

*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-ISE-2010-02 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-ISE-2010-02. 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 ISE. 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-ISE-2010-02 and should be submitted on or before March 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**  
Deputy Secretary.  
[FR Doc. 2010-2587 Filed 2-5-10; 8:45 am]  
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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61455; File No. SR-NASDAQ-2010-013]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add Seventy-Five Options Classes to the Penny Pilot Program**

February 1, 2010.

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 January 25, 2010, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II and III 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**

Nasdaq is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal for the NASDAQ Options Market (“NOM” or “Exchange”) to designate seventy-five options classes to be added to the Penny Pilot Program (“Penny Pilot” or “Pilot”) on February 1, 2010.<sup>3</sup> The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.<sup>4</sup>

The text of the proposed rule change is available from Nasdaq’s Web site at <http://nasdaq.cchwallstreet.com/Filings/>, at Nasdaq’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, 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

The purpose of this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective February 1, 2010.

In the Exchange’s immediately effective filing to extend and expand the Penny Pilot through December 31, 2010,<sup>5</sup> the Exchange proposed expanding the Pilot four times on a quarterly basis. Each such quarterly expansion would be of the next seventy-five most actively traded multiply listed options classes based on the national average daily volume (“ADV”) for the six months prior to selection, closing under \$200 per share on the Expiration Friday prior to expansion; however, the month immediately preceding the addition of options to the Penny Pilot will not be used for the purpose of the six month analysis. Index option products would be included in the quarterly expansions if the underlying index levels were under 200.

The Exchange is identifying, in the chart below, seventy-five options classes that it will add to the Penny Pilot on February 1, 2010, based on ADVs for the six months ending December 31, 2009.

| Nat'l ranking | Symbol | Company name           | Nat'l ranking | Symbol | Company name                     |
|---------------|--------|------------------------|---------------|--------|----------------------------------|
| 131 .....     | ABT    | Abbott Laboratories    | 192 .....     | LEAP   | Leap Wireless International Inc. |
| 169 .....     | AEM    | Agnico-Eagle Mines Ltd | 205 .....     | LLY    | Eli Lilly & Co.                  |
| 151 .....     | AET    | Aetna Inc              | 162 .....     | LO     | Lorillard Inc.                   |

<sup>10</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> The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2010. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008)(SR-NASDAQ-2008-

026)(notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009)(SR-NASDAQ-2009-091)(notice of filing and immediate effectiveness expanding and extending Penny Pilot); and 60965 (November 9, 2009)(SR-NASDAQ-2009-097)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot).

<sup>4</sup> See Chapter VI, Section 5 regarding the Penny Pilot.

<sup>5</sup> See Securities Exchange Act Release No. 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009)(SR-NASDAQ-2009-091)(notice of filing and immediate effectiveness).

| Nat'l ranking | Symbol | Company name                          | Nat'l ranking | Symbol | Company name                                  |
|---------------|--------|---------------------------------------|---------------|--------|---|
| 156           | AFL    | Aflac Inc                             | 152           | LOW    | Lowe's Cos Inc.                               |
| 181           | AKAM   | Akamai Technologies Inc               | 176           | M      | Macy's Inc.                                   |
| 178           | AMAT   | Applied Materials Inc                 | 155           | MCO    | Moody's Corp.                                 |
| 117           | AMR    | AMR Corp                              | 217           | MET    | MetLife Inc.                                  |
| 166           | ANF    | Abercrombie & Fitch Co                | 187           | MMM    | 3M Co.  |
| 172           | APC    | Anadarko Petroleum Corp               | 140           | MU     | Micron Technology Inc.                        |
| 209           | ATVI   | Activision Blizzard Inc               | 177           | NUE    | Nucor Corp.                                   |
| 145           | BBD    | Banco Bradesco SA                     | 157           | OXY    | Occidental Petroleum Corp.                    |
| 190           | BCRX   | BioCryst Pharmaceuticals Inc          | 158           | PARD   | Poniard Pharmaceuticals Inc.                  |
| 218           | BK     | Bank of New York Mellon Corp/The      | 150           | PEP    | PepsiCo Inc/NC.                               |
| 194           | BRCM   | Broadcom Corp                         | 141           | PM     | Philip Morris International Inc.              |
| 184           | BTU    | Peabody Energy Corp                   | 185           | PNC    | PNC Financial Services Group Inc.             |
| 144           | BX     | Blackstone Group LP                   | 216           | QID    | ProShares UltraShort QQQ.                     |
| 200           | CAL    | Continental Airlines Inc              | 149           | SHLD   | Sears Holdings Corp.                          |
| 211           | CF     | CF Industries Holdings Inc            | 175           | SLM    | SLM Corp.                                     |
| 142           | CMCSA  | Comcast Corp                          | 212           | SLW    | Silver Wheaton Corp.                          |
| 203           | CSX    | CSX Corp                              | 215           | SQNM   | Sequenom Inc.                                 |
| 143           | CVS    | CVS Caremark Corp                     | 153           | STEC   | STEC Inc.                                     |
| 174           | CX     | Cemex SAB de CV                       | 219           | STX    | Seagate Technology.                           |
| 183           | DD     | El du Pont de Nemours & Co            | 202           | SU     | Suncor Energy Inc.                            |
| 146           | ERTS   | Electronic Arts Inc                   | 207           | TCK    | Teck Resources Ltd.                           |
| 121           | EWJ    | iShares MSCI Japan Index Fund         | 196           | TEVA   | Teva Pharmaceutical Industries Ltd.           |
| 186           | FDX    | FedEx Corp                            | 135           | TLT    | iShares Barclays 20+ Year Treasury Bond Fund. |
| 118           | FNM    | Federal National Mortgage Association | 214           | TZA    | Direxion Daily Small Cap Bear 3X Shares.      |
| 182           | FRE    | Federal Home Loan Mortgage Corp       | 168           | UAUA   | UAL Corp.                                     |
| 179           | GILD   | Gilead Sciences Inc                   | 154           | URE    | ProShares Ultra Real Estate.                  |
| 198           | GLW    | Corning Inc                           | 180           | UTX    | United Technologies Corp.                     |
| 170           | HBC    | HSBC Holdings PLC                     | 204           | WFR    | MEMC Electronic Materials Inc.                |
| 197           | HES    | Hess Corp                             | 115           | WFT    | Weatherford International Ltd.                |
| 161           | HL     | Hecla Mining Co                       | 165           | WLP    | WellPoint Inc.                                |
| 193           | HOG    | Harley-Davidson Inc                   | 191           | XLB    | Materials Select Sector SPDR Fund.            |
| 206           | HON    | Honeywell International Inc           | 173           | XRX    | Xerox Corp.                                   |
| 210           | JOYG   | Joy Global Inc                        | 148           | XTO    | XTO Energy Inc.                               |
| 213           | JWN    | Nordstrom Inc                         | 130           | YRCW   | YRC Worldwide Inc.                            |
| 137           | KFT    | Kraft Foods Inc                       |               |        |   |

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> in particular, in that it 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by identifying the options classes to be added to the Penny Pilot in a manner

consistent with prior approvals and filings.

### *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

Pursuant to Section 19(b)(3)(A)(i) of the Act<sup>8</sup> and Rule 19b-4(f)(1) thereunder,<sup>9</sup> Nasdaq has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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,

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>9</sup> 17 CFR 240.19b-4(f)(1).

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-2010-013 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-2010-013. 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 available publicly. All submissions should refer to File No. SR-NASDAQ-2010-013 and should be submitted on or before March 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-2584 Filed 2-5-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61461; File No. SR-NASDAQ-2010-006]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify the Press Release Requirements for Listed Companies

February 1, 2010.

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 January 13, 2010, 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. 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 modify certain of the press release requirements for listed companies. Nasdaq will implement the proposed rule upon approval. 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.

#### 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.

<sup>10</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.

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

#### 1. Purpose

There are a number of Nasdaq rules related to the issuer compliance process that require a company to disclose information in a press release or through the news media.<sup>3</sup> These rules generally were adopted to address inconsistent issuer disclosure practices and reflected the view, prevalent at that time, that issuing a press release was the only way to assure wide dissemination of an important event. However, in 2002, after the Commission adopted Regulation FD,<sup>4</sup> Nasdaq amended its rules to allow listed companies to provide disclosure of material news via any Regulation FD compliant means.<sup>5</sup> Since that time Nasdaq has had the opportunity to observe market reaction to news disclosed in ways other than via a press release. Nasdaq's experience since adopting this rule indicates that there is broad acceptance of Regulation FD compliant methods of disclosure, such as through the use of a Form 8-K.

In addition, the Commission has substantially modified its rules regarding the disclosure of information on a Form 8-K.<sup>6</sup> As a result Nasdaq's requirements in some instances are duplicative of the Form 8-K requirements and Nasdaq sees companies forced to make multiple disclosures regarding the same event. Nasdaq believes that investors have come to rely upon Form 8-K disclosure and notes that Form 8-K disclosures are readily available to investors and the information reported on them is widely reported on by the news media. As such, to the extent information is reported on a Form 8-K, Nasdaq believes that duplicate disclosure through a press release is unnecessary and an extra burden on listed companies.

Given the foregoing, Nasdaq believes it is appropriate to modify the following rules to permit disclosure either through a press release or by filing a Form 8-K where required by Commission rules:

<sup>3</sup> Nasdaq interprets the requirement to disclose information through the news media to be satisfied by the issuance of a press release.

<sup>4</sup> 17 CFR 243.100-103. Regulation FD permits a company to disclose material information using a method (or combination of methods) of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public.

<sup>5</sup> Exchange Act Release No. 46901 (November 25, 2002), 67 FR 72011 (December 3, 2002).

<sup>6</sup> Exchange Act Release No. 49424 (March 16, 2004), 69 FR 15594 (March 25, 2004).