

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58778A; File No. SR-CBOE-2008-90]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change Related to Trades in Restricted Classes; Correction

October 23, 2008.

In FR Doc. No. E8-24971, for Tuesday, October 21, 2008, on page 62577, third column, first full paragraph, the first sentence is revised to read:

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>4a</sup> and, in particular, the requirements of Section 6(b) of the Act<sup>5</sup> and the rules and regulations thereunder.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority (17 CFR 200.30-(a)(12).

**Florence E. Harmon,**  
Acting Secretary.

[FR Doc. E8-25627 Filed 10-27-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58827; File No. SR-NASDAQ-2008-083]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Nasdaq Options Maintenance Tool and Related Fees

October 21, 2008.

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 October 16, 2008, The NASDAQ Stock Market LLC ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Exchange filed the

<sup>4a</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

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

proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to establish a new service and related fees for use on the Nasdaq Options Market. The new Nasdaq Options Maintenance Tool will enable subscribers to query trades, correct trades and/or allocate trades to appropriate accounts and sub-accounts.

The text of the proposed rule change is below. Proposed new language is *italicized*.<sup>5</sup>

\* \* \* \* \*

#### 7039. Nasdaq Options Maintenance Tool

*The Nasdaq Options Maintenance Tool will be available to each user at no cost until October 31, 2008, and for a subscription fee of \$200 per month, per user thereafter.*

\* \* \* \* \*

#### 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 establish a new service, the Nasdaq Options Maintenance Tool ("OMT"), and establish related fees. The OMT is a new web-based options back-office tool that gives users the ability to query trades, correct trades and/or allocate trades to the appropriate accounts and sub-

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

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

<sup>5</sup> Changes are marked to the rules of The NASDAQ Stock Market LLC found at <http://nasdaqomx.cchwallstreet.com>.

accounts for clearing. The Options Clearing Corporation ("OCC") requires firms to provide certain information when submitting a trade for clearing. Currently, other options exchanges make available to firms a tool with which they can correct trade clearing information that is submitted to the OCC.<sup>6</sup> Certain firms have requested that Nasdaq provide a similar tool so that they may correct their trade-related clearing information. In response, Nasdaq has developed the OMT, which will allow users to correct certain OCC-required trade information. Specifically, the OMT will allow a firm to correct a trade's account number or designate a sub-account number, correct a trade's designation as opening or closing, and change the Clearing Member Trade Assignment clearing firm. The OMT will also allow firms to correct a trade's OCC designation as Customer, Firm, or Market Maker.

Nasdaq proposes to offer the OMT at no cost through October 31, 2008, after which Nasdaq proposes to charge a subscription fee of \$200 per month, per user. Nasdaq believes the subscription fee fairly reflects the value of this product. Use of the OMT is voluntary and the subscription fee will be imposed on all purchasers equally based on the number of users selected.

The proposed fee will cover the costs associated with establishing the service, responding to customer requests, configuring Nasdaq's systems, programming to user specifications, and administering the service, among other things. The OMT is responsive to the requests of market participants, some of whom have determined that they could not participate on the Nasdaq Options Platform until they had this functionality was [sic] available.

###### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(5) of the Act,<sup>8</sup> in particular, because it is designed to prevent fraudulent and

<sup>6</sup> See e.g., the International Securities Exchange PrecISE, and the Boston Options Exchange Back Office Trade Management Software. Certain firms have requested that Nasdaq provide a similar tool so that they may correct their trade-related clearing information. In response, Nasdaq has developed the OMT, which will allow users to correct certain OCC-required trade information. Specifically, the OMT will allow a firm to correct a trade's account number or designate a sub-account number, correct a trade's designation as opening or closing, and change the Clearing Member Trade Assignment clearing firm. The OMT will also allow firms to correct a trade's OCC designation as Customer, Firm, or Market Maker.

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

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

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 mechanism of a free and open market and a national market system. Use of the Options Maintenance Tool is voluntary and the subscription fees will be imposed on all purchasers equally based on the number of users.

Nasdaq also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>9</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Nasdaq operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. As noted, use of the Options Maintenance Tool is voluntary and the subscription fees will be imposed on all purchasers equally based on the number of users. The proposed fees will cover the costs associated with establishing the service, responding to customer requests, configuring Nasdaq's systems, programming to user specifications, and administering the service, among other things. Nasdaq notes that the revenue associated with this product may be negligible as this tool was built to primarily support new volume into Nasdaq's Options Platform.

#### *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.

#### *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 proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) 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, the proposed rule change has

become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>12</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>13</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 has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Immediate implementation of the OMT functionality should assist Nasdaq members in providing accurate clearing information to OCC by allowing firms to correct inaccurate trade information before it is submitted to OCC. Further, the OMT should assist firms in efficiently managing their back office clearing operations, such as handling Clearing Member Transfer Agreements. Finally, the Commission recognizes that Nasdaq would like to provide the OMT in the most expedited timeframe possible to attract firms to the Nasdaq Options Market, enhancing Nasdaq's competitive position. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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:

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required 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 Exchange has satisfied this requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

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

#### *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-2008-083 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2008-083. 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 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-2008-083 and should be submitted on or before November 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

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<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>15</sup> 17 CFR 200.30-3(a)(12).