SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60905; File No. SR-NASDAQ-2009-093)

October 30, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Opening of Trading on the NASDAQ Options Market

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 October 26, 2009, 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, II, and III, below, which Items have been prepared by 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 is filing a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to modify Chapter VI, Section 8 of the Exchange's rules, dealing with the Nasdaq Opening Cross. The Exchange proposes to implement this change on or about November 23, 2009.

The text of the proposed rule change is available from Nasdaq's website at http://nasdaq.cchwallstreet.com, at Nasdaq's principal office, 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, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

---

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

proposed rule change. The text of these 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 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 proposes to modify Chapter VI, Section 8 of the rules governing NOM, and in particular governing the opening of trading in that market. Since NOM was launched on March 31, 2008, Nasdaq has monitored the operation of the market to identify instances where market efficiency can be enhanced.[3] Nasdaq believes that the opening of the market, while currently quite effective, can be further enhanced.

Currently, pursuant to Chapter VI, Section 8(b) of NOM's rules, the Nasdaq Opening Cross occurs at 9:30 a.m., unless the Opening Cross is delayed pursuant to Section 8(b)(5) of Chapter VI in order to avoid opening at a price that is away from the prevailing market. Pursuant to that provision, the opening is delayed if the Nasdaq BBO after execution of the opening print would be wider than pre-determined authorized trading thresholds. In the event that no Opening Cross occurs due to insufficient interest, Nasdaq systematically delays the

[3] For instance, in May 2008 Nasdaq filed a proposed rule change to enhance its opening process by 1) delaying the Opening Cross in the event that after the execution of the Opening Cross the NOM best bid and offer would be outside certain pre-determined threshold amounts, and 2) delaying the opening of trading if after the opening print the NOM best bid and offer would be outside the same pre-determined threshold amounts in instances where there is insufficient interest available to initiate the Opening Cross. See Securities Exchange Act Release No. 57822 (May 15, 2008), 73 FR 29800 (May 22, 2008) (SR-NASDAQ-2008-045). In June 2008 Nasdaq filed a proposed rule change to allow the opening of trading in those instances where trading interest at the National Best Bid and Offer ("NBBO"), which includes the non-firm Nasdaq Best Bid and Offer (Nasdaq BBO), is within the currently authorized trading thresholds. See Securities Exchange Act Release No. 57977 (June 17, 2008), 73 FR 35429 (June 23, 2008) (SR-NASDAQ-2008-052).

opening of trading if the NBBO (which includes the non-firm Nasdaq BBO) is wider than certain spread requirements set from time to time by Nasdaq management. Thus, both the NBBO and the Nasdaq BBO are currently analyzed by NOM when determining to open trading, in order to ensure opening the market in an orderly fashion. If a delay occurs pursuant to Section 8(b)(5) of Chapter VI, the Opening Cross (and thus regular market trading) does not commence until such time as it is determined that the width requirements can be met.[4]

The Exchange is proposing to alter its methodology for opening trading by deleting the delay provisions of Section 8(b)(5) of Chapter VI, and instead requiring certain other preconditions to be met. Additionally, Section 8(b)(2)(A) of Chapter VI would be amended to require the Nasdaq Opening Cross to occur at the price that maximizes the number of contracts of Eligible Interest[5] in NOM to be executed at or within the NBBO.

In order to improve the opening process on NOM by streamlining the opening timeline and providing further price protection to orders received prior to market open, Nasdaq is proposing to revise Section 8(b) of Chapter VI to permit the Opening Cross to occur at or after 9:30 if there is no Imbalance,[6] if the dissemination of a quote or trade by the Market for the Underlying Security[7] has occurred (or, in the case of index options, the Exchange has received

---

4 Except for executions arising from the Opening Cross, executions are only permitted if they will not result in a trade-through violation of the NBBO as described in Chapter VI, Sec. 7(b)(3)(C) of the NOM rules.

5 "Eligible Interest" is defined in Section 8(a)(1) [sic] of Chapter VI as any quotation or any order that may be entered into the system and designated with a time-in-force of IOC, DAY, GTC, or EXPR.

6 "Imbalance" is defined in Section 8(a)(1) of Chapter VI as the number of contracts of Eligible Interest that may not be matched with other order contracts at a particular price at any given time.

7 New Section 8(a)(5) of Chapter VI would define "Market for the Underlying Security" as meaning either the primary listing market, the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar

the opening price of the underlying index) and if a certain number (as the Exchange may determine from time to time) of other options exchanges have disseminated a firm quote on the Options Price Reporting Authority ("OPRA"). If all the conditions specified in Section 8(b) of Chapter VI have been met except that there is an Imbalance, Section 8(b)(5) would require one additional Order Imbalance Indicator message to be disseminated, after which the Opening Cross would occur, executing the maximum number of contracts. Any remaining Imbalance that is not executable in the Opening Cross would be canceled.

By amending the NOM rules as explained above, Nasdaq accomplishes two main objectives. First, relying on a quote or trade of the underlying asset upon which a particular option is based aligns the NOM rules with accepted practices on various other options exchanges.[8] Second, waiting for the dissemination of firm quotes from other options exchanges allows NOM to build an NBBO upon which it can bound the Opening Cross. This adds an additional layer of protection to customers entering orders into the market and assists in creating an orderly opening to trading.[9]

Proposed Section 8(c) of Chapter VI governs situations in which the requisite number of firm quotes have not been disseminated for an option by other options exchanges. No Opening Cross will occur if firm quotes are not disseminated for an option by the predetermined number of options exchanges by a specific time during the day that the Exchange determines. In that

---

months), or the first market to open the underlying security, as determined by the Exchange on an issue-by-issue basis and announced to the membership on the Exchange's web site.

8 See, e.g., Section (j) of NASDAQ OMX PHLX Rule 1017, Openings in Options, and Chicago Board Options Exchange Chapter VI, Rule 6.2B, Hybrid Opening System ("HOSS"), Section (b).

9 NASDAQ OMX PHLX has a similar process in which it considers the NBBO before executing. See NASDAQ PHLX Rule 1017(l)(ii)(C).

case, provided dissemination of a quote or trade by the Market for the Underlying Security has occurred (or, in the case of index options, the Exchange has received the opening price of the underlying index), the option will open for trading. However, if there is interest in the Opening Cross, the option will not open for trading in that option until the orders that would be executed in the Opening Cross are resolved through the cancellation or modification of the orders by the entering party or parties.

In connection with the Opening Cross, pursuant to Section 8(b)(1) of Chapter VI Nasdaq disseminates an Order Imbalance Indicator beginning at 9:25 a.m. The Order Imbalance Indicator for the Opening Cross includes, among other information, a Current Reference Price, which generally is the single price at which the maximum number of contracts of Eligible Interest can be paired. Section 8(a)(2)(A)(i) of Chapter VI is proposed to be amended so that the definition of "Current Reference Price" is limited to the single price at which the maximum number of contracts of Eligible Interest can be paired <u>at or within the NBBO</u>. The Exchange believes that limiting the opening execution price to be at or within the NBBO will provide customers with prices that are more aligned with prices available across the national option exchange system. If there is more than one such price, Sections 8(a)(2)(A)(ii) – (iv) provide certain "tie-breaker" rules to determine the Current Reference Price. The "tie-breaker" rule of Section 8(a)(2)(A)(iv) is proposed to be amended such that the Current Reference Price provided for in that rule would be the price that is closest to the midpoint of the NBBO (as opposed to the current rule which would result in the price that is closest to the midpoint price of the interest available in NOM the time of the Opening Cross).

Finally, references to the "Nasdaq Opening/Halt Cross" are being replaced in Chapter VI, Section 8 with references to the "Nasdaq Opening Cross". This housekeeping change is necessary to reflect that following a trading halt, trading resumes as specified in Chapter V, Section 4 (Resumption of Trading After a Halt) rather than as specified in Chapter VI, Section 8.[10]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, in that it is designed to 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 believes that the proposal is consistent with this standard because the proposed rule change is designed to improve execution quality at the critical opening of the market. By waiting for the Market for the Underlying Security to be open, liquidity providers on the Exchange will have better information on which to base their quotes and will thus provide better markets for investor orders. Additionally, the Exchange believes that limiting the opening execution price to be at or within the NBBO will provide customers with prices that are better aligned with the national option exchange system.

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

The Exchange 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.

---

10 When Nasdaq first proposed its options trading rules, it planned to resume trading by operating a "Halt Cross," which it originally described in Chapter VI, Section 8. Nasdaq later amended the proposed rules to remove the Halt Cross and to make clear that trading after a halt would "resume" rather than "open." See Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (approval order regarding NOM Rules including Chapters III and XIV).

11 15 U.S.C. 78f(b).

12 15 U.S.C. 78f(b)(5).

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

The Exchange believes that the foregoing proposed rule change effects a change in an existing order-entry or trading system pursuant to Section 19(b)(3)(A)[13] of the Act, and Rule 19b-4(f)(5)[14] thereunder, which renders the proposal effective upon filing with the Commission. The Exchange believes that the proposed rule change effects a change in an existing order-entry or trading system that does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and 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 are away from the prevailing market. 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. To the contrary, Nasdaq believes that the proposed rule change will prompt additional market participants to utilize the system at the opening of trading. NOM's participants will not need to make systems changes relating to the changes proposed by NOM in this proposed rule change.

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

13 15 U.S.C.78s(b)(3)(A).

14 17 CFR 240.19b-4(f)(5).

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2009-093 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-2009-093. 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, N.E., 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 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-2009-093 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.[15]

Florence E. Harmon
Deputy Secretary

[15] 17 CFR 200.30-3(a)(12).