

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59948; File No. SR-NASDAQ-2009-047)

May 20, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Order Routing

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 15, 2009, The NASDAQ Stock Market LLC (the “NASDAQ Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the NASDAQ Exchange. The NASDAQ Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. 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

The NASDAQ Exchange is proposing to modify the terms and conditions under which it is affiliated with NASDAQ Options Services, LLC (“NOS”). The NASDAQ Exchange proposes to implement the proposed rule change when NASDAQ OMX PHLX, Inc. (“PHLX”) implements its XL II trading system.⁴ There is no proposed rule language.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ Securities Exchange Act Release No. 59721 (April 7, 2009), 74 FR 17245 (April 14, 2009) (SR-Phlx-2009-32); Securities Exchange Act Release No. 59779 (April 16, 2009), 74 FR 18600 (April 23, 2009) (SR-Phlx-2009-32, Amendment No. 1).

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

In its filing with the Commission, the NASDAQ Exchange 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. The NASDAQ Exchange 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

Nasdaq Options Services, LLC ("NOS"), which is a subsidiary of the NASDAQ Exchange, is a registered broker-dealer and a member of the NASDAQ Exchange and PHLX. In SR-NASDAQ-2006-006,⁵ the Commission approved the adoption of NASDAQ Exchange Rule 2140, which provides that, subject to certain exceptions, the NASDAQ Exchange may not become an affiliate of one of its members unless the terms and conditions of such affiliation are the subject of an effective filing with the Commission. Previously, the Commission had approved the acquisition of the entity that is now NOS by The Nasdaq Stock Market, Inc., which is now The NASDAQ OMX Group, Inc. ("NASDAQ OMX"), the holding company parent corporation of the NASDAQ Exchange and PHLX.⁶ Moreover, in SR-NASDAQ-2007-004 and -080,⁷ the Commission approved rules to govern the operation of The NASDAQ Options Market

⁵ Securities Exchange Act Release No. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006).

⁶ Securities Exchange Act Release No. 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (SR-NASD-2005-128).

⁷ Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004, -080).

(“NOM”) as an options market of the NASDAQ Exchange, including rules establishing NOS as the approved outbound routing facility of the NASDAQ Exchange for NOM. The rules governing NOS’s routing of orders for NOM stipulate, among other things, that: (i) NOS is a facility of the NASDAQ Exchange; (ii) use of NOS’s routing function by NASDAQ Exchange members is optional; (iii) NOS does not provide routing of orders in options from NOM to an exchange that is an affiliate of NASDAQ unless such orders first attempt to access any liquidity on the NOM book;⁸ and (iv) NOS is a member of a self-regulatory organization that is unaffiliated with the NASDAQ Exchange and that serves as NOS’s designated examining authority.

In SR-PHLX-2009-32,⁹ PHLX, another exchange subsidiary of NASDAQ OMX, has proposed establishing NOS as PHLX’s routing facility (the “Routing Facility”). The sole use of the Routing Facility by the PHLX’s new proposed Phlx XL II system will be to route orders in options listed and open for trading on the Phlx XL II system to away markets pursuant to PHLX rules on behalf of PHLX. Proposed PHLX Rule 1080(m)(iii)(B) would provide that the use of NOS to route orders to other market centers is optional. Parties that do not desire to use NOS must designate orders as not available for routing (i.e., a Do Not Route Order, as described in proposed PHLX Rule 1080(m)(iv)(A)).

Proposed PHLX Rule 1080(m)(iii)(C) would provide that PHLX will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between PHLX and the Routing Facility, and any other

⁸ Securities Exchange Act Release No. 59420 (February 19, 2009), 74 FR 8597 (February 25, 2009) (SR-NASDAQ-2009-011).

⁹ Securities Exchange Act Release No. 59721 (April 7, 2009), 74 FR 17245 (April 14, 2009) (SR-Phlx-2009-32); Securities Exchange Act Release No. 59779 (April 16, 2009), 74 FR 18600 (April 23, 2009) (SR-Phlx-2009-32, Amendment No. 1).

entity, including any affiliate of the Routing Facility, and, if the Routing Facility or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the Routing Facility or affiliate that provides the other business activities and the routing services. In SR-PHLX-2009-32, PHLX further noted that NOS is a member of a self-regulatory organization that is unaffiliated with PHLX and that serves as NOS's designated examining authority.¹⁰

Finally, proposed PHLX Rule 1080(m)(iii)(D) would state that the books, records, premises, officers, directors, agents, and employees of the Routing Facility, as a facility of PHLX, will be deemed to be the books, records, premises, officers, directors, agents, and employees of PHLX for purposes of and subject to oversight pursuant to the Act. The books and records of the Routing Facility, as a facility of PHLX, will be subject at all times to inspection and copying by PHLX and the Commission.

PHLX has also adopted a rule restricting affiliation between PHLX and its members, comparable to the NASDAQ Exchange's Rule 2140. See PHLX Rule 985(b). In SR-PHLX-2009-32, PHLX has requested that the Commission allow PHLX to use NOS to provide routing services for orders routed to all destinations, provided they first attempt to access liquidity on PHLX's systems before routing to other exchanges. Thus, the terms and conditions of PHLX's order routing would be substantially similar to those already approved with respect to routing by NOM through NOS.

Because orders from PHLX may be routed to NOM through NOS, it is necessary for the NASDAQ Exchange to submit this filing to establish that NOM may receive such routed orders.

¹⁰ The Financial Industry Regulatory Authority ("FINRA") serves as NOS's designated examining authority. FINRA is unaffiliated with both PHLX and the NASDAQ Exchange.

Accordingly, the NASDAQ Exchange proposes that NOS be permitted to route orders from PHLX to NOM subject to the following: (i) NOS is approved as and remains a facility of PHLX; (ii) use of NOS's Routing Facility function by PHLX members continues to be optional; (iii) NOS does not provide routing of orders in options from PHLX to the NASDAQ Exchange or any trading facilities thereof, unless such orders first attempt to access any liquidity on the PHLX book, and (iv) NOS is a member of a self-regulatory organization that is unaffiliated with PHLX and the NASDAQ Exchange and that serves as NOS's designated examining authority. The terms and conditions under which NOM would receive orders from PHLX through NOS are the same as the terms and conditions under which PHLX has been approved to receive orders from NOM through NOS.

2. Statutory Basis

The NASDAQ Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹¹ in general, and with Section 6(b)(5) of the Act,¹² 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 would permit inbound routing of orders from PHLX to NOM through NOS in accordance with the terms and conditions governing

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

order routing that have been approved by the Commission with respect to receipt of orders by PHLX from NOM through NOS.

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

The NASDAQ Exchange 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

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

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹⁵ However, Rule 19b-4(f)(6)(iii)¹⁶ permits the Commission to

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to 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 NASDAQ Exchange has satisfied this requirement.

¹⁶ Id.

designate a shorter time if such action is consistent with the protection of investors and the public interest. The NASDAQ Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that the NASDAQ Exchange's proposal is substantially similar to the proposal of another national securities exchange previously approved by the Commission and does not raise any new substantive issues.¹⁷ The NASDAQ Exchange proposes to implement the proposed rule change when PHLX implements its XLII trading system, and states that waiving the operative delay will ensure that the NASDAQ Exchange is able to implement the proposed rule change at such time.¹⁸ For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.¹⁹

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:

¹⁷ See Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR-Phlx-2008-31).

¹⁸ See SR-NASDAQ-2009-047, Items 2 and 7.

¹⁹ For the 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).

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. Please include File Number SR-NASDAQ-2009-047 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-2009-047. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the NASDAQ 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-NASDAQ-2009-047 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.²⁰

Florence E. Harmon
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).