for so finding or as to which the sponsors consent, the Commission shall approve such plan or amendment, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act. The 120th day for this notice of filing of a national market system plan is September 29, 2011.

The Commission is hereby extending the 120-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change. In particular, the extension of time will ensure that the Commission has sufficient time to consider and take action on the Participants' proposal, in light of, among other things, the comments received on the proposal.

Accordingly, pursuant to Section 11A of the Act [8] and Rule 608 thereunder,[9] the Commission designates November 28, 2011 as the date by which the Commission shall approve the proposed Plan (File Number 4–631), with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

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BILLING CODE 8011–01–P

[8] *Id.*

[9] 17 CFR 242.608.

[10] 17 CFR 200.30–3(a)(42).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65405; File No. SR–NASDAQ–2011–105]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change To Establish an Acceptable Trade Range for Quotes and Orders Entered on The NASDAQ Options Market

September 27, 2011.

I. Introduction

On August 2, 2011, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to establish an Acceptable Trade Range (''ATR'') for quotes and orders entered on The NASDAQ Options Market (''NOM''). The proposed rule change was published for comment in the **Federal Register** on August 18, 2011.[3] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to establish an ATR for quotes and orders entered on NOM, which is intended to create a level of protection on NOM that prevents the market from moving beyond set thresholds. These thresholds would consist of a reference price plus or minus set dollar amounts based on the nature and premium of the option. This mechanism is intended to prevent the NOM trading system from experiencing dramatic price swings, which can exist if, for example, a market order or aggressively-priced limit order is entered that is larger than the total volume of contracts quoted at the top-of-book across all U.S. options exchanges.[4] The Exchange believes that, without the ATR, options could execute at prices that have little or no relation to the theoretical price of the option, resulting in potential harm to investors.[5]

A. ATR Operation

Prior to executing orders received by NOM, an ATR would be calculated to determine the range of prices at which orders may be executed. When an order is initially received, the range would be calculated by adding (for buy orders) or subtracting (for sell orders) a value to the National Best Offer (''NBO'') (for buy orders) or the National Best Bid (''NBB'') (for sell orders) to determine the range of prices that would be valid for execution. A buy (sell) order would be allowed to execute up (down) to and including the maximum (minimum) price within the ATR (''Threshold Price''). If an order could not be executed completely within the ATR, the unexecuted portion of the original order would be posted at the Threshold Price for a brief period, not to exceed one second (''Posting Period''), to allow the market to refresh and determine whether or not more liquidity becomes available on NOM (or any other exchange if the order is designated as routable) within the posted price of the order before moving on to a new Threshold Price. The Threshold Price, at which the order is posted, would then become the new reference price,[6] and a new ATR would be calculated.

Once the Posting Period has expired, if the order has not been fully executed, it would be allowed to execute up to and including the Threshold Price of the new ATR. During the Posting Period, NOM would display the ATR Threshold Price on one side of the market and the best available price on the opposite side of the market using a ''non-firm'' indicator. The order setting the ATR retains price/time priority in the NOM book.[7] The Exchange notes that, if NOM were to display trading interest available on the opposite side of the market, that trading interest would be automatically accessible to later-entered orders during the period when the order triggering the ATR is paused.[8] Following the Posting Period, the Exchange would return to a normal trading state and disseminate its best bid and offer.

The ATR will be neutral with respect to away markets in that NOM will route orders to other destinations to access liquidity priced within the ATR, provided the order is designated as routable.[9] If an order remains unexecuted, the process would repeat until it is executed, cancelled, or posted at its limit price. If an order is routed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65125 (August 12, 2011), 76 FR 51453 (August 18, 2011) (''Notice'').

[4] *Id.*

[5] The Exchange provides an example of such executions in the Notice. *Id.*

[6] If a new NBB is received that is greater than a buy order posted at the Threshold Price, or a new NBO is received that is lower than a sell order posted at the Threshold Price, the new NBB (for buy orders) or NBO (for sell orders) would become the new reference price.

[7] *See* Notice, *supra* note 3, 76 FR at 51454.

[8] *Id.*

[9] *Id.*

to the full size of an away exchange and additional size remains available on NOM, the remaining contracts would be posted on NOM at a price that assumes the away market has executed the routed order. The Exchange believes this practice of routing and then posting would be consistent with the national market system plan governing trading and routing of options orders and the NOM policies and procedures that implement that plan.[10]

B. Setting ATR Values

The Exchange represents that the options class premium would be the dominant factor in determining the ATR.[11] The Exchange further represents that options with lower premiums tend to be more liquid and have tighter bid/ask spreads, while options with higher premiums have wider spreads and less liquidity.[12] Accordingly, the Exchange proposes to use a table consisting of several steps based on the premium of the option to determine how far the market for a given option would be allowed to move. The table(s) would be listed on the NASDAQTrader.com website, and any periodic updates to the table(s) would be announced via an Options Trader Alert (''OTA'').[13] The Exchange does not anticipate updating the table(s) frequently or intraday.[14] The Exchange will provide sufficient advanced notice of changes to the ATR table(s) to its membership via OTAs.[15]

Other market conditions, such as extreme volatility or historically low liquidity, would also be considered when determining the ATR. The Exchange believes these different market conditions could present the need to adjust the ATRs from time to time to ensure a well-functioning market.[16] Without adjustments, the Exchange believes the market could become too constrained or, conversely, prone to wide price swings.[17]

The Exchange represents that the ATR would be generally the same across all options traded on NOM, but it proposes to maintain flexibility to set them separately based on characteristics of the underlying security.[18] Initially, the Exchange expects to set ATRs for three categories of options: Standard Penny Pilot, Special Penny Pilot (*e.g.,* IWM, QQQQ, SPY), and Non-Penny Pilot.[19]

III. Discussion

After careful review of the proposal, 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.[20] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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 Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[22] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The ATR is intended to reduce the negative impacts of sudden, unanticipated volatility in individual NOM options, assist in preserving an orderly market in a transparent and uniform manner, enhance the price-discovery process, increase overall market confidence, and promote fair and orderly markets and the protection of investors.[23] The Commission notes that the ATR will be neutral with respect to away markets in that NOM will route orders to other destinations to access liquidity priced within the ATR, provided the order is designated as routable.[24] The Commission believes that the ATR functionality should result in greater continuity in prices as it is designed to prevent immediate or rapid executions at far away prices; thereby protecting investors and the public interest.

The Exchange believes that disseminating a non-firm quotation message during the Posting Period would be consistent with its obligations under the Quote Rule.[25] Specifically, the Exchange believes that volatility strong enough to trigger the ATR on NOM qualifies as an unusual market condition.[26] The Exchange expects such situations to be rare, and the Exchange will set the parameters of the ATR at levels that would ensure that it is triggered infrequently.[27] The Commission believes that the Exchange's dissemination of a non-firm quotation on the opposite side of the market from the Threshold Price of the paused order during the Posting Period is consistent with the Quote Rule's provisions regarding non-firm quotations.[28]

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NASDAQ–2011–105) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Elizabeth M. Murphy,

Secretary.

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[10] *See* Notice, *supra* note 3, 76 FR at 51455, n.9 and accompanying text. The Exchange provides examples of this process in the Notice. *Id.* at 51455–56.

[11] *Id.* at 51456.

[12] *Id.*

[13] The value added to or subtracted from the reference price would be set by the Exchange and posted on the Exchange Web site: *http://www.nasdaqtrader.com.*

[14] *See* Notice, *supra* note 3, 76 FR at 51455.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] The Exchange provides examples of options that could require this flexibility because of the underlying securities. *Id.* The Exchange notes that the Acceptable Range Test in place at NASDAQ OMX PHLX LLC (''Phlx'') currently provides for this flexibility. *See* Phlx Rule 1082(a)(ii)(B)(3)(f).

[19] *See* Notice, *supra* note 3, 76 FR at 51456.

[20] 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).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78f(b)(8).

[23] *See* Notice, *supra* note 3, 76 FR at 51456.

[24] *See id.* at 51454.

[25] *Id.*

[26] *Id.*

[27] *Id.* The ATR will cause the market to pause for no more than one second, which the Exchange notes is a briefer pause than occurs in other markets that experience and attempt to dampen volatility. For example, the Posting Period would be briefer than the pause triggered by the Liquidity Replenishment Point (''LRP'') employed by the New York Stock Exchange LLC (''NYSE''). *See* NYSE Rules 1000(a)(iv) and 60(d).

[28] *See* 17 CFR 242.602(a)(3)(i)–(ii). Specifically, Rule 602(a)(3) provides that, if, at any time a national securities exchange is open for trading, the exchange determines, pursuant to rules approved by the Commission, that the level of trading activities or the existence of unusual market conditions is such that the exchange is incapable of collecting, processing, and making available to vendors the data for a subject security required to be made available in a manner that accurately reflects the current state of the market on such exchange, such exchange shall immediately notify all specified persons of that determination and, upon such notification, the exchange is generally relieved of its obligations relating to collecting and disseminating quotations.

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).