

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59632; File No. SR-NASDAQ-2009-030)

March 26, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposal to Extend the Options Penny Pilot for The NASDAQ Options Market

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 March 25, 2009, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 is proposing to extend a pilot (the “pilot”) that permits certain options series to be quoted and traded in increments of \$0.01. The Exchange proposes to extend the pilot through July 3, 2009. There is no new text contained in this proposed rule change. The text of the filing is available at <http://www.cchwallstreet.com/nasdaq>, at NASDAQ’s principal office, and at the Commission’s Public Reference Room.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

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

Nasdaq has designated this proposal as non-controversial and provided the Commission with the notice required by Exchange Act Rule 19b-4(f)(6)(iii). Nasdaq requests that the Commission waive the 30-day pre-operative waiting period contained in that rule. If such waiver is granted by the Commission, this rule proposal, which is effective upon filing with the Commission, shall become immediately operative pursuant to SEC Rule 19b-4(f)(6).

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 the proposed rule change is to continue to permit specified options series to be quoted and traded in increments of \$0.01 by extending the pilot through July 3, 2009. Prior to the Penny Pilot Program, options were quoted in nickel and dime increments. The minimum price variation for quotations in options series that are quoted at less than \$3 per contract is \$0.05 and the minimum price variation for quotations in options series that are quoted at \$3 per contract or greater is \$0.10.

Under the Penny Pilot Program, beginning on January 26, 2007, market participants were able to begin quoting in penny increments in certain series of option classes. The Penny Pilot Program originally included the following thirteen options:

Ishares Russell 2000 (IWM); NASDAQ-100 Index Tracking Stock (QQQQ);  
 SemiConductor Holders Trust (SMH); General Electric Company (GE); Advanced Micro  
 Devices, Inc. (AMD), Microsoft Corporation (MSFT); Intel Corporation (INTC);  
 Caterpillar, Inc. (CAT); Whole Foods Market, Inc. (WFMI); Texas Instruments, Inc.  
 (TXN); Flextronics International Ltd. (FLEX); Sun Microsystems, Inc. (SUNW); and  
 Agilent Technologies, Inc. (A).

On September 28, 2007, the following twenty-two options classes were added:  
 SPDRs (SPY); Apple, Inc. (AAPL); Altria Group Inc. (MO); Dendreon Corp. (DNDN);  
 Amgen Inc. (AMGN); Yahoo! Inc. (YHOO); QUALCOMM Inc. (QCOM); General  
 Motors Corporation (GM); Energy Select Sector (XLE); DIAMONDS Trust, Series 1  
 (DIA); Oil Services HOLDRs (OIH); NYSE Euronext, Inc. (NYX); Cisco Systems, Inc.  
 (CSCO); Financial Select Sector SPDR (XLF); AT&T Inc. (T); Citigroup Inc. (C);  
 Amazon.com Inc. (AMZN); Motorola Inc. (MOT); Research in Motion Ltd. (RIMM);  
 Freeport-McMoRan Copper & Gold Inc. (FCX); ConocoPhillips (COP); and Bristol-  
 Myers Squibb Co. (BMY). These thirty-five options classes are among the most  
 actively-traded, multiply-listed options classes.

On March 28, 2008, the following 28 options classes were added:

Goldman Sachs Group, Inc. (GS)	The Bear Stearns Companies, Inc. (BSC)
Countrywide Financial Corporation (CFC)	Pfizer Inc. (PFE)
Bank of America Corporation (BAC)	eBay Inc. (EBAY)
iShares MSCI Emerging Mkts. Index Fund (EEM)	Halliburton Company (HAL)
Merrill Lynch & Co., Inc. (MER)	Lehman Brothers Holdings Inc. (LEH)
Vale (RIO)	JPMorgan Chase & Co. (JPM)
EMC Corporation (EMC)	Washington Mutual, Inc. (WM)
Exxon Mobil Corporation (XOM)	Ford Motor Company (F)
Wal-Mart Stores, Inc. (WMT)	Target Corporation (TGT)
The Home Depot, Inc. (HD)	American International Group, Inc. (AIG)
Valero Energy Corporation (VLO)	Newmont Mining Corporation (NEM)

Alcoa Inc. (AA)  
Dell Inc. (DELL)  
SanDisk Corporation (SNDK)

Verizon Communications Inc. (VZ)  
Mini-NDX Index Options (MNX)  
Starbucks Corporation (SBUX)

The minimum price variation for all classes included in the Penny Pilot Program, except for the QQQQs, is \$0.01 for all quotations in option series that are quoted at less than \$3 per contract and \$0.05 for all quotations in option series that are quoted at \$3 per contract or greater. The QQQQs are quoted in \$0.01 increments for all options series.

During the extended Pilot Program, Nasdaq will submit a report addressing the impact of the pilot on the quality of the Exchange's markets and option quote traffic and capacity not later than the last business day of May, 2009, covering the period from February 1, 2009 through April 30, 2009, and will submit further reports as requested by the Commission as the pilot continues.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general and with Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers,

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.

Analysis of the current Pilot has shown that the reduction in the minimum quoting increment has resulted in narrowing the average quoted spreads in all classes in the Pilot. A reduction in quoted spreads means that customers and other market participants may be able to trade options at better prices. Extending the Pilot Program as proposed will allow further analysis of the impact of penny quoting in the Pilot classes over a longer period of time on, among other things: (1) spreads; (2) peak quote rates; (3) quote message traffic; (4) displayed size; (5) "depth of book" liquidity; and (6) market structure. Nasdaq's unique options market structure will add to the analysis delivered by the existing options markets to date.

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

Because the foregoing rule 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Penny Pilot Program to continue without interruption through July 3, 2009.<sup>11</sup> Accordingly, the Commission designated the proposed rule change operative upon filing with the Commission.

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.

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

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 the pre-filing requirement.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4.

<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. 78(c)(f).

#### 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-NASDAQ-2009-030 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-2009-030. 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 Section, 100 F Street, NE, Washington, DC 20549-1090 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of the filing will also be available for inspection and copying at Nasdaq's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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-2009-030 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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