

Options will be charged the same reasonable dues, fees, and other charges.

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

The Exchange does not believe that the proposed rule change will impose 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 or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2009-77 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-NYSEAmex-2009-77. 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 publicly available. All submissions should refer to File Number SR-NYSEAmex-2009-77 and should be submitted on or before November 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60907; File No. SR-NYSEAmex-2009-73]

### **Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Commentary .04 to Rule 904C**

October 30, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on October 19, 2009, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange

Commission (the "Commission") the proposed rule change as described in Items I and II, 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 add Commentary .04 to Rule 904C to clarify position limits on reduced-value index options. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. 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 Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

The Exchange proposes to define and clarify the treatment of positions in reduced-value index options. NYSE Amex Rule 904C describes Position Limits for both Broad Stock Index Groups and Stock Index Industry Groups. Rule 904C does not describe aggregation requirements for reduced-value index options, nor does it describe the relationship of a position in a reduced-value index option to a position in a full-value index option.

Occasionally, when an index level is high it becomes less desirable for trading options because of the large amount of capital involved in maintaining margin. Additionally, because of the linear nature of options premiums, the premium for an at-the-money call on an index level of 500 will be ten times the premium for an at-the-money call at an index level of 50, and thus more expensive to trade. To

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

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</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.

address this situation, the Exchange may list options on a reduced-value index, in which the full index value is divided by a set amount, and the new, reduced-value index becomes the underlyer for a class of options.

NYSE Amex is proposing to add Commentary .04 to Rule 904C to require positions in reduced-value index options to be aggregated with any positions in options on the full-value of the same index. Additionally, Commentary .04 will explicitly state that the positions in reduced-value index options will be treated in the same ratio to a full-value index option position as the ratio between the reduced value index and the full value index. The Commentary is based on similar rule provisions of the Chicago Board Options Exchange, Inc. ("CBOE"), NASDAQ OMX PHLX ("PHLX"), and NYSE Arca, Inc.<sup>3</sup>

As an example, suppose that the Exchange listed options on the XXX narrow based index, and that the index had a position limit determined by Rule 904C of 31,500 contracts. If the Exchange then listed options on a one-fifth reduced-value of XXX, and designated it as XXR, then the position of one contract in XXR would be treated as the equivalent to one-fifth of a contract in XXX. The resultant position limit for XXR would be 157,500 contracts (5 × 31,500).

Positions in XXX and XXR would be aggregated such that the combination of XXX contracts and one-fifth of XXR contracts could not exceed 31,500.

The Exchange believes that definition and clarification of the requirements for the treatment of positions in reduced value index options will reduce confusion regarding the application of the Rules and ensure compliance with position limit requirements.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)<sup>4</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>5</sup> in particular in that it is designed to promote just and equitable principles if trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest, by requiring positions in reduced-value index options to be

aggregated with any positions in full-value index options, and to clarify how contracts in reduced-value index options are counted.

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

The Exchange does not believe that the proposed rule change will impose 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 or received with respect to the proposed rule change.

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

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>8</sup> However, Rule 19b-4(f)(6)(iii)<sup>9</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 notes that the proposal is substantially similar to the rules of other options exchanges<sup>10</sup> and serves to treat NYSE Amex users with positions in reduced-value index options in the same manner as they would be treated on the other options exchanges. In addition, the Exchange notes that waiving the 30-day operative delay will allow it to immediately offer market participants options in reduced

value index products on the same basis as they are offered on other exchanges. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal as operative upon filing with the Commission.<sup>11</sup>

At any time within 60 days of the filing of such 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2009-73 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-NYSEAmex-2009-73. 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

<sup>11</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).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to 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>9</sup> *Id.*

<sup>10</sup> See *supra* note 3.

<sup>3</sup> See CBOE Rule 24.4(d) and 24.4A(c); PHLX Rule 1001A (e); and NYSE Arca Rule 5.15(c).

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

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

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 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-NYSEAmex-2009-73 and should be submitted on or before November 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60905; File No. SR-NASDAQ-2009-093]

### Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Opening of Trading on the NASDAQ Options Market

October 30, 2009.

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 26, 2009, 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 a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to modify Chapter VI, Section 8 of the Exchange's rules, dealing with the Nasdaq Opening Cross. The Exchange proposes to implement this change on or about November 23, 2009.

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, the Exchange 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. The Exchange 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 modify Chapter VI, Section 8 of the rules governing NOM, and in particular governing the opening of trading in that market. Since NOM was launched on March 31, 2008, Nasdaq has monitored the operation of the market to identify instances where market efficiency can be enhanced.<sup>3</sup> Nasdaq believes that the opening of the market, while currently quite effective, can be further enhanced.

Currently, pursuant to Chapter VI, Section 8(b) of NOM's rules, the Nasdaq Opening Cross occurs at 9:30 a.m., unless the Opening Cross is delayed pursuant to Section 8(b)(5) of Chapter VI in order to avoid opening at a price that is away from the prevailing market. Pursuant to that provision, the opening is delayed if the Nasdaq BBO after execution of the opening print would be wider than pre-determined authorized

<sup>3</sup> For instance, in May 2008 Nasdaq filed a proposed rule change to enhance its opening process by (1) delaying the Opening Cross in the event that after the execution of the Opening Cross the NOM best bid and offer would be outside certain pre-determined threshold amounts, and (2) delaying the opening of trading if after the opening print the NOM best bid and offer would be outside the same pre-determined threshold amounts in instances where there is insufficient interest available to initiate the Opening Cross. See Securities Exchange Act Release No. 57822 (May 15, 2008), 73 FR 29800 (May 22, 2008) (SR-NASDAQ-2008-045). In June 2008 Nasdaq filed a proposed rule change to allow the opening of trading in those instances where trading interest at the National Best Bid and Offer ("NBBO"), which includes the non-firm Nasdaq Best Bid and Offer (Nasdaq BBO), is within the currently authorized trading thresholds. See Securities Exchange Act Release No. 57977 (June 17, 2008), 73 FR 35429 (June 23, 2008) (SR-NASDAQ-2008-052).

trading thresholds. In the event that no Opening Cross occurs due to insufficient interest, Nasdaq systematically delays the opening of trading if the NBBO (which includes the non-firm Nasdaq BBO) is wider than certain spread requirements set from time to time by Nasdaq management. Thus, both the NBBO and the Nasdaq BBO are currently analyzed by NOM when determining to open trading, in order to ensure opening the market in an orderly fashion. If a delay occurs pursuant to Section 8(b)(5) of Chapter VI, the Opening Cross (and thus regular market trading) does not commence until such time as it is determined that the width requirements can be met.<sup>4</sup>

The Exchange is proposing to alter its methodology for opening trading by deleting the delay provisions of Section 8(b)(5) of Chapter VI, and instead requiring certain other preconditions to be met. Additionally, Section 8(b)(2)(A) of Chapter VI would be amended to require the Nasdaq Opening Cross to occur at the price that maximizes the number of contracts of Eligible Interest<sup>5</sup> in NOM to be executed at or within the NBBO.

In order to improve the opening process on NOM by streamlining the opening timeline and providing further price protection to orders received prior to market open, Nasdaq is proposing to revise Section 8(b) of Chapter VI to permit the Opening Cross to occur at or after 9:30 if there is no Imbalance,<sup>6</sup> if the dissemination of a quote or trade by the Market for the Underlying Security<sup>7</sup> has occurred (or, in the case of index options, the Exchange has received the opening price of the underlying index) and if a certain number (as the Exchange may determine from time to time) of other options exchanges have disseminated a firm quote on the Options Price Reporting Authority ("OPRA"). If all the conditions specified

<sup>4</sup> Except for executions arising from the Opening Cross, executions are only permitted if they will not result in a trade-through violation of the NBBO as described in Chapter VI, Sec. 7(b)(3)(C) of the NOM rules.

<sup>5</sup> "Eligible Interest" is defined in Section 8(a)(1) [sic] of Chapter VI as any quotation or any order that may be entered into the system and designated with a time-in-force of IOC, DAY, GTC, or EXP.

<sup>6</sup> "Imbalance" is defined in Section 8(a)(1) of Chapter VI as the number of contracts of Eligible Interest that may not be matched with other order contracts at a particular price at any given time.

<sup>7</sup> New Section 8(a)(5) of Chapter VI would define "Market for the Underlying Security" as meaning either the primary listing market, the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months), or the first market to open the underlying security, as determined by the Exchange on an issue-by-issue basis and announced to the membership on the Exchange's Web site.

<sup>12</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.