

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 Act¹⁰ and Rule 19b-4(f)(6)¹¹ 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"),¹² 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."¹³ 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. 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.¹⁴

Florence E. Harmon,
Deputy Secretary.

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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")¹ and Rule 19b-4 thereunder,² 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, 2009.³ 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 Participants⁴ may not execute as principal against orders they represent as agent from three seconds to one second. Specifically, NASDAQ proposes to

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

⁴ 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".

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

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

¹³ *Id.* at 40149.

amend Chapter VII, Section 12, which currently provides that an Options Participant may not execute as principal against orders on the limit order book they represent as agent unless: (a) Agency orders are first exposed on NOM for at least three seconds, or (b) the Options Participant has been bidding or offering on NOM for at least three seconds prior to receiving an agency order that is executable against such bid or offer. In addition, Options Participants must expose orders they represent as agent for at least three seconds before such orders may be automatically executed, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders. Under the proposal, these exposure periods would be reduced to one second.

III. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.)⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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 Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,⁷ which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that, given the electronic environment of NASDAQ, reducing each of these exposure periods from three seconds to one second could facilitate the prompt execution of orders, while continuing to provide market participants with an opportunity to compete for exposed bids and offers. To substantiate that NASDAQ members could receive, process, and

communicate a response back to NASDAQ within one second, NASDAQ stated that it distributed a survey to all NOM Options Participants. NASDAQ stated that the survey results indicated that it typically takes not more than 250 milliseconds for members to receive, process, and respond to broadcast messages that would be affected by the proposal. NASDAQ also stated that all eight members that responded to the survey indicated that reducing the exposure period to one second would not impair their ability to participate in orders affected by the proposal. Based on NASDAQ's statements regarding the survey results, the Commission believes that market participants should continue to have opportunities to compete for exposed bids and offers within a one second exposure period. Accordingly, the Commission believes that it is consistent with the Act for NASDAQ to reduce the order handling and exposure times discussed herein from three seconds to one second.

The Commission finds good cause to approve the proposed rule change prior to the thirtieth day after publication for comment in the **Federal Register**. The Commission notes that the proposed rule change was noticed for a fifteen-day comment period, and no comments were received. The Commission believes that NASDAQ has provided reasonable support for its belief that its market participants would continue to have an opportunity to compete for exposed bids and offers if the exposure periods were reduced to one second as proposed. Finally, the Commission also notes that the proposed rule change is similar to recently approved proposals submitted by the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, LLC, and NASDAQ OMX PHLX, Inc.⁸ Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,⁹ to approve the proposed rule change on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NASDAQ-2009-005), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

⁸ See Securities Exchange Act Release Nos. 58088 (July 2, 2008), 73 FR 39747 (July 10, 2008) (SR-CBOE-2008-16); 58224 (July 25, 2008), 73 FR 44303 (July 30, 2008) (SR-ISE-2007-94); and 59081 (December 11, 2008), 73 FR 76432 (December 16, 2008).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59415; File No. SR-NYSE-2009-13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending Certain NYSE Rules To Reflect That Designated Market Makers on the Exchange No Longer Act as Agents for Orders Entered on the Exchange

February 18, 2009.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (the "Act") ² and Rule 19b-4 thereunder,³ notice is hereby given that, on February 4, 2009, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 Exchange proposes to amend certain NYSE rules to reflect that Designated Market Makers ("DMMs") on the Exchange will no longer act as agents for orders entered on the Exchange.

The text of the proposed rule change is available at <http://www.nyse.com>, the Exchange, and 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 self-regulatory organization 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 those statements may be examined at

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(8).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.