted by the filing exchange but listed on another exchange and restricted to closing transactions, a situation that may equally occur on NOM as well as other options exchanges.

Chapter IV, Section 3 (Criteria for Underlying Securities) sets forth the requirements or criteria that underlying securities must meet before the Exchange may initially list options on such securities. Chapter IV, Section 4 sets forth listing maintenance and delisting criteria in respect of securities underlying options listed on the Exchange that are used by the Exchange to determine whether such listing status should be continued. These rules do not have provisions for listing option series that are restricted to closing transactions where such series are listed on another exchange.

The Exchange proposes to add new subsection (m) to Chapter IV, Section 4 to provide that if an option series is listed but restricted to closing transactions on another national securities exchange, the Exchange may list such series (even if such series would not otherwise be eligible for listing under the Exchange’s rules), which shall also be restricted to closing transactions on the Exchange.⁷ No restrictions will be in place with respect to the exercise of any restricted series.

The Exchange believes that the proposed rule change should encourage competition and be beneficial to traders and market participants by providing them with a means to trade on the Exchange securities that are listed and traded on other exchanges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market

and a national market system. Permitting the Exchange to accommodate possible customer requests and allow execution of trades on the Exchange will encourage competition and not harm investors or the public interest.

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 were neither solicited nor received.

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

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)¹⁰ of the Act and Rule 19b-4(f)(6)(iii) thereunder¹¹ 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, if consistent with the protection of investors and the public interest.¹²

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. However, Rule 19b-4(f)(6)(iii)¹³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. In particular, the Exchange would be permitted to list the restricted

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written 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 this requirement.

¹³ 17 CFR 240.19b-4(f)(6)(iii).

2009) (SR-CBOE-2009-066) (notice of filing and immediate effectiveness).

⁷ The parenthetical text is being proposed to eliminate ambiguity about the Exchange’s ability to list a restricted series pursuant to proposed subsection (m) to Chapter IV, Section 4 in the event other Exchange rules would otherwise prohibit the listing of that series.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ 17 CFR 240.19b-4(f)(6)(iii).

⁶ See Securities Exchange Act Release No. 60625 (September 4, 2009), 74 FR 46825 (September 11,

series solely for the purpose of closing transactions as long as the restricted series is listed on another national securities exchange. In addition, the proposed rule change is substantially similar to the rules of CBOE.¹⁴ The Commission therefore designates the proposal operative upon filing.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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.¹⁶

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. Please include File Number SR-NASDAQ-2009-090 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2009-090. 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 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-2009-090 and should be submitted on or before November 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60878; No. SR-FINRA-2009-041]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend Rules 12100, 12506, and 12902 of the Code of Arbitration Procedure for Customer Disputes and Rule 13100 of the Code of Arbitration Procedure for Industry Disputes To Implement Conforming Changes

October 26, 2009.

I. Introduction

On June 5, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA" or the "Corporation") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rules 12100(r), 12506(a), and 12902(a) of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and Rule 13100(r) of the Code of Arbitration

Procedure for Industry Disputes ("Industry Code") to amend the definition of "associated person," streamline case administration procedure, and clarify that customers could be assessed hearing session fees based on their own claims for relief in connection with an industry claim. The proposed rule change was published for comment in the **Federal Register** on July 2, 2009.³ The Commission received one comment on the proposed rule change.⁴ On August 10, 2009, FINRA responded to the comment letter.⁵ On October 16, 2009, FINRA filed Amendment No. 1 to the proposed rule change.⁶ The Commission is publishing this notice and order to solicit comments on Amendment No. 1 and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of Proposed Rule Change

On January 24, 2007, the SEC approved amendments to the NASD Code of Arbitration Procedure ("old Code") in connection with rules applicable to customer disputes and to industry disputes,⁷ a final step in the reorganization of the old Code into three separate procedural codes: The Customer Code, the Industry Code, and the Mediation Code (the "Code Revision").⁸ The Code Revision simplified the language of the old Code, codified current dispute resolution practices, and implemented several substantive changes to dispute resolution rules. Since the SEC approved the Code Revision, Dispute Resolution staff ("staff") has found rule language that was omitted inadvertently from the Customer Code and the Industry Code (collectively, "Codes"), as well as rule language that could be improved to better convey FINRA's

³ Securities Exchange Act Release No. 60159 (June 22, 2009), 74 FR 31779 ("Notice").

⁴ See letter from Brian M. Smiley, Public Investors Arbitration Bar Association, to Elizabeth M. Murphy, Secretary, Commission, dated July 29, 2009 ("PIABA Letter").

⁵ See letter from Mignon McLemore, FINRA Dispute Resolution, to Elizabeth M. Murphy, Secretary, Commission, dated August 10, 2009 ("FINRA Response").

⁶ Amendment No. 1 was a partial amendment that made minor technical edits to the rule text and the description of the proposal, and therefore does not require notice and comment.

⁷ See Securities Exchange Act Release No. 55158 (January 24, 2007), 72 FR 4574 (January 31, 2007) (File Nos. SR-NASD-2003-158 and SR-NASD-2004-011).

⁸ The Mediation Code was filed separately with the Commission as SR-NASD-2004-013. The Commission approved the Mediation Code on October 31, 2005, and it became effective on January 30, 2006. See Securities Exchange Act Rel. No. 52705 (October 31, 2005), 70 FR 67525 (November 7, 2005) (SR-NASD-2004-013).

¹⁴ See CBOE Rule 5.4.12(b).

¹⁵ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 15 U.S.C. 78s(b)(3)(C).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.