

(ii) as to which the self-regulatory organization 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.

**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-FINRA-2009-044 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-FINRA-2009-044. 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 FINRA. 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-FINRA-2009-044 and should be submitted on or before August 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

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

[FR Doc. E9-17633 Filed 7-23-09; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-60335; File No. SR-NASDAQ-2009-066]**

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Processing of Orders on the NASDAQ Options Market**

July 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 7, 2009, The NASDAQ Stock Market LLC (“Exchange” or “Nasdaq”) filed with the Securities and Exchange 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**

The Exchange proposes to amend Chapter VI, Section 10 of the NASDAQ Options Market (“NOM” or “Exchange”) to allow marketable orders to be exposed to market participants for a brief period of time before routing to an away market center for execution at the National Best Bid/Offer (“NBBO”) or cancelling the order. The text of the proposed rule change is available from Nasdaq’s Web site at <http://nasdaq.cchwallstreet.com>, at Nasdaq’s principal office, and at the Commission’s Public Reference Room.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.<sup>3</sup>

\* \* \* \* \*

<sup>18</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> Changes are marked to the rules of The NASDAQ Stock Market LLC found at <http://nasdaqomx.cchwallstreet.com>.

Chapter VI Trading Systems

Sec. 1 Definitions

The following definitions apply to Chapter VI for the trading of options listed on NOM.

- (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)-(7) No Change.  
(8) “Additional Exposure Orders” are orders that are priced at the National Best Offer, for buys, and the National Best Bid, for sells. The order is exposed on the System Book Feed for a time determined by the Exchange, not to exceed one second. At the end of the exposure period, if still unexecuted, the order will be routed to the market(s) at the NBBO, cancelled back to the entering party, or posted on the book pursuant to Section 7 of Chapter VI.

Any update to the NBBO that improves the exposed order price will cause an immediate end to the exposure period. Any unexecuted portion of the order will be routed to the market(s) at the NBBO, cancelled back to the entering party or posted on the book pursuant to Section 7 of Chapter VI.

Any update to the NBBO that unlocks the exposed order price will cause an immediate end to the exposure period. Any unexecuted portion of the order will be executed against contra interest on the book, routed to the market(s) at the NBBO, cancelled back to the entering party or posted on the book pursuant to Section 7 of Chapter VI.

\* \* \* \* \*

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”), WAIT 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, a Price Improving Order, [or] an Exchange

Direct Order, or an Additional Exposure Order.

\* \* \* \* \*

## Sec. 11 Order Routing

(a) For System securities, the order routing process shall be available to Participants from 9:30 a.m. Eastern Time until market close, and shall route orders as follows. Participants can designate orders as either available for routing or not available for routing. Orders designated as not available for routing shall follow the book processing rules set forth in Section 10 above. Orders designated as available for routing, will first check the System for available contracts for execution. After checking the System for available contracts, orders are sent to other available market centers for potential execution, per entering firm's instructions. When checking the book, the System will seek to execute at the price at which it would send the order to a destination market center. *Orders designated as Additional Exposure Orders, as defined in Chapter VI, Section 1, will be exposed on the System Book Feed prior to routing to other markets.* If contracts remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option.

\* \* \* \* \*

## 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 is proposing to change the NOM rules in order to provide marketable orders an additional opportunity for execution on the NOM

when NOM is not part of the NBBO. Currently, if an order that is marketable against the NBBO is received, it is matched against any possible contra side orders available in the Trading System. If the order is still unexecuted, or if only partially unexecuted, the order is then routed away to the market or markets at the NBBO, cancelled back to the entering party or posted on the NOM Book and displayed at a non-locking price according to the instructions on the order.

The proposed rule change will provide for the NOM System to expose the order, at the NBBO price, to subscribers of a data feed for System securities ("System Book Feed"), for a brief period of time (the "exposure period") not to exceed one second. All Members have the opportunity to respond to any order exposed or displayed on the System Book Feed.

Participants may designate orders to be Additional Exposure Orders using a notation on the order message submitted to the Exchange. Additional Exposure Orders will be exposed at a price equal to the National Best Offer, if a buy, or the National Best Bid, if a sell. During the exposure period, the Additional Exposure Order will be treated as a Limit Order (as defined in Chapter VI, Section 1(e)(2)) for book processing purposes. Specifically, during the exposure period, orders and quotes that are equal to the NBBO and on the opposite side of the market will be matched against the exposed order and immediately executed as they are received. Orders and quotes that are better than the NBBO and on the opposite side of the market will also be matched against the exposed order, and immediately executed as they are received at the price of the exposed order as per Chapter VI, Section 10(1) and (3) of the NOM rules. If the order is still unexecuted, or if only partially unexecuted, it will be routed to the market(s) at the NBBO, cancelled back to the entering party or posted on the NOM Book and displayed at a non-locking price as per the instructions of the order.

Any update to the NBBO during the exposure period that unlocks the exposed order will cause the exposure period to terminate, and any unexecuted portion of the order will either be (i) executed against contra interest on the NOM book; (ii) immediately routed to the new NBBO market(s); (iii) cancelled if the order is marked as a Do Not Route order and there is no contra interest available; or (iv) the order will be posted on the NOM book for possible display and/or execution pursuant to Section 7 of Chapter VI if the order is marked as

a Do Not Route order and has a Time In Force other than IOC.

Conversely, an update to the NBBO that crosses the exposed price will also bring the exposure period to an immediate end, and any unexecuted portion of the order will either be routed away, cancelled or posted on the NOM book pursuant to Section 7 of Chapter VI.<sup>4</sup>

#### Example 1

NOM market 3.00–3.30.

CBOE market (NBBO) 3.00–3.20.

NOM receives an order to Buy paying 3.30. The order is exposed for one second at a price of 3.20 prior to routing to CBOE.

200 milliseconds after the start of the exposure, CBOE offer moves to 3.30. The exposure period terminates, and the order is executed against the NOM 3.30 offer, and if not fully executed, routed to the CBOE offer at 3.30, cancelled or posted on the NOM book depending on the instructions on the order.

#### Example 2

NOM 3.00–3.30.

CBOE market (NBBO) 3.00–3.20.

NOM receives an order to Buy paying 3.30. The order is exposed for one second prior to routing to CBOE.

200 milliseconds after the start of the exposure period, ISE posts an offer at 3.10. Again, the exposure period terminates, and if the order is designated for routing, the order is immediately routed to the ISE to trade against the 3.10 offer, otherwise the order is cancelled or posted in accordance with Chapter VI, Section 7(b)(3)(C) ("Trade-Through Compliance and Locked or Crossed Markets").

NOM Users who do not wish to have an order exposed have the ability to designate their order accordingly, in which case the order will be executed against contra interest on the NOM book, immediately routed to other markets at the NBBO, posted on the NOM book at a non-locking price in accordance with Chapter VI, Section 7(b)(3)(C) or cancelled depending on the instructions on the order. Users who wish to avoid both exposure and routing may do so by using an order designation that indicates to the Exchange that the order should not be exposed and marking the order as Do Not Route.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

<sup>4</sup> For example, with regard to posting on the NOM book, if the order was a non-routable order and CBOE's offer (see Example 1) updated to 3.10, the exposure period would terminate, and the non-routable order would then be posted on the NOM book at a price of 3.10 and displayed at 3.05.

of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> 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. The Exchange believes that it will provide greater opportunities for investors to receive executions on the NOM System so as to enhance the efficiency of order handling, and also provides Users the opportunity to match prices at other markets.

#### *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.

#### *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>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)(iii)<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 has requested that the Commission waive the 30-day operative delay. The Exchange asserts that waiver of the operative delay is appropriate in order to allow the Exchange to remain competitive with other options exchanges, which have a substantially similar functionality to that being proposed.<sup>11</sup> On this basis, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates that the proposed rule change become operative immediately.<sup>12</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:

#### *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-2009-066 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-2009-066. 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 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-2009-066 and should be submitted on or before August 14, 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. E9-17636 Filed 7-23-09; 8:45 am]

BILLING CODE 8010-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60333; File No. SR-ISE-2009-52]

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Price Improvement Mechanism Pilot Program**

July 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 13, 2009, the International Securities Exchange, LLC (the "Exchange" or "ISE") 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 the ISE. The ISE has designated the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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

<sup>8</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 met this requirement.

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> See Item 7 of SR-NASDAQ-2009-066. See e.g., Boston Options Exchange Rules Chapter V, Sec. 16(b)(iii), Chicago Board Options Exchange Rule 6.14, and NYSE Arca Rule 6.76A.

<sup>12</sup> For the 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).