

Number SR–NASDAQ–2009–021 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–2009–021. 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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–2009–021 and should be submitted on or before April 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>3</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59557; File No. SR–NASDAQ–2009–017]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Processing of Orders on the NASDAQ Options Market

March 11, 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 March 6, 2009, The NASDAQ Stock Market LLC (“Nasdaq”) 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 Nasdaq. Pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b–4(f)(5) thereunder,<sup>4</sup> Nasdaq has designated this proposal as one effecting a change in an existing order-entry or trading system of a self-regulatory organization. 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 proposed rule change to offer the “WAIT” order modifier for use with orders entered into the NASDAQ Options Market (“NOM”). This modifier is designed to enhance compliance with the Order Exposure requirement set forth at Chapter VII, Section 12 of the NOM Rules.

The text of the proposed rule change is available from Nasdaq's Web site at <http://cchwallstreet.com/nasdaqomx/> at Nasdaq's principal office, and at the Commission's Public Reference Room.

Proposed new language is italicized; proposed deletions are in brackets.<sup>5</sup>

\* \* \* \* \*

## Chapter VI, Trading Systems

### Sec. 1. Definitions

The following definitions apply to Chapter VI for the trading of options listed on NOM.

- (a)–(f) No Change.
- (g)

<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).

<sup>4</sup> 17 CFR 240.19b–4(f)(5).

<sup>5</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://www.complinet.com/nasdaq>.

- (1)–(4) No Change.

(5) “WAIT” shall mean for orders so designated, that upon entry into the System, the order is held for one second without processing for potential display and/or execution. After one second, the order is processed for potential display and/or execution in accordance with all order entry instructions as determined by the entering party.

- (h) No Change.

\* \* \* \* \*

### Sec. 6. Acceptance of Quotes and Orders

All bids or offers made and accepted on NOM in accordance with the NOM Rules shall constitute binding contracts, subject to applicable requirements of the Rules of the Exchange and the Rules of the Clearing Corporation.

(a) General—A System order is an order that is entered into the System for display and/or execution as appropriate. Such orders are executable against marketable contra-side orders in the System.

(1) All System Orders shall indicate limit price and whether they are a call or put and buy or sell. Systems Orders can be designated as Immediate or Cancel (“IOC”), Good-till-Cancelled (“GTC”), Day (“DAY”), [or] WAIT or Expire Time (“EXPR”).

- (2) No change.

- (b) No change.

\* \* \* \* \*

### 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. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

On February 19, 2009, the Securities Exchange Commission approved Nasdaq's proposal to reduce the Order Exposure requirement set forth at Chapter VII, Section 12 of the NOM Rules from three seconds to one second.<sup>6</sup> Chapter VII, Section 12 prohibits Options Participants from executing as principal orders they

<sup>6</sup> See Exchange Act Release No. 59421 (Feb. 19, 2009) (accelerated approval of SR–Nasdaq–2009–005).

<sup>3</sup> 17 CFR 200.30–3(a)(12).

represent as agent unless (i) agency orders are first exposed on NOM for at least one (1) second or (ii) the Options Participant has been bidding or offering on NOM for at least one (1) second prior to receiving an agency order that is executable against such bid or offer. This rule ensures that Options Participant do not gain at the expense of customers by depriving them of the opportunity to interact with orders in the NOM System.

NOM Participants that enter agency orders into the NOM System have asked Nasdaq to develop an automated mechanism that permits them to enter orders into NOM as soon as the orders are received but that also prevents them from interacting with their own agency orders in violation of the order exposure requirement. Nasdaq believes this is an efficient use of resources because it will allow Nasdaq to program its NOM Systems once rather than have multiple Options Participant re-program their systems.

In order to accomplish that request, Nasdaq has developed the "WAIT" modifier which can be appended to an order prior to entry into NOM Systems. The WAIT modifier will instruct NOM Systems to wait precisely one second from the time of order entry before processing the order in accordance with the other instructions attached to that order. Upon expiration of the one-second WAIT period, the System will time stamp, route, display, or execute the order in accordance with the entering party's other order entry instructions. Thus, the WAIT modifier does not affect the existing display, routing, or execution priorities of the NOM Systems or any other obligations of NOM Participants as set forth in the NOM rules.

Orders designated with the WAIT modifier are independent of all other orders, including an agency order that is being exposed pursuant to Chapter VII, Section 12. WAIT orders are not associated or in any way linked to another order entered into the System, as is the case with certain facilitation orders at other options exchanges. The System will process the WAIT order even if a customer order entered into the System simultaneously with the WAIT order has been executed or cancelled during the WAIT second, unless the WAIT order itself is modified or cancelled pursuant to System rules. As a result, there is no guarantee that an order designated as WAIT will execute against another specific order. Use of the WAIT modifier is completely voluntary.

Nasdaq believes that the implementation of the aforementioned

rule change modifying Nasdaq order entry options will enhance compliance with NOM rules and also preserve order execution opportunities on NOM.

## 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 Section 6(b)(5) 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, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating 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 proposed rule change promotes these goals by enhancing market quality and protecting investors and market participants from executions that violate Chapter VII, Section 12 of NOM Rules.

### 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, as amended. To the contrary, Nasdaq fully expects that other options exchanges will copy this proposed rule change shortly after its implementation.

### 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(5) of Rule 19b-4 thereunder<sup>10</sup> as one that effects a change that: (A) Does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) does not have the effect of limiting the access to or availability of the system.

Specifically, the proposed rule change will benefit the protection of investors

and the public interest by enhancing market quality and protecting investors and market participants from execution that violate Chapter VII, Section 12 of NOM Rules. The proposed rule change does not place a burden on competition but rather enhances competition among the markets. The proposed rule change does not limit access to or availability of the system.

Nasdaq believes that this proposal with respect to the WAIT modifier is properly designated as a change to an existing order entry system because the proposal modifies the timing of processing but not the manner in which orders are displayed, prioritized, executed, routed or otherwise processed within the System. Nasdaq has designated similar proposals in this fashion in the past, including a proposal to delay the operation of the Opening Cross on NOM.<sup>11</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.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2009-017 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-NASDAQ-2009-017. 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

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

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

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

<sup>10</sup> 17 CFR 240.19b-4(f)(5).

<sup>11</sup> Exchange Act Release No. 57822 (May 15, 2008) (SR-NASDAQ-2008-045); 73 FR 29800 (May 22, 2008).

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 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-2009-017 and should be submitted on or before April 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-5722 Filed 3-16-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59559; File No. SR-NYSE-2009-03]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Adopt Listing Fees for Securities Listed Under Section 703.21 and 703.22 and Traded on NYSE Bonds

March 11, 2009.

#### I. Introduction

On January 9, 2009, the New York Stock Exchange LLC ("NYSE" or "Exchange") 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 listing fees for securities that are listed under the Exchange's Listed Company Manual ("Manual") Sections

703.21 and 703.22 and are traded on NYSE Bonds. The proposed rule change was published for comment in the **Federal Register** on February 4, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

Currently, securities listed on the NYSE pursuant to Sections 703.21 (Equity-Linked Debt Securities) and 703.22 of the Manual (Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities) and traded on NYSE Bonds are subject to the fees set forth in Section 902.09 of the Manual.<sup>4</sup> Section 902.09 establishes various levels of fees based on the number of shares outstanding, with a minimum initial listing fee of \$5,000 (for one million securities or fewer) and a maximum initial listing fee of \$45,000 (for over 15 million securities). The minimum annual listing fee under Section 902.09 is \$10,000 (for 6 million securities or fewer), and the maximum annual listing fee is \$55,000 (for more than 50 million securities).

The Exchange proposes to establish a new section, proposed Section 902.10, in the Manual establishing fees payable in connection with the listing of securities that are listed under Section 703.21 and Section 703.22 and are traded on NYSE Bonds.<sup>5</sup> Under proposed Section 902.10, the initial listing fee for securities listed under Sections 703.21 and 703.22 and traded on NYSE Bonds will be a flat fee of \$5,000 and the annual fee will be a flat fee of \$5,000, regardless of the number of securities outstanding.

The Exchange stated that it is adopting a low level of listing fees for these securities because it believes doing so will make an exchange listing attractive in connection with offerings where listing is not crucial to a successful marketing of the securities. The Exchange notes that, in order to be listed on NYSE Bonds, a security must have a \$1,000 denomination, and typically, index-linked securities and equity-linked securities with \$1,000 denominations are marketed to institutional investors rather than retail

investors. Because these purchasers are less concerned that securities they invest in should have an exchange listing, the Exchange notes that these securities are generally not listed on a national securities exchange. In addition, the Exchange notes that securities listed on NYSE Bonds do not have the benefit of a Designated Market Maker and, as such, the Exchange incurs lower regulatory and administrative costs in connection with such securities than would be the case with floor-traded securities. For the reasons noted above, the Exchange asserts that the proposed fees are set at a level that reflects the lower costs incurred by the Exchange in connection with the trading of securities on NYSE Bonds than on the equities trading floor, while remaining attractive to issuers for whom an exchange listing is not crucial.

#### III. Discussion

After careful review, 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 and, in particular, the requirements of Section 6(b) of the Act<sup>6</sup> and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4)<sup>7</sup> and 6(b)(5)<sup>8</sup> of the Act, which require that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities, and are designed, among other things, to promote just and equitable just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.<sup>9</sup>

The Commission believes that the new fees set forth for securities listed under Sections 703.21 and 703.22 of the Manual and traded on NYSE Bonds are consistent with the Act. The Commission notes that the adoption of new Section 902.10 will not result in any issuer paying higher initial listing fees, as the proposed flat initial listing fee of \$5,000 is the same as the current minimum charged under Section 902.09. Accordingly, most issuers will

<sup>3</sup> See Securities Exchange Act Release No. 59313 (January 28, 2009), 74 FR 6067.

<sup>4</sup> The Exchange recently added securities listed under Sections 703.21 and 703.22 and traded on NYSE Bonds to those securities subject to the fees set forth in Section 902.09. See Securities Exchange Act Release No. 58599 (September 19, 2008), 73 FR 55883 (September 26, 2008) (SR-NYSE-2008-56).

<sup>5</sup> The proposed rule change also amends Section 902.09 to remove references to the securities that will be subject to the fees under proposed Section 902.10.

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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

<sup>9</sup> 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).

<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.