

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61991; File No. SR-NASDAQ-2010-050)

April 27, 2010

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

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 April 15, 2010, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the 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 filing a proposal for the NASDAQ Options Market (“NOM” or “Exchange”) to to [sic] modify Chapter VI, Section 8 of the Exchange’s rules, dealing with the Nasdaq Opening Cross.

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, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

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

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

proposed rule change. The text of these statements may be examined at the 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

Nasdaq proposes to modify Chapter VI, Section 8 of the rules governing NOM, and in particular governing the opening of trading in that market. Currently, pursuant to Chapter VI, Section 8(b) of NOM's rules, the Nasdaq Opening Cross occurs once certain preconditions are met. Section 8(b) of Chapter VI permits the Opening Cross to occur at or after 9:30 if there is no Imbalance<sup>3</sup>, if the dissemination of a quote or trade by the Market for the Underlying Security<sup>4</sup> has occurred (or, in the case of index options, the Exchange has received 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").<sup>5</sup>

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<sup>3</sup> "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.

<sup>4</sup> Section 8(a)(5) of Chapter VI defines "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 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.

<sup>5</sup> 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) requires one additional Order Imbalance Indicator message to be disseminated, after which the Opening Cross occurs, executing the maximum number of contracts. Any remaining Imbalance that is not executable in the Opening Cross is canceled.

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 until such time during the day that the Exchange determines. In that 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.<sup>6</sup>

The Exchange is proposing to amend both Section 8(b) and 8(c) of Chapter VI to clarify in each case that the dissemination of a quote or trade by the Market for the Underlying Security must occur during regular trading hours in order for the NOM opening cross to occur in that option. These amendments would establish clearly that this precondition for opening trading in an option on NOM would not be met if, for example, the Market for the Underlying Security were to both open and then halt trading prior to regular trading hours which currently begin at 9:30 a.m.

The Exchange is also proposing to amend Section 8(c)(2) of Chapter VI to clarify that if opening quotes or orders lock or cross each other such that an Opening Cross can be initiated, the Exchange may open for trading in that option even if the orders that would be executed in the Opening Cross are not cancelled or modified so that they no longer lock or cross each other, if and when the number of options exchanges required under the introductory language of Section 8(b) of Chapter VI for the opening of trading of System securities have disseminated a firm

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<sup>6</sup> 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.

quote on OPRA. This amendment will not make a change in the operation of the trading system, but will merely clarify the intended NOM opening process.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> 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 clarify its rules for the benefit of all market participants.

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.

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 may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup>

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</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 at least five business days prior to the date of filing of the proposed rule change,

thereunder 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 after the date of the filing, or such shorter time as the Commission may designate.

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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2010-050 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-2010-050. 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

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or such shorter time as designated by the Commission. Nasdaq has satisfied this requirement.

comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,<sup>11</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, 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-2010-050 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>12</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/rules/sro.shtml>.

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