

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*

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**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-2009-94 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-NYSEArca-2009-94. 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 the 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 Number SR-NYSEArca-2009-94 and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-27494 Filed 11-16-09; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60965; File No. SR-NASDAQ-2009-097]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No.1, to Add Seventy-Five Options Classes to the Penny Pilot Program**

November 9, 2009.

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 October 28, 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, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 to the proposal on November 5, 2009.<sup>3</sup> The Commission is publishing

<sup>30</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>3</sup> In Amendment No. 1, Nasdaq proposed to correct a technical error in Section III. The change has no effect on the substance of the proposed rule change.

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 with the Securities and Exchange Commission ("SEC" or "Commission") a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to designate seventy-five options classes to be added to the Penny Pilot in options classes in certain issues ("Penny Pilot" or "Pilot") on November 2, 2009.<sup>4</sup> The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.<sup>5</sup>

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 this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective November 2, 2009.

In the Exchange's immediately effective filing to extend and expand the Penny Pilot through December 31, 2010,<sup>6</sup> the Exchange proposed expanding the Pilot four times on a

<sup>4</sup> The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2010. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR-NASDAQ-2008-026) (notice of filing and immediate effectiveness establishing Penny Pilot); and 60874 (October 23, 2009) (SR-NASDAQ-2009-091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot).

<sup>5</sup> See Chapter VI, Section 5 regarding the Penny Pilot.

<sup>6</sup> See Securities Exchange Act Release No. 60874 (October 23, 2009) (SR-NASDAQ-2009-091) (notice of filing and immediate effectiveness).

quarterly basis. Each such quarterly expansion would be of the next seventy-five most actively traded multiply listed options classes based on the national average daily volume ("ADV") for the six months prior to selection, closing under \$200 per share on the Expiration Friday prior to expansion; however, the

month immediately preceding the addition of options to the Penny Pilot will not be used for the purpose of the six month analysis. Index option products would be included in the quarterly expansions if the underlying index levels were under 200.

The Exchange is identifying, in the chart below, seventy-five options classes that it will add to the Penny Pilot on November 2, 2009, based on ADVs from April 1, 2009, through September 30, 2009.

Nat'l ranking	Symbol	Company name
118	ABX	Barrick Gold Corp
48	AXP	American Express Co
134	AUY	Yamana Gold Inc
93	BA	Boeing Co/The
115	BBT	BB&T Corp
111	BBY	Best Buy Co Inc
94	BP	BP PLC
67	CHK	Chesapeake Energy Corp
58	CIT	CIT Group Inc
78	COF	Capital One Financial Corp
68	CVX	Chevron Corp
130	DE	Deere & Co
104	DOW	Dow Chemical Co/The
49	DRYS	DryShips Inc
88	EFA	iShares MSCI EAFE Index Fund
64	ETFC	E*Trade Financial Corp
32	EWZ	iShares MSCI Brazil Index Fund
25	FAS	Direxion Daily Financial Bull 3X Shares
33	FAZ	Direxion Daily Financial Bear 3X Shares
112	FITB	Fifth Third Bancorp
70	FSLR	First Solar Inc
26	FXI	iShares FTSE/Xinhua China 25 Index Fund
82	GDV	Market Vectors—Gold Miners ETF
127	GG	Goldcorp Inc
18	GLD	SPDR Gold Trust
129	HGSI	Human Genome Sciences Inc
62	HIG	Hartford Financial Services Group Inc
72	HPQ	Hewlett-Packard Co
59	IBM	International Business Machines Corp
45	IYR	iShares Dow Jones US Real Estate Index Fund
105	JNJ	Johnson & Johnson
131	JNPR	Juniper Networks Inc
98	KO	Coca-Cola Co/The
39	LVS	Las Vegas Sands Corp
87	MCD	McDonald's Corp
71	MGM	MGM Mirage
113	MON	Monsanto Co
63	MOS	Mosaic Co/The
120	MRK	Merck & Co Inc/NJ
35	MS	Morgan Stanley
73	NLY	Annaly Capital Management Inc
99	NOK	Nokia OYJ
121	NVDA	Nvidia Corp
80	ORCL	Oracle Corp
61	PALM	Palm Inc
37	PBR	Petroleo Brasileiro SA
85	PG	Procter & Gamble Co/The
41	POT	Potash Corp of Saskatchewan Inc
74	RF	Regions Financial Corp
124	RIG	Transocean Ltd
132	RMBS	Rambus Inc
103	S	Sprint Nextel Corp
83	SDS	ProShares UltraShort S&P500
122	SKF	ProShares UltraShort Financials
107	SLB	Schlumberger Ltd
91	SLV	iShares Silver Trust
84	SRS	ProShares UltraShort Real Estate
119	SSO	ProShares Ultra S&P500
101	STI	SunTrust Banks Inc
125	SVNT	Savient Pharmaceuticals Inc
92	TBT	ProShares UltraShort 20+ Year Treasury
14	UNG	United States Natural Gas Fund LP
117	UNH	UnitedHealth Group Inc
110	UPS	United Parcel Service Inc

Nat'l ranking	Symbol	Company name
81 .....	USB .....	US Bancorp
44 .....	USO .....	United States Oil Fund LP
60 .....	UYG .....	ProShares Ultra Financials
96 .....	V .....	Visa Inc
10 .....	WFC .....	Wells Fargo & Co
133 .....	WYNN .....	Wynn Resorts Ltd
52 .....	X .....	United States Steel Corp
114 .....	XHB .....	SPDR S&P Homebuilders ETF
86 .....	XLI .....	Industrial Select Sector SPDR Fund
79 .....	XLU .....	Utilities Select Sector SPDR Fund
54 .....	XRT .....	SPDR S&P Retail ETF

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> 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, by identifying the options classes to be added to the Penny Pilot in a manner consistent with prior approvals and filings.

### 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 were neither solicited nor received.

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

Pursuant to Section 19(b)(3)(A)(i) of the Act<sup>9</sup> and Rule 19b-4(f)(1) thereunder,<sup>10</sup> NASDAQ has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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-NASDAQ-2009-097 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-2009-097. 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-NASDAQ-2009-097 and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority,<sup>11</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E9-27499 Filed 11-16-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60969; File No. SR-NYSE-2009-96]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Permitting Affiliation With NYFIX Millennium LLC and NYFIX Securities Corporation

November 9, 2009.

## I. Introduction

On September 22, 2009, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change, 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> proposing that the Exchange be affiliated with two registered broker-dealer subsidiaries of

<sup>11</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>7</sup> 15 U.S.C. 78f(b).

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

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

<sup>10</sup> 17 C.F.R. 240.19b-4(f)(1).