

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61573; File No. SR-NASDAQ-2010-022)

February 23, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ Stock Market, LLC. Inc. Relating to Amending NASDAQ Options Market (“NOM”) Chapter V, Section 6, Obvious Errors

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on February 18, 2010, 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 the NASDAQ. 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 proposes to amend NASDAQ Options Market (“NOM”) Rule Chapter V, Section 6, Obvious Errors, to adopt the ability to review transactions on NASDAQ's own motion.

The text of the proposed rule change is available on the Exchange’s Website at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, 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. The text of these statements may be examined at the

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

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

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 V, Section 6 pertaining to the nullification and adjustment of options transactions. Specifically, NASDAQ proposes to adopt a provision which provides that in the interest of maintaining a fair and orderly market and for the protection of investors, the Chief Regulatory Officer of NASDAQ or his/her designee who is an officer (collectively "NASDAQ officer"), may, on his or her own motion or upon request, determine to review any transaction occurring on NASDAQ that is believed to be erroneous.<sup>3</sup> A transaction reviewed pursuant to this provision may be nullified or adjusted only if it is determined by the NASDAQ officer that the transaction is an obvious error as provided in Chapter V, Section 6. A transaction would be adjusted or nullified in accordance with the provision under which it is deemed an erroneous transaction. The NASDAQ officer may be assisted by a designated employee in NASDAQ Regulation that is trained in the application of this rule for reviewing a transaction(s).

The NASDAQ officer shall act pursuant to this paragraph as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the rule provides that the NASDAQ officer shall act no later than 9:30 a.m. (ET) on the next trading day following the date of the

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<sup>3</sup> In the event a party to a transaction requests that NASDAQ review a transaction, the NASDAQ officer nonetheless would need to determine, on his or her own motion, whether to review the transaction.

transaction in question. A party affected by a determination to nullify or adjust a transaction pursuant to this provision may appeal such determination in accordance with Chapter V, Section 6; however, a determination by a NASDAQ officer not to review a transaction, or a determination not to nullify or adjust a transaction for which a review was requested or conducted, is not appealable. NASDAQ believes it is appropriate to limit review on appeal to only those situations in which a transaction is actually nullified or adjusted.

This provision is not intended to replace a party's obligation to request a review, within the required time periods under Chapter V, Section 6, of any transaction that it believes meets the criteria for an obvious error. And, if a transaction is reviewed and a determination has been rendered pursuant to Chapter V, Section 6, no additional relief may be granted under this new provision. Moreover, NASDAQ does not anticipate exercising this new authority in every situation in which a party fails to make a timely request for review of this transaction pursuant to Chapter V, Section 6. NASDAQ believes this provision should help to protect the integrity of its marketplace by vesting a NASDAQ officer with the authority to review a transaction that may be erroneous, in those situations where a party failed to make a timely request for a review.

NASDAQ believes that the provision would also be useful in situations where some parties, but not all, to trades around the same time have requested a review. Under the rule, reviews are currently request-based. Under the proposal, in this situation, NASDAQ would be able to invoke this provision to review a series of trades, whether or not all parties requested it.

## 2. Statutory Basis

NASDAQ believes that its proposal is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>5</sup> in particular, in that it is designed to

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

promote 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, and, in general to protect investors and the public interest. NASDAQ notes that a NASDAQ officer can adjust or nullify a transaction under the authority granted by this provision only if the transaction meets the objective criteria for an obvious error under NASDAQ rules.

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 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

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; or (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give 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. The Exchange has satisfied this requirement.

The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange may promptly implement the proposed rule change. The Exchange believes that a recent trading situation that resulted in divergent outcomes on some other options markets could have been handled in a more clear and orderly way if the new provision had been in place. The Commission notes that the proposed rule change is substantively identical to a previously approved proposal from CBOE<sup>8</sup> and thus presents no new regulatory issues. The Commission believes that, under the circumstances, it is appropriate and consistent with the protection of investors and the public interest to waive the 30-day operative delay. Therefore, the Commission hereby designates the proposed rule change operative upon filing.<sup>9</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 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

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<sup>8</sup> See Exchange Act Release No. 60978 (November 10, 2009), 74 FR 59296 (November 17, 2009) (approving SR-CBOE-2009-68).

<sup>9</sup> For 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).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-NASDAQ-2010-022 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 No. SR-NASDAQ-2010-022. 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,<sup>10</sup> 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, 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

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<sup>10</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

that you wish to make available publicly. All submissions should refer to File No. SR-NASDAQ-2010-022 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).