(C) Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2) thereunder,[9] because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

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 proposal 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 No. SR–BATS–2009–005 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 No. SR–BATS–2009–005. 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 changes 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 BATS. 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 No. SR–BATS–2009–005 and should be submitted on or before February 24, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2231 Filed 2–2–09; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(6) [*sic*].

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59310; File No. SR–NASDAQ–2009–005]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change as Modified by Amendment No. 1 Thereto To Reduce The Order Exposure Period on the NASDAQ Options Market

January 28, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 23, 2009, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment 1 was filed on January 27, 2009. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Specifically, NASDAQ is proposing to amend Chapter VII, Section 12 of the NASDAQ rule manual governing the NASDAQ Options Market to provide that: (i) Options Participants may not execute as principal against orders on the limit order book they represent as agent unless such agency orders are first exposed on the limit order book for at least one (1) second, or the Options Participant has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such order, and (ii) Options Participants must expose orders they represent as agent for at least one (1) second 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.[3]

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[4]

* * * * *

Chapter VII, Market Participants:

Sec. 12 Order Exposure Requirements:

With respect to orders routed to NOM, Options Participants may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on NOM for at least *one (1) second* [three (3) seconds] or (ii) the Options Participant has been bidding or offering on NOM for at least *one (1) second* [three (3) seconds] prior to receiving an agency order that is executable against such bid or offer.

Commentary:

.01 and .02 No change.

.03 With respect to non-displayed trading interest, including the reserve portion, the exposure requirement of subsection (i) is satisfied if the displayable portion of the order is displayed at its displayable price for *one* [three] seconds.

.04 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, the self-regulatory organization included statements concerning the purpose of,

[3] Amendment 1 makes a technical correction to conform Commentary .03 to the proposed new rule language.

[4] Changes are marked to the rule text that appears in the electronic NASDAQ Manual found at *http://wallstreet.cch.com/nasdaq/*.

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 the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts 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 the proposed rule change is to reduce the exposure time during which Options Participants may not execute as principal against orders they represent as agent while continuing to afford the opportunity for other market participants to execute at or better than the limit order price during such exposure period.

Chapter VII, Section 12 currently provide that an Options Participant [5] may not execute as principal against orders on the limit order book they represent as agent unless: (a) Agency orders are first exposed on the limit order book for at least three seconds, or (b) the Options Participant has been bidding or offering on the Exchange for at least three (3) seconds prior to receiving an agency order that is executable against such order.

In addition, Options Participants must expose orders they represent as agent for at least three (3) 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.

The Exchange adopted the 3-second exposure period upon its initial creation, based upon similar requirements and functionality already in existence on other options exchanges.[6] The three-second order handling and exposure period assumes that three seconds is not long enough to permit human interaction with the orders. Rather, market participants had become sufficiently automated that they could react to these orders electronically. In this context, the Exchange believes it would be in all market participants' best interest to minimize the exposure period to a time frame that continues to allow adequate time for market participants to respond electronically, as both the order being exposed and the participants responding are subject to market risk during the exposure period. In this respect, the Exchange states that its experience with the three-second exposure time period indicates that one second would provide an adequate response time. The Exchange does not believe it is necessary or beneficial to the orders being exposed to continue to subject them to market risk for a full three seconds.

The Exchange has numerous market participants that have the capability and do opt to respond within a one-second exposure period on the Exchange's fully automated trading platform for options. Recently, the Exchange distributed a survey to all NOM Options Participants. To substantiate that its members could receive, process, and communicate a response back to the Exchange within one second, the survey asked members to identify how many milliseconds it took for (i) a broadcast from the Exchange to reach their systems; (ii) their systems to generate responses; and (iii) their responses to reach the Exchange. The survey results indicate that the time it takes a message to travel between the Exchange and its members is not more than 100 milliseconds each way. The survey also indicated that it typically takes not more than 50 milliseconds for member systems to process the information and generate a response. Thus, the survey indicated that it typically takes not more than 250 milliseconds for members to receive, process, and respond to broadcast messages related to the various Mechanisms. Additionally, all 8 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. The Exchange believes that this information provides additional support for its assertion that reducing the exposure periods from three seconds to one second will continue to provide members with sufficient time to ensure effective interaction with orders.

The Exchange is submitting the instant proposal in order to remain competitive with other exchanges that have reduced the exposure period from 3 seconds to 1 second.[7] The Exchange believes that reducing its order handling and exposure periods from three seconds to one second will benefit market participants. The Exchange further believes that reducing the time periods to one second will allow it to provide investors and other market participants with more timely executions, thereby reducing market risk.[8]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] 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, by providing investors with more timely execution of their options orders, while ensuring that there is adequate exposure of limit orders in the Exchange's marketplace.

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

NASDAQ 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. To the contrary, NASDAQ is adopting this proposed rule change in response to the competitive advantage enjoyed by options exchanges that have already reduced the order exposure requirement from three seconds to one second.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

None.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or

[5] 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''.

[6] Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004).

[7] *See* Securities Exchange Act Release Nos. 57849 (May 22, 2008), 73 FR 31167 (May 30, 2008) (SR–CBOE–2008–16); and 58224 (July 25, 2008), 73 FR 44303 (July 30, 2008) (SR–ISE–2007–94).

[8] The Exchange believes that the proposed timeframe would give market participants sufficient time to respond, compete, and provide price improvement for orders. The Exchange also notes that electronic systems are readily available to, if not already in place for, Exchange members that allow them to respond in a meaningful way within the proposed timeframe.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

(ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposal, including whether it 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–2009–005 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–2009–005. 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 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 offices 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–2009–005 and should be submitted on or before February 18, 2009.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2226 Filed 2–2–09; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–59305; File No. SR–NYSEArca–2009–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rules Governing Flexible Exchange Options to Increase Maximum Term

January 27, 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 January 9, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III 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 Exchange rules governing Flexible Exchange Options. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange'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, 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 the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to increase the maximum term for FLEX Options. Currently, the maximum term for a FLEX Equity Options[4] is three (3) years, provided an OTP Holder may request a longer term to a maximum of five (5) years,[5] and for FLEX Index Options the maximum term is five (5) years.

NYSE Arca is proposing to increase the maximum term for all FLEX Options to fifteen years and to eliminate the requirement that a FLEX Post Official make a liquidity assessment. The changes are being proposed to simplify the process and in response to investor interest in expanding the maximum term, in order to accommodate their desire to bring trades that are otherwise conducted in the over-the-counter (''OTC'') market to an exchange environment.

The Exchange believes that expanding the eligible term for FLEX Options as proposed is important and necessary to the Exchange's efforts to create a product and market that provides OTP Holders, and other qualified investors interested in FLEX-type options, with an improved but comparable alternative to the OTC market in customized options, which can take on contract characteristics similar to FLEX Options but are not subject to the same maximum term restriction. By expanding the eligible term for FLEX Options, market participants will now have greater flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. NYSE Arca believes market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2)

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Flex Equity Options includes options on specified equity securities or Exchange Traded Fund Shares.

[5] Pursuant to NYSE Arca Rule 5.32 (d)(1), upon assessment by the FLEX Post Official that sufficient liquidity exists, such request will be granted.