

are reasonable and fair to all Contract owners. The Section 17 Applicants maintain that the terms of the proposed in-kind purchase transactions, including the consideration to be paid and received by each Fund, are reasonable, fair and do not involve overreaching on the part of any person principally because the transactions will conform with all but one of the conditions enumerated in Rule 17a-7. The proposed transactions will take place at relative net asset values as of the date of substitution in conformity with the requirements of Section 22(c) of the 1940 Act and Rule 22c-1 thereunder with no change in the amount of any Contract owner's Contract value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not suffer any adverse tax consequences as a result of the substitution. The fees and charges under the Contracts will not increase because of the substitution.

34. Even though the Section 17 Applicants may not rely on Rule 17a-7, the Section 17 Applicants believe that the Rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons. The board of the Replacement Fund has adopted procedures, as required by paragraph (e)(1) of Rule 17a-7, pursuant to which a series may purchase and sell securities to and from their affiliates. The Section 17 Applicants will carry out the proposed in-kind purchases in conformity with all of the conditions of Rule 17a-7 and the Replacement Fund's procedures adopted thereunder, except that the consideration paid for the securities being purchased or sold may not be entirely cash. The investment adviser for the Replacement Fund will examine any securities received from an in-kind redemption, and accept any securities that they would otherwise have purchased for cash for the Replacement Fund to hold. The circumstances surrounding the proposed substitution will be such as to offer the Replacement Fund the same degree of protection from overreaching that Rule 17a-7 provides the Replacement Fund generally in connection with the purchase and sale of securities under that Rule in the ordinary course of its business. In particular, the proposed transactions will not be effected at a price that is disadvantageous to the Replacement Fund.

35. Although the transactions may not be entirely for cash, each will be

effected based upon (1) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a-7, and (2) the net asset value per share of each Fund involved valued in accordance with the procedures disclosed in its registration statement and as required by Rule 22c-1 under the 1940 Act. Moreover, consistent with Rule 17a-7(d), no brokerage commissions, fees, or other costs or remuneration will be paid in connection with the proposed transactions, except for any brokerage commissions paid in connection with the liquidation of the securities that are not distributed as part of the in-kind redemption, which brokerage costs will be borne by the Company or its affiliates and not by Contract owners.

36. Consistent with Section 17(b) and Rule 17a-7(c), any in-kind redemptions and purchases for purposes of the proposed substitution will be transacted in a manner consistent with the investment objectives and policies of the Funds, as recited in their registration statements. Any in-kind redemption will be effected on a pro-rata basis, where the Replacement Fund will receive an approximate proportionate share of every security position in the Replaced Fund's portfolio in accordance with the Signature Letter, as supplemented by the SEC in subsequent no-action letters. CSAM, the adviser to the Replacement Fund, will examine the securities being transferred to the Replacement Fund to ensure they are consistent with the Replacement Fund's investment objective and policies and will retain only those securities that it would have acquired for the Replacement Fund in a cash transaction. In addition, the redeeming and purchasing values of such securities will be the same.

37. The Section 17 Applicants submit that the in-kind redemptions and purchases described above are consistent with the general purposes of the 1940 Act as stated in the Findings and Declaration of Policy in Section 1 of the 1940 Act and that the proposed transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent. The Commission has previously granted relief to others based on similar facts. The Section 17 Applicants represent that the proposed in-kind purchases meet all the requirements of Section 17(b) of the 1940 Act and request that the Commission issue an order pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) to the extent necessary to permit the Company, on behalf of the Accounts, to carry out in-kind the

proposed substitution by redeeming shares of the Replaced Fund in-kind and using securities distributed as redemption proceeds to purchase shares of the Replacement Fund.

### Conclusion

For the reasons and upon the facts set forth above and in the application, the Substitution Applicants and the Section 17 Applicants believe that the requested orders meet the standards set forth in Section 26(c) of the Act and Section 17(b) of the Act, respectively, and should therefore, be granted.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70245; File No. SR-NASDAQ-2013-110]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter VII, Section 6 of the Rules of the NASDAQ Options Market To Permit the Exchange To Establish Wider Bid/Ask Differentials for Certain Options With High Premiums or Other Special Characteristics

August 22, 2013.

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 19, 2013 The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 proposing to amend Chapter VII, Section 6 (Market Maker Quotations) of the rules of the NASDAQ Options Market ("NOM") to permit the Exchange to establish wider bid/ask differentials for certain options with

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

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

high premiums or other special characteristics.

## 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts 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 proposed rule change is to amend Chapter VII, Section 6 of the rules of NOM to permit the Exchange to establish wider bid/ask differentials for certain options with high premiums or other special characteristics.

Currently, the spread on options on equities and index options must not exceed \$5. For in-the-money series where the market for the underlying security is wider than \$5, the bid/ask differential may be as wide as the quotation for the underlying security on the primary market.<sup>3</sup>

In this filing, the Exchange seeks the capability to establish wider bid/ask differentials for options that have high premiums or other special characteristics. For high premium options, the current five dollar range can expose market makers to disproportionate risk in dealing with those issues thereby discouraging them from quoting in those instruments. As such, the Exchange proposes to be able to modify the bid/ask differential for one or more series or classes of options, as appropriate, in response to high differential prices, market conditions, or other special factors impacting a particular option, options series, or class of option.

The Exchange notes that this flexibility is already permitted by the rules of many other options exchanges.<sup>4</sup>

#### 2. Statutory Basis

The proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.<sup>5</sup> In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Here, the proposal will allow the Exchange to adjust price differentials in a manner that encourages quoting and trading activity.

The Exchange believes that the proposed rule change will enhance competition because the Exchange will be able adjust bid/ask differentials in a manner similar to Phlx, CBOE, ISE, and NYSE [sic].

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

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule proposed here is already in use by other options exchanges.

### 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

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, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>8</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-110 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-2013-110. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from

<sup>3</sup> See NOM Rule Chapter VII Section 6(d)(ii).

<sup>4</sup> See Phlx Rule 1014(c)(i)(A)(1)(a); CBOE Rule 44.4(e); ISE Rule 803(b)(4); NYSE MKT Rule 925NY(b)(4)(E).

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

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2013-110, and should be submitted on or before September 18, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70246; File No. SR-NYSE-2013-40]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending 303A.00 of the Exchange's Listed Company Manual To Provide a One-Year Transition Period To Comply With the Internal Audit Requirement of Section 303A.07(c) for Companies Listing in Connection With an Initial Public Offering, or by Means of a Carve-Out or Spin-Off Transaction

August 22, 2013.

#### I. Introduction

On June 18, 2013, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change to amend 303A.00 of the Exchange's Listed Company Manual (the "Manual") to provide a one-year transition period to comply with the internal audit function requirement of Section 303A.07(c) for companies listing in connection with an initial public offering (as new registrants under the Exchange Act ("IPO")),<sup>4</sup> or by means of

a carve-out or spin-off transaction. The proposed rule change was published for comment in the **Federal Register** on July 8, 2013.<sup>5</sup> The Commission received one comment letter on the proposal.<sup>6</sup> This order approves the proposed rule change.

#### II. Description of the Proposal

For companies listing on the Exchange in connection with an IPO,<sup>7</sup> or by means of a carve-out or spin-off transaction, Section 303A.07(c) of the Manual requires that those companies comply with the internal audit function requirement at the time of listing. Specifically, Section 303A.07(c) of the Manual requires that any listed company subject to Section 303A.07 must have an internal audit function to provide management and the audit committee with ongoing assessments of the listed company's risk management processes and system of internal control. A listed company may choose to outsource this function to a third party service provider other than its independent auditor.

According to the Exchange, consistent with the transition provisions of Section 303A.00 of the Manual, any company listing upon transfer from another national securities exchange that does not have an internal audit function requirement has one year from the date of listing to comply with the Exchange's internal audit function requirement in Section 303A.07(c) of the Manual.<sup>8</sup> Neither the Nasdaq Stock Market LLC ("Nasdaq") nor NYSE MKT LLC ("NYSE MKT") has an internal audit function requirement for companies listing on their exchange. Consequently, any company transferring its listing from Nasdaq or NYSE MKT to the NYSE has one year from the date of listing to

Exchange's proposed amendment would provide a one-year transition period for compliance with the internal audit function requirement to all companies currently eligible for the IPO transition periods in Section 303A.00.

<sup>5</sup> See Securities Exchange Act Release No. 69914 (July 2, 2013), 78 FR 40816.

<sup>6</sup> See Letter from Richard F. Chambers, President and Chief Executive Officer, The Institute of Internal Auditors to Elizabeth M. Murphy, Secretary, Commission, dated July 29, 2013.

<sup>7</sup> The Commission notes that companies listing on the Exchange must register under Section 12(b) of the Exchange Act.

<sup>8</sup> Section 303.00 of the Manual states, among other things, that a company previously registered pursuant to Section 12(b) of the Exchange Act must satisfy the requirements of Section 303A, which includes the internal audit function requirement of Section 303A.07(c), within one year of the listing to the extent that the national securities exchange on which it was listed did not have the same requirement, with the exception of Section 303A.06 including, if applicable, the independence requirements of Section 303A.02, which must be complied with at the time of listing.

comply with the requirement of Section 303A.07(c) of the Manual. By contrast, Section 303A.00 currently does not provide any transition period for compliance with the internal audit function requirement to a company which is listing in connection with: (i) Its IPO, or (ii) by means of a carve-out or spin-off transaction.<sup>9</sup> In its filing, the Exchange stated that it believes that the lack of a transition period in relation to the internal audit function requirement for these categories of newly-listed companies is anomalous in light of the treatment of companies transferring from other markets. Accordingly, the Exchange has proposed to amend Section 303A.00 to extend the application of the one-year transition period to comply with the internal audit function requirement to such categories of newly-listed companies. Further, the Exchange proposed to amend Section 303A.07 to include a sentence explicitly stating that, although Section 303A.00 permits certain categories of newly-listed companies to have a transition period, that all companies that are subject to Section 303A.07 would be required to have an internal audit function no later than one year after their listing date.

Several provisions in Section 303A.07 set forth duties of the audit committee with respect to the internal audit function requirement. In its filing, the Exchange has proposed to amend those provisions to clarify the duties of the audit committee with respect to the internal audit function during any transition period applicable to IPOs, transfers from another national securities exchange, carve-outs and spin-offs. The Exchange has proposed to amend the following sections of the Manual as described below:

- Section 303A.07(b)(i)(A) currently requires that the audit committee's charter must provide that the committee will assist board oversight of: (1) The integrity of the listed company's financial statements, (2) the listed company's compliance with legal and regulatory requirements, (3) the independent auditor's qualifications and independence, and (4) the

<sup>9</sup> Section 102.01B of the Manual defines a carve-out as the initial offering of an equity security to the public by a publicly traded company for an underlying interest in its existing business (which may be subsidiary, division, or business unit). For all practical purposes, a carve-out is the same as an IPO, as it involves the listing of a newly-public company in connection with the initial public offering of its common stock. A spin-off involves the distribution by a listed company of all of the outstanding common stock of a subsidiary to the listed company's shareholders and the listing of the new company, generally without any concurrent offering.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> For purposes of Section 303A other than Sections 303A.06 (which incorporates Exchange Act Rule 10A-3 by reference) and 303A.12(b), Section 303A.00 currently provides that a company is considered to be listing in conjunction with an IPO if, immediately prior to listing, it does not have a class of common stock registered under the Exchange Act. Consequently, a company whose common stock has not previously been registered under the Exchange Act is eligible to avail itself of the IPO transition periods in Section 303A.00 regardless of whether that company is conducting a public offering at the time of its initial listing. The