

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62297; File No. SR-NASDAQ-2010-073)

June 15, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by The NASDAQ Stock Market LLC to Establish a Short Term Option Program

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 June 14, 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 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 with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal for the NASDAQ Options Market (“NOM” or “Exchange”) to amend Chapter IV, Section 6 (Series of Options Contracts Open for Trading) and Chapter XIV, Section 11 (Terms of Index Options Contracts) in order to list option series that expire one week after being opened for trading; to add the definition of Short Term Option Series to Chapter I, Section 1 (Definitions) and Chapter XIV, Section 2 (Definitions); and to make non-substantive changes to the language of Chapter IV, Section 6, Chapter I, Section 1, and Chapter XIV, Section 2.

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

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

The text of the proposed rule change is available from NASDAQ's website at <http://nasdaq.cchwallstreet.com/Filings/>, at NASDAQ's principal office, on the Commission's Web site at [www.sec.gov](http://www.sec.gov), 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 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

The purpose of this proposal is to amend Chapter IV, Section 6 and Chapter XIV, Section 11 to establish a short term option program on the Exchange ("STO Program" or "Short Term Option Program") by proposing to add new Chapter IV, Section 6, Supplementary Material .07 to Section 6 and Chapter XIV, Section 11(h) in order to list option series that expire one week after being opened for trading ("Short Term Option Series" or "STO"). The Exchange also proposes to add the definition of Short Term Option Series to Chapter I, Section 1 and Chapter XIV, Section 2;<sup>3</sup> and to make non-substantive changes to conform the language of Chapter IV, Section 6, Chapter I, Section 1, and Chapter XIV, Section 2 and delete unnecessary language.

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<sup>3</sup> Short Term Option Series is defined as: a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Thursday or Friday that is a business day and that expires on the Friday of the next business week. If a Thursday or Friday is not a business day, the series may be opened

The Commission approved the Short Term Option Program on a pilot basis in 2005 and approved permanent establishment of the Short Term Option Program in 2009 on behalf of Chicago Board Options Exchange (“CBOE”) in its Rules 5.5 and 24.9.<sup>4</sup> Thereafter, CBOE amended Rules 5.5 and 24.9 to permit opening Short Term Option Series not just on Friday but also on Thursday.<sup>5</sup> The Exchange’s proposal is based directly on the short term option program (Weeklys Program) in CBOE Rules 5.5 and 24.9.

Specifically, the Exchange proposes to establish a Short Term Option Program for non-index options (e.g., equity options and ETF options) in new Chapter IV, Section 6, Supplementary Material .07 to Section 6; and for index options in new Chapter XIV, Section 11(h). The Short Term Option Program allows the Exchange to list and trade Short Term Option Series. Thus, after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day (“Short Term Option Opening Date”) series of options on that class that expire on the Friday of the following business week that is a business day (“Short Term Option Expiration Date”). If

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(or shall expire) on the first business day immediately prior to that Thursday or Friday, respectively. Proposed Chapter I, Section 1(a)(58) and Chapter XIV, Section 2(n).

<sup>4</sup> CBOE refers to its short term option program as the “Weeklys Program.” See Securities Exchange Act Release Nos. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (SR-CBOE-2004-63) (approval order establishing Weeklys Pilot Program) and 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR-CBOE-2009-018) (approval order permanently establishing Weeklys Program).

Other options exchanges have also established short term option series pilots (but have not made them permanent). See Securities Exchange Act Release Nos. 52012 (July 12, 2005), 70 FR 41246 (July 18, 2005) (SR-ISE-2005-17) (approval order establishing short term option series pilot); 52013 (July 12, 2005), 70 FR 41471 (July 19, 2005) (SR-PCX-2005-32) (approval order establishing short term option series pilot); 52014 (July 12, 2005), 70 FR 41244 (July 18, 2005) (SR-AMEX-2005-035) (approval order establishing short term option series pilot).

<sup>5</sup> See Securities Exchange Act Release No. 62170 (May 25, 2010), 75 FR 30889 (June 2, 2010) (SR-CBOE-2010-048) (notice of filing and immediate effectiveness allowing opening Short Term Option Series on any Thursday or Friday).

the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on the Friday of the following business week, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday.<sup>6</sup>

Under the STO Program, the Exchange may select up to five approved option classes on which Short Term Option Series could be opened. The Exchange also may list Short Term Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules.<sup>7</sup>

For each class selected for the STO Program, the Exchange may open up to twenty Short Term Option Series for each expiration date in that class, with approximately the same number of strike prices above and below the value of the underlying security or calculated index value at about the time that the Short Term Option Series is opened. The interval between strike prices on Short Term Option Series shall be the same as the strike prices for series in that same option class that expire in accordance with the normal monthly expiration cycle.<sup>8</sup> Any strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current value of the underlying index.<sup>9</sup>

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<sup>6</sup> See proposed Chapter IV, Section 6, Supplementary Material .07 to Section 6 and Chapter XIV, Section 11(h).

<sup>7</sup> See proposed Chapter IV, Section 6, Supplementary Material .07(a) to Section 6 and Chapter XIV, Section 11(h)(l)(i).

<sup>8</sup> See proposed Chapter IV, Section 6, Supplementary Material .07(e) to Section 6 and Chapter XIV, Section 11(h)(l)(v).

<sup>9</sup> See proposed Chapter IV, Section 6, Supplementary Material .07(c) to Section 6 and Chapter XIV, Section 11(h)(l)(iii).

If the Exchange opens less than twenty Short Term Option Series for a given expiration date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the current value of the underlying security or index moves substantially from the previously listed exercise prices. The total number of series for a given expiration date, however, will not exceed twenty series. Any additional strike prices listed by the Exchange shall be within 30% above or below the current price of the underlying security. The Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision. Moreover, the opening of the new Short Term Option Series shall not affect the series of options of the same class previously opened.<sup>10</sup>

The Short Term Option Program provides that no Short Term Option Series may expire in the same week in which monthly option series on the same class expire or, in the case of Quarterly Options Series, on an expiration that coincides with an expiration of Quarterly Options Series on the same class.<sup>11</sup>

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (“OPRA”) have the

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<sup>10</sup> See proposed Chapter IV, Section 6, Supplementary Material .07(d) to Section 6 and Chapter XIV, Section 11(h)(1)(iv).

<sup>11</sup> See proposed Chapter IV, Section 6, Supplementary Material .07(b) to Section 6 and Chapter XIV, Section 11(h)(1)(ii) Moreover, the Exchange expects that Short Term Option Series will settle (e.g., in terms of A.M. or P.M.) in the same manner as do the monthly expiration series in the same option class.

necessary systems capacity to handle the potential additional traffic associated with the listing and trading of options pursuant to the Short Term Option Program.

Finally, the Exchange is proposing to make non-substantive changes to conform the language of Chapter I, Section 1, Chapter IV, Section 6 and Chapter XIV, Section 2, and to delete unnecessary language. Thus, the Exchange proposes to delete unnecessary language regarding expiration in Chapter IV, Section 6(g) because expiration is discussed in newly-added STO Program rule language, and conforms the noted NOM rule language with CBOE Rules 5.5 and 24.9. The Exchange proposes to add a definition of Quarterly Options Series (“QOS”) to Chapter I, Section 1 and Chapter XIV, Section 2. The definition was inadvertently left out when QOS listing standards were added for NOM,<sup>12</sup> and the addition conforms the noted NOM rule language to Phlx Rules 1000 and 1000A as well as the rules of CBOE.

The Exchange believes that the Short Term Option Program will provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie options contracts. The Exchange also believes that providing the flexibility to list all Short Term Option series (equity and index) on any Thursday or Friday will help implement the program more effectively and avoid investor confusion.

The Commission has requested, and the Exchange has agreed for the purposes of this filing, to submit one report to the Commission providing an analysis of the Exchange’s Short Term Option Program (the “Report”). The Report will cover the period from the date of effectiveness of the STO Program through the first quarter of 2011, and will describe the

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<sup>12</sup> See Securities Exchange Act Release No. 58209 (July 22, 2008), 73 FR 43966 (July 29, 2008) (SR-NASDAQ-2008-064) (notice of filing and immediate effectiveness establishing quarterly option series program as pilot).

experience of the Exchange with the STO Program in respect of the options classes included by the Exchange in such program.<sup>13</sup> The Report will be submitted by May 1, 2011, under separate cover and will seek confidential treatment under the Freedom of Information Act.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>15</sup> in particular, in that it 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by establishing a Short Term Option Program that will provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie option contracts.

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

The 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.

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<sup>13</sup> The Report would include the following: (1) data and written analysis on the open interest and trading volume in the classes for which Short Term Option Series were opened; (2) an assessment of the appropriateness of the option classes selected for the STO Program; (3) an assessment of the impact of the STO Program on the capacity of the Exchange, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the STO Program and how the Exchange addressed such problems; (5) any complaints that the Exchange received during the operation of the STO Program and how the Exchange addressed them; and (6) any additional information that would assist in assessing the operation of the STO Program.

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

The Exchange has requested that the Commission waive the 30-day operative delay to permit the Exchange to compete with other exchanges whose rules permit the listing of similar short term options series.<sup>18</sup> The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to a rule of another exchange that has been approved by the Commission.<sup>19</sup> Therefore, the Commission designates the proposal operative upon filing.<sup>20</sup>

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A). 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 Commission is waiving the five-day pre-filing requirement in this case.

<sup>17</sup> 17 C.F.R. 240.19b-4(f)(6).

<sup>18</sup> See supra notes 4-5 and accompanying text.

<sup>19</sup> See Securities Exchange Act Release No. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR-CBOE-2009-018).

<sup>20</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).

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-2010-073 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-2010-073. 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 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 10:00 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-2010-073 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>21</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).