

in general, and furthers the objectives of Section 6(b)(1)<sup>9</sup> of the Act, which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The proposed rule change is also consistent with, and furthers the objectives of, Section 6(b)(5)<sup>10</sup> of the Act, 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, 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. Specifically, the Exchange believes that the proposed rule change will protect investors and the public interest by codifying in the Bylaws the existing policy of the Corporation aimed at ensuring better corporate governance and accountability to stockholders by means of a voting procedure leading to election results that more accurately reflect the views of stockholders on the qualifications and suitability of individual director nominees, even if there are no alternative director nominees to vote for on the ballot.

#### *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**

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 (ii) as to which NYSE 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, as amended, 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-NYSE-2010-18 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-NYSE-2010-18. 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 Web site viewing and printing 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-NYSE-2010-18, and

should be submitted on or before April 8, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-5916 Filed 3-17-10; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-61700; File No. SR-NASDAQ-2010-034]**

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish an Optional Non-Display Usage Cap for Internal Distributors of TotalView and OpenView**

March 12, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on March 5, 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**

The Exchange proposes to create an optional non-display usage cap of \$30,000 per month for internal distributors of TotalView and OpenView.

The text of the proposed rule change is below. Proposed new language is in italics.<sup>3</sup>

\* \* \* \* \*

#### **7023. Nasdaq TotalView**

- (a) No change.  
 (a)(1)(A)-(C) No change.  
 (D) *As an alternative to (a)(1)(A), (B) and (C), a market participant may purchase an enterprise license at a rate of \$30,000 per month for internal use of non-display data. The enterprise license entitles a distributor to provide*

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> U.S.C. 78s(b)(1).

<sup>17</sup> 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>.

<sup>9</sup> 15 U.S.C. 78f(b)(1).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

*TotalView and OpenView to an unlimited number of non-display devices within its firm. The enterprise license shall not apply to relevant Level 1 fees.*

(a)(2) No change.

(b)–(d) 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, 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 amend Nasdaq Rule 7023 and establish an optional \$30,000 per month non-display TotalView and OpenView fee cap for internal distributors. The TotalView and OpenView fee cap would *not* include distributor fees. By providing this non-display usage cap, firms will have more administrative flexibility in their consumption of TotalView and OpenView information.

Currently, Nasdaq requires that internal distributors count and report each server and display device that processes TotalView-ITCH data as a professional TotalView and OpenView user. Some firms report upwards of 500 devices, while other firms report as few as one non-display device using TotalView-ITCH data.

Nasdaq proposes to permit a market participant to purchase an enterprise license at a rate of \$30,000 per month for non-display usage in a firm. As the number of devices increase, so does the administrative burden on the end customer of counting these devices. For firms that feel they are near the capped amount, this new enterprise license helps relieve this administrative burden. Additionally, firms would purchase this optional enterprise license to reduce fees so no firms would experience a fee increase as a result of this filing. Nasdaq has offered similar enterprise licenses for professional and non-professional usage of TotalView-ITCH data in the

past and is expanding this service to non-display devices as well.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general and with Sections 6(b)(5) of the Act,<sup>5</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 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. Nasdaq believes that this proposal is in keeping with those principles by offering firms an option to increase their administrative flexibility in their consumption of TotalView and OpenView information.

### 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

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)<sup>6</sup> of the Act and Rule 19b-4(f)(6)(iii) thereunder<sup>7</sup> because the foregoing proposed rule change 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 if consistent with the protection of investors and the public interest. In addition, at least five days prior to the instant filing, the Exchange provided

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

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

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

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

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 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-NASDAQ-2010-034 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-2010-034. 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 web site viewing and printing in the Commission's Public Reference Room. 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–2010–034 and should be submitted on or before April 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–5918 Filed 3–17–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61696; File No. SR–CBOE–2010–005]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change To Establish Strike Price Intervals and Trading Hours for Options on Index-Linked Securities

March 12, 2010.

#### I. Introduction

On January 27, 2010, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to establish strike price intervals and trading hours for Index-Linked Securities. The proposed rule change was published for comment in the **Federal Register** on February 8, 2010.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

Prior to the commencement of trading options on Index-Linked Securities (also known as exchange-traded notes (“ETN”)), CBOE has proposed to establish strike price intervals and trading hours for these new products. The Commission has approved CBOE’s and other option exchanges’ proposals to enable the listing and trading of options on Index-Linked Securities.<sup>4</sup>

#### \$1 Strikes for ETN Options

CBOE’s proposal would extend the trading conventions applicable to options on exchange-traded funds (“ETFs”) to options on Index-Linked Securities. Specifically, under the proposed rule change, strike price intervals of \$1 will be permitted where the strike price is less than \$200. Where the strike price is greater than \$200, \$5 strikes will be permitted. These proposed changes are reflected by the proposed addition of new Interpretation and Policy .09 to Rule 5.5. The proposed strike price intervals for options on Index-Linked Securities are consistent with the strike price intervals currently permitted for options on ETFs.<sup>5</sup>

In support of its proposal, CBOE stated that it believes the marketplace and investors will be expecting ETN options to trade in a similar manner to options on ETFs. Strike prices for ETF options are permitted in \$1 or greater intervals where the strike price is \$200 or less and \$5 or greater where the strike price is greater than \$200.<sup>6</sup> Accordingly, the Exchange asserts that the rationale for permitting \$1 strikes for ETF options equally applies to permitting \$1 strikes for ETN options and that investors will be better served if \$1 strike price intervals are available for ETN options (where the strike price is less than \$200).

CBOE further stated that it has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of \$1 strikes (where the strike price is less than \$200) for ETN options.

#### Trading Hours for ETN Options

Similar to the trading hours for ETF options, the Exchange’s proposal also would amend Interpretation and Policy .03 to Rule 6.1 by: (1) Adding new subparagraph (b) to provide that options on Index-Linked Securities, as defined under Interpretation and Policy .13 to Rule 5.3, may be traded on the Exchange until 3:15 p.m. each business day; and (2) making a technical change to Interpretation and Policy .03 to Rule 6.1.

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the

rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of a national securities exchange be 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 Commission notes that the proposed strike price intervals for options on Index-Linked Securities are consistent with the strike price intervals currently permitted for options on ETFs.<sup>9</sup> Accordingly, the proposal should provide consistency and predictability for investors who may view these products as serving similar investment functions in the marketplace to ETFs and may provide investors with greater flexibility in achieving their investment objectives.

In addition, the Commission notes that CBOE has represented that it believes the Exchange and the Options Price Reporting Authority CBOE and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of \$1 strikes for options on Index-Linked Securities.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR–CBOE–2010–005) be, and hereby is, approved.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–5917 Filed 3–17–10; 8:45 am]

**BILLING CODE 8011–01–P**

<sup>8</sup> 17 C.F.R. 200.30–3(a)(12). [sic]

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> Securities Exchange Act Release No. 61466 (February 2, 2010), 75 FR 6243.

<sup>4</sup> See e.g., Securities Exchange Act Release No. 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (approving SR–CBOE–2008–64); 58203 (July 22, 2008), 73 FR 43812 (July 28, 2008) (approving SR–NYSEArca–2008–57); 58985 (November 10, 2008), 73 FR 72538 (November 28, 2008) (approving SR–ISE–2008–86).

<sup>5</sup> See Interpretation and Policy .08 to Rule 5.5.

See also Securities Exchange Act Release No. 46507 (September 17, 2002), 67 FR 60266 (September 25, 2002) (permitting list of options on ETFs at \$1 strike price intervals) (SR–CBOE–2002–54).

<sup>6</sup> See *id.*

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See *supra* note 5.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30–3(a)(12).