

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58840; File No. SR-NASDAQ-2008-081]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Rules Governing Options Trading

October 23, 2008.

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 October 10, 2008, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”), 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 substantially prepared by Nasdaq. The Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under Rule 19b-4(f)(6) under the Act,³ 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 amend the Nasdaq Options Market Rules (“NOM Rules”) to eliminate the requirement for separate designations of Senior Registered Options Principal (“SROP”) and Compliance Registered Options Principal (“CROP”), to require a member to integrate the responsibility for supervision of its public customer options business into its overall supervisory and compliance program, and to make certain related changes to the NOM Rules. The rule proposal, which is effective upon filing with the Commission, shall become operative 30 days after filing pursuant to Rule 19b-4(f)(6) of the Act. The text of the proposed rule is available on the Exchange’s Web site at <http://nasdaqomx.cchwallstreet.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, 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 Exchange proposes to amend the NOM Rules to integrate the responsibility for supervision of a member’s public customer options business into its overall supervisory and compliance program. The proposed rule change is substantively similar to recent amendments to the rules of Financial Industry Regulatory Authority (“FINRA”), which were approved by the Commission.⁴ As part of these changes, the Exchange proposes to eliminate the requirement that a firm must designate a SROP and CROP to be responsible for the overall supervision and compliance programs, respectively, for a member’s public customer options activities. Nasdaq believes that the supervisory and compliance function of a member’s public customer options activities would be better integrated into the matrix of a firm’s overall supervisory and compliance functions rather than separately vested in a SROP and CROP.

The Exchange does not believe that eliminating the SROP and CROP requirements would lead to a reduction in supervision, as firms have an obligation to designate an appropriately registered principal(s) to supervise their public customer options activities pursuant to Nasdaq Rule 3010, which requires Nasdaq members to comply with NASD Rule 3010⁵ as if such Rule were part of Nasdaq’s Rules. In this regard, the Exchange proposes to amend NOM Rules Chapter II, Section 2(g)(1) to delete the reference to the SROP and CROP and to clarify that if a person is engaged in the supervision of options and security futures sales practices, including a person designated pursuant to NASD Rule 3010(a)(2),⁶ then such

person must be registered as a Registered Options and Security Futures Principal. The Exchange believes that the proposed rule change would provide firms greater flexibility to incorporate supervision into existing, firm-wide supervisory structures.

The proposed rule change also makes two technical changes. First, all references to “Options Principal” would be changed to “Registered Options and Security Futures Principal” to reflect the correct title of such principals, consistent with the other NOM Rules. Second, all references to “put and call” would be deleted before options, and “options” will mean all types of options.

In addition, the proposed rule change would amend NOM Rules Chapter XI in several respects. First, Section 7, paragraph (f), which relates to the opening of accounts, would be amended to delete the reference to the SROP and CROP and require that a specific Registered Options and Security Futures Principal(s) be designated to be responsible for approving customer accounts that do not meet the specific criteria and standards for writing uncovered short option transactions and for maintaining written records of the reasons for every account so approved. The proposed rule change would allow members the flexibility to assign this responsibility, which currently rests with the SROP and/or CROP, to a specific Registered Options and Security Futures Principal.

Second, references to the SROP and CROP would be deleted and a new paragraph (a) would be inserted into Section 8, which relates to supervision of accounts. The new paragraph (a) would make clear that a member that conducts a public customer options business must ensure its written supervisory system policies and procedures pursuant to NASD Rules 3010, 3012, and 3013 adequately address its public customer options business. Although the proposed rule change would eliminate entirely the positions and titles of the SROP and CROP, a member would still be required pursuant to NASD Rule 3010(a)(2) to designate “an appropriately registered principal(s) with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages for which registration as a broker/dealer is required,” which would include designating an Options Principal to supervise a member’s public customer options activities.

Third, Nasdaq proposes amending Section 10, which relates to discretionary accounts, to eliminate references to the CROP and SROP, and

⁴ Securities Exchange Act Release No. 57775 (May 5, 2008), 73 FR 26453 (May 9, 2008) (SR-FINRA-2007-035) (approval order)

⁵ NASD Rule 3010 sets forth member firms’ responsibilities with respect to supervision.

⁶ NASD Rule 3010(a)(2) requires that members designate “an appropriately registered principal(s) with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages for which registration as a broker/dealer is required.”

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

require that a specific Registered Options and Security Futures Principal(s) be designated to be responsible for the review of the acceptance of discretionary accounts. Under the proposed rule change, each firm would be required to have a Registered Options and Security Futures Principal other than the Registered Options and Security Futures Principal who accepted the account review the acceptance of each discretionary account to determine that the Registered Options and Security Futures Principal accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risk of the strategies or transactions proposed. The firm must maintain a record of the basis for such determination. In addition, the proposed rule change would eliminate the requirement in paragraph (a)(ii) that discretionary options orders be approved and initialed on the day of entry by the branch office manager or other Options Principal, or confirmed within a reasonable time by an Options Principal if the branch office manager is not an Options Principal. Under the proposed rule change, discretionary orders would be required to receive frequent appropriate supervisory review by a Registered Options and Security Futures Principal who is not exercising discretionary authority (instead of a CROP) and be reviewed in accordance with a member's written supervisory procedures. The proposed rule change would ensure that supervisory responsibilities are assigned to specific Registered Options and Security Futures Principal-qualified individuals, thereby enhancing the quality of supervision.

Proposed NOM Rules Chapter XI, Section 10(e) would allow a participant to exercise time and price discretion on orders for the purchase or sale of a definite number of options contracts in a specified security. The Exchange proposes to limit the duration of this discretionary authority to the day it is granted, absent written authorization to the contrary. Additionally, the proposed rule would require any exercise of time and price discretion to be reflected on the customer order ticket. The proposed one-day limitation would not apply to time and price discretion exercised for orders affected with or for an institutional account (as defined in the NOM Rules) pursuant to valid Good-Till Cancelled instructions issued on a "not held" basis.

The Exchange believes that investors will receive greater protection by clarifying the time such discretionary orders remain pending.

Nasdaq also proposes to add NOM Rules Chapter XI, Section 10(f), which requires any participant that does not utilize computerized surveillance tools for the frequent and appropriate review of discretionary account activity to establish and implement procedures to require Registered Options and Security Futures-qualified individuals who have been designated to review discretionary accounts to approve and initial each discretionary order on the day entered. The Exchange believes that any member that does not use computerized tools for the frequent and adequate surveillance of options discretionary account activity should continue to be required to perform the daily manual review of discretionary orders.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and with Section 6(b)(5) of the Act,⁸ in particular, in that the proposal 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 regulating, clearing, settling, processing information with respect to, and facilitating 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 Exchange believes that the supervisory and compliance function of a member's public customer options activities would be better integrated into the matrix of a firm's overall supervisory and compliance functions rather than separately vested in a SROP and CROP.

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

The Exchange 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

No written comments were solicited nor were any received with respect to the proposed rule change.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

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

The Exchange has designated the proposed rule change as one that does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

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 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-2008-081 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-2008-081. 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>).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 the Commission may designate. The Exchange had satisfied the five business-day pre-filing requirement.

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, NW., 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-2008-081 and should be submitted on or before November 19, 2008.

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

Florence Harmon,
Acting Secretary.

[FR Doc. E8-25810 Filed 10-28-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58845; File No. SR-NYSE-2008-46]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, To Create a New NYSE Market Model, With Certain Components To Operate as a One-Year Pilot, That Would Alter NYSE's Priority and Parity Rules, Phase Out Specialists by Creating a Designated Market Maker, and Provide Market Participants With Additional Abilities To Post Hidden Liquidity

October 24, 2008.

I. Introduction

On June 12, 2008, the New York Stock Exchange LLC¹ ("NYSE" or "Exchange") filed with the Securities

and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ a proposed rule change to establish a new market model ("New Model"). The New Model would implement significant changes in NYSE's market structure, including, most notably: (i) The phasing out of the specialist system and adopting a Designated Market Maker ("DMM") structure; (ii) the alteration of NYSE's priority and parity rules, most significantly to allow DMMs to trade on parity with orders on NYSE's Display Book[®] ("Display Book"); and (iii) the introduction of new order functionality, including the DMM Capital Commitment Schedule ("CCS") and hidden orders.⁴

On July 15, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for public comment in the **Federal Register** on July 23, 2008.⁵ The Exchange filed Amendment No. 2 to the proposed rule change on August 29, 2008. The Exchange filed Amendment No. 3 to the proposed rule change on October 7, 2008. The Commission received no comment letters regarding proposed rule change. This order provides notice of filing of Amendment Nos. 2 and 3 to the proposed rule change, and grants accelerated approval to the proposed rule change, as modified by Amendment Nos. 1, 2 and 3.

II. Description of the Proposal

A. Background: NYSE's Hybrid Market and the Evolution of Electronic Trading

Section 11(b) of the Act⁶ allows the rules of a national securities exchange to permit a member to be registered as a specialist and act as both a broker and a dealer. Historically, the NYSE specialist was responsible for overseeing the execution of all orders coming into the Exchange, for conducting auctions on the Floor, and for maintaining an orderly market in assigned securities. Specialists' dealer activities are governed, in part, by the negative and affirmative trading obligations. Rule 11b-1 under the Act⁷ requires exchanges that permit members to register as specialists to have rules

governing specialists' dealer transactions so that their proprietary trades conform to the negative and affirmative obligations. The negative obligation as set forth in Rule 11b-1 under the Act requires that a specialist's dealings be restricted, so far as practicable, to those reasonably necessary to permit the specialist to maintain a fair and orderly market.⁸ The affirmative obligation as set forth in Rule 11b-1 under the Act requires a specialist to engage in a course of dealings for its own account to assist in the maintenance, so far as practicable, of a fair and orderly market.⁹ NYSE has adopted these obligations in its current Rule 104.¹⁰ In 2006, the Exchange began implementation of its NYSE HYBRID MARKETSM ("Hybrid Market"),¹¹ under which Exchange systems assumed the function of matching and executing electronically-entered orders. As part of the Hybrid Market, the Exchange programmed its systems to provide specialists with an order-by-order advance "look" at incoming orders.

The rise of the electronic Hybrid Market has fundamentally altered NYSE's trading environment. Traditionally, price discovery on the Exchange took place almost exclusively on the Floor in the form of face-to-face interactions among brokers and specialists. These interactions have diminished as electronic trading has become more important on the Exchange.

In addition, information that once was exclusive to the Floor, such as the most up-to-date quotes and last sale prices, is now widely available off the Floor through electronic means. At the same time, the Exchange believes that it is no longer the dominant trading market for many NYSE-listed securities, as competition from other market centers has increased.

The increase in electronic executions on the Exchange as well as the increase in the use of smart routing engines by market participants of all types has reduced the advantages once enjoyed by Floor brokers and specialists. Indeed, NYSE has argued that the informational advantage has shifted "upstairs" where

⁸ 17 CFR 240.11b-1(a)(2)(iii).

⁹ 17 CFR 240.11b-1(a)(2)(ii).

¹⁰ NYSE Rule 104(a) reflects NYSE's adoption of the negative obligation and states that "no specialist shall effect on the Exchange purchases or sales of any security in which such specialist is registered, for any account in which he or his member organization * * * is directly or indirectly interested, unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market * * *."

¹¹ See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR-NYSE-2004-05).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ Currently, specialists must yield to customer orders on the Display Book. See NYSE Rule 92(a).

⁵ Securities Exchange Act Release No. 58184 (Jul. 17, 2008), 73 FR 42853 ("Notice").

⁶ 15 U.S.C. 78k(b).

⁷ 17 CFR 240.11b-1.

¹¹ 17 CFR 200.30-3(a)(12).

¹ Formerly known as the New York Stock Exchange, Inc.