

thus providing investors additional opportunities to hedge their positions.

#### *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*

The Exchange has neither solicited nor received comments on the proposed rule change.

### **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; and (iii) 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>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>9</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>10</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay. The Commission notes that this proposed rule change is substantially identical to a proposed rule change that was approved by the Commission after an opportunity for public comment,<sup>11</sup> and does not raise any new substantive issues. The Exchange requests the waiver of the 30-day operative delay so that the proposed rule change may become effective and

operative immediately and allow BOX to remain competitive with other exchanges. For these reasons, the Commission believes that waiving the 30-day operative delay<sup>12</sup> is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

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-BX-2009-011 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-BX-2009-011. 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 a.m. and 3 p.m. Copies of such 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 publicly available. All submissions should refer to File Number SR-BX-2009-011 and should be submitted on or before March 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-3978 Filed 2-24-09; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59420; File No. SR-NASDAQ-2009-011]

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Exchange Direct Order for the NASDAQ Options Market**

February 19, 2009.

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 February 17, 2009, The NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. Nasdaq has filed this proposal pursuant to Exchange Act Rule 19b-4(f)(6)<sup>3</sup> and has provided the Commission with the notice required by Rule 19b-4(f)(6)(iii).<sup>4</sup> 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 establish a new order type for the NASDAQ Options

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</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, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> *Id.*

<sup>11</sup> The Exchange's proposed rule change is substantially identical to a proposed rule change by the Chicago Board Options Exchange ("CBOE") recently approved by the Commission. See Securities Exchange Act Release No. 59336 (February 2, 2009), 74 FR 6332 (February 6, 2009) (SR-CBOE-2008-127).

<sup>12</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).

Market (“NOM”) that will allow users to direct orders to be delivered by the system to another exchange without first checking the NOM book.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.<sup>5</sup>

## Options Rules

### Chapter VI Trading System

\* \* \* \* \*

#### Sec. 1 Definitions

(a)–(d) No change.

(e) The term “Order Type” shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)–(6) No change.

(7) “Exchange Direct Orders” are orders that are directed to an exchange other than NOM as directed by the entering party without checking the NOM book. If unexecuted, the order (or unexecuted portion thereof) shall be returned to the entering party. This order type may only be used for orders with time-in-force parameters of IOC.

*Directed Orders may not be directed to a facility of an exchange that is an affiliate of Nasdaq.*

\* \* \* \* \*

#### Sec. 6 Acceptance of Quotes and Orders

All bids or offers made and accepted on NOM in accordance with the NOM Rules shall constitute binding contracts, subject to applicable requirements of the Rules of the Exchange and the Rules of the Clearing Corporation.

(a) General—A System order is an order that is entered into the System for display and/or execution as appropriate. Such orders are executable against marketable contra-side orders in the System.

(1) All System Orders shall indicate limit price and whether they are a call or put and buy or sell. Systems Orders can be designated as Immediate or Cancel (“IOC”), Good-till-Cancelled (“GTC”), Day (“DAY”), or Expire Time (“EXPR”).

(2) A System order may also be designated as a Reserve Order, a Limit Order, a Minimum Quantity Order, a Discretionary Order, a Market Order, [or] a Price Improving Order, or an Exchange Direct Order.

(b) No change.

\* \* \* \* \*

## 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

Nasdaq proposes to implement a new order type—the Exchange Direct Order—that is well-established for equities trading but will now be available for use by Options Participants.<sup>6</sup> Exchange Direct Orders will be entered by an Options Participant and sent to an options market other than NOM without first checking the NOM book. Upon entry, the Options Participant will select the options market to receive the order. If unexecuted, the order (or unexecuted portion thereof) shall be returned to the entering party. The Exchange Direct Order will be available only for orders with time-in-force parameters of Immediate Or Cancel (IOC).

The Exchange Direct Order type is similar to the “Directed Order” in use by Nasdaq for cash equities trading which permits members of Nasdaq to route orders directly to other equity markets without first checking the Nasdaq book.<sup>7</sup> Similar to the processing of Directed Orders for equities trading, when NOM’s execution system receives an Exchange Direct Order, NOM’s system will pass that order to NASDAQ Options Services, LLC, the Nasdaq facility providing routing for NOM. NASDAQ Options Services has connectivity to route to all of the other options markets. NASDAQ Option Services will accept orders only from NOM, which in turn accepts orders only from Nasdaq members.

This order will provide additional flexibility and functionality to Options Participants and promote market

efficiency by providing them the ability to better control their access to other options markets. In addition, the order may promote the entry of new participants to the options markets by facilitating access to multiple markets. Exchange Direct Orders will enhance the value of a connection to NOM for Nasdaq members who are Options Participants and at times want to access liquidity at the National Best Bid and Offer (NBBO) but do not have connections to all other options markets. These participants will be able to control the liquidity they access, the sequence in which the liquidity is accessed and the manner in which they access the liquidity.

Options Participants that enter Exchange Direct Orders on NOM will be subject to applicable routing fees. However, at this time Options Participants will not be charged a separate fee for using this order designation.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Section 6(b)(5) of the Act,<sup>9</sup> 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 provide additional functionality to Nasdaq members using NOM and promote the entry of new participants to the options markets by facilitating access to multiple markets. The Commission has already determined that this functionality is consistent with the Act for use in equities trading.

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

Nasdaq 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, as amended.

<sup>6</sup> Pursuant to Chapter I, Section 1(a)(40) of the NOM Rules, the term “Options Participant” means a firm, or organization that is registered with Nasdaq for purposes of participating in options trading on NOM as a “Nasdaq Options Order Entry Firm” or “Nasdaq Options Market Maker”.

<sup>7</sup> See Nasdaq Equities Rule 4751(f)(9).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaq.cchwallstreet.com>.

*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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder in that it effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, 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.

In its recent guidance on the proposed rules of Self-Regulatory Organizations ("SROs"),<sup>12</sup> the Commission concluded that filings based on the rules of another SRO already approved by the Commission are eligible for immediate effectiveness under Rule 19b-4(f)(6). The Commission noted that "a proposed rule change appropriately may be filed as an immediately effective rule so long as it is based on and similar to another SRO's rule and each policy issue raised by the proposed rule (i) has been considered previously by the Commission when the Commission approved another exchange's rule (that was subject to notice and comment), and (ii) the rule change resolves such policy issue in a manner consistent with such prior approval."<sup>13</sup> Nasdaq believes that the proposed rule change is "based on and similar to" existing order types in use for cash equities trading, including Equities Rule 4751(f)(9) of Nasdaq ("Directed Order"), Equities Rule 7.31(x)(iii) of NYSE Arca ("PO+ Order") and Rule 11.9(c)(11) of BATS ("Modified Destination Specific Order"). The proposed Exchange Direct Order for NOM is based on the same functionality currently in use and is intended to operate in a manner similar to these existing order types.

This rule proposal, which is effective upon filing with the Commission, shall become operative 30 days after the date of the filing.

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, as amended, 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-2009-011 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-2009-011. 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 a.m. and 3 p.m. Copies of the 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 that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2009-011 and

should be submitted on or before March 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-4037 Filed 2-24-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59421; File No. SR-NASDAQ-2009-005]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 Thereto To Reduce Certain Order Exposure Periods on the NASDAQ Options Market From Three Seconds to One Second

February 19, 2009.

#### I. Introduction

On January 23, 2009, The NASDAQ Stock Market LLC ("NASDAQ"), filed with the Securities and Exchange Commission ("Commission") 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> a proposed rule change to reduce certain order exposure periods on the NASDAQ Options Market ("NOM") from three seconds to one second. NASDAQ filed Amendment 1 to the proposed rule change on January 27, 2009. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on February 3, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### II. Description of the Proposal

The purpose of the proposed rule change is to reduce the exposure time during which Options Participants<sup>4</sup> may not execute as principal against orders they represent as agent from three seconds to one second. Specifically, NASDAQ proposes to

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 59310 (January 28, 2009), 74 FR 5952.

<sup>4</sup> Pursuant to Chapter I, Section 1(a)(40) of the NOM Rules, the term "Options Participant" means a firm, or organization that is registered with the Exchange for purposes of participating in options trading on NOM as a "Nasdaq Options Order Entry Firm" or "Nasdaq Options Market Maker".

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008).

<sup>13</sup> *Id.* at 40149.