

June 12, 2009

Elizabeth Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N. E.  
Washington, DC 20549

Re: ***Comment Regarding the Options Penny Pilot Program  
Release No. 3459944 (SR-NYSEArca-2009-44);  
Release No. 34-60018 (SR-CBOE-2009-031); and  
SR-ISE-2009-032***

Dear Ms. Murphy:

The NASDAQ OMX Group, Inc. (“NASDAQ”), on behalf of NASDAQ OMX PHLX, Inc. (“PHLX”) and The NASDAQ Options Market LLC (“NOM”), appreciates the opportunity to comment on the above captioned proposals regarding the Pilot Program to quote and trade certain options in pennies (“Penny Pilot”). NASDAQ supports expanding the Penny Pilot, but considers it imperative that the Securities and Exchange Commission (“Commission”) does so in a manner that ensures a fair and orderly market for the trading of standardized options and that protects investors against confusion and regulatory arbitrage. Specifically, NASDAQ urges the Commission to approve a single proposal to serve as a model for the Penny Pilot rules of all exchanges, rather than approving multiple and contrasting proposals such as those currently under review.<sup>1</sup>

Permitting options markets to expand the Penny Pilot according to different rules is contrary to the core concept of the National Market System, and would create unnecessary technological difficulties for exchanges, firms, market data vendors, and investors. The Commission’s continuing focus on structural uniformity has been a linchpin of the National Market System and has helped to make U.S. markets the fairest, fastest, most transparent, and most liquid markets in the world. In fact, the Commission and the Division of Trading and Markets are close to ushering in the Options Order Protection and Locked-Crossed Markets Plan, a tremendous advance in structural uniformity in the National Market System for options. Permitting the adoption of different Penny Pilot rules would undermine not only the new plan, but also multiple listing, and other positive developments over the past decade.

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<sup>1</sup> ***NASDAQ intends to submit a proposal within one week to expand the Penny Pilot according to terms that differ from the proposals already on file.***

The Commission has already witnessed in equities trading the detrimental impact of permitting market participants to price securities in different quotation increments. The Commission noted the competitive “race to the bottom,” the regulatory arbitrage, and the investor confusion caused by non-uniform trading increments and it re-established order by adopting Rule 612 of Regulation NMS. These same concerns led to the initial adoption of the options Penny Pilot, and they should continue to guide us in expanding it.

The adoption of different Penny Pilot rules would also cause technological and implementation problems for all participants in the National Market System – investors, exchanges, firms, market data vendors, market makers, technology software and service providers, and others. For example, the adoption of different “breakpoints” would require participants to program their order entry, routing, quoting and compliance systems for each venue, and to integrate daily batch files from each exchange, and enable customers to interact properly with their systems. It is NASDAQ’s understanding, after consulting with members, that the adoption of different Penny Pilot rules would require a significant delay in the implementation of what would otherwise be a rapid expansion of a very successful program.

NASDAQ believes that consistency in the implementation of penny quoting and pricing has been an important factor in the success of the Penny Pilot. As a result, market participants have enjoyed substantial decreases in quoted spread widths and better executions for retail investors in many options within the Pilot. The Commission should continue to promote consistency in the Penny Pilot to preserve and extend these benefits.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas A. Wittman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Thomas Wittman  
Vice President