

4(f)(6)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. CHX has requested that the Commission waive the 30-day operative delay. The Exchange notes that the proposed rule change is substantially similar to a rule change proposed by NYSE Arca, Inc.¹¹ The Exchange also believes that it is important to implement this rule change as soon as practicable to ensure that the Exchange has adequate personnel available to suspend or reinstate trading on the Exchange when necessary. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it should further the Exchange's ability to suspend or reinstate trading on the Exchange when necessary in the public interest. For this reason, the Commission designates the proposal to be operative upon filing with the Commission.¹²

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 the 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-CHX-2009-05 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-CHX-2009-05. 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 the filing also will be available for inspection and copying at the principal office of the CHX. 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-CHX-2009-05 and should be submitted on or before August 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60282; File No. SR-NYSEArca-2009-66]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Option Trading Rules in Order To Adopt the Quarterly Option Series Pilot Program on a Permanent Basis

July 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder,

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

notice is hereby given that on July 9, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 amend its option trading rules in order to adopt the Quarterly Option Series Pilot Program on a permanent basis. 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 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

The Exchange is proposing to adopt the Quarterly Option Series Pilot Program ("QOS Program") on a permanent basis. On July 12, 2006, the Exchange filed with the Securities and Exchange Commission ("Commission") SR-NYSEArca-2006-45, which was effective on filing and established the QOS Program. The QOS Program allows NYSE Arca to list and trade Quarterly Option Series, which expire at the close of business of the last business day of a calendar quarter. Under the QOS Program, NYSE Arca may select up to five (5) currently listed exchange traded fund ("ETF") or index option classes on which Quarterly Option Series may be opened. In addition, NYSE Arca may also list Quarterly Option Series on any

¹⁰ *Id.*

¹¹ See NYSE Arca Equities Rule 7.13; see also Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25).

¹² For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

options classes that are selected by other securities exchanges that employ a similar pilot program under their respective rules.

The Exchange may list series that expire at the end of the next consecutive four (4) calendar quarters, as well as the fourth quarter of the next calendar year. For example, if the Exchange is trading Quarterly Options Series in the month of May 2009, it may list series that expire at the end of the second, third, and fourth quarters of 2009, as well as the first and fourth quarters of 2010. Following the second quarter 2009 expiration, the Exchange could add series that expire at the end of the second quarter of 2010.

Quarterly Option Series are P.M. settled.

Quarterly Option Series in ETF Options

If an ETF option is selected for participation in the QOS Program, the strike price of each Quarterly Option Series is fixed at a price per share, with at least two strike prices above and two strike prices below the approximate value of the underlying security at about the time the Quarterly Options Series is opened for trading on the Exchange. NYSE Arca shall list strikes prices for a Quarterly Option series that are within \$5 from the closing price of the underlying security on the preceding day.

The Exchange may open for trading additional Quarterly Options Series of the same class when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices shall be within thirty percent (30%) above or below the closing price of the underlying ETF on the preceding day. The Exchange may also open additional strike prices of Quarterly Option Series in ETF options that are more than 30% above or below the current price of the underlying ETF provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision. The opening of the new Quarterly Options Series shall not affect the series of options of the same class previously opened. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each Quarterly Options Series in ETF options.

The interval between strike prices on Quarterly Options Series shall be the same as the interval for strike prices for series in that same options class that expire in accordance with the normal monthly expiration cycle.

The Exchange has adopted a delisting policy with respect to QOS in ETF options. On a monthly basis, the Exchange reviews series that are outside a range of five (5) strikes above and five (5) strikes below the current price of the underlying ETF, and delists series with no open interest in both the put and the call series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding the delisting policy, customer requests to add strikes and/or maintain strikes in QOS in ETF options in series eligible for delisting shall be granted.

Further, in connection with the delisting policy, if the Exchange identifies series for delisting, the Exchange shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed Quarterly Options Series in ETF options.

During the last quarter of 2008 (and for the new expiration month added after December Quarterly Option Series expiration), the Exchange was permitted to list up to one hundred (100) additional series per expiration month for each Quarterly Options Series in ETF options.

Quarterly Option Series in Index Options

If an index option is selected for participation in the QOS Program, the strike price of each Quarterly Option Series will be fixed at a price per share, with at least two, but no more than five, strike prices above and at least two, but no more than five, strike prices below the value of the underlying index at about the time that a Quarterly Options Series is opened for trading on the Exchange. The Exchange shall list strike prices for Quarterly Options Series that are reasonably related to the current index value of the underlying index to which such series relates at about the time such series of options is first opened for trading on the Exchange. The term "reasonably related to the current index value of the underlying index" means that the exercise price is within

thirty percent (30%) of the current index value.

The Exchange may open for trading additional Quarterly Options Series of the same class when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the initial exercise price or prices. The Exchange may also open for trading additional Quarterly Options Series that are more than thirty percent (30%) of the current index value, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision.

The Exchange may open additional strike prices of a Quarterly Option Series that are above the value of the underlying index provided that the total number of strike prices above the value of the underlying index is no greater than five. The Exchange may open additional strike prices of a Quarterly Option Series that are below the value of the underlying index provided that the total number of strike prices below the value of the underlying index is no greater than five. The opening of any new Quarterly Option Series shall not affect the series of options of the same class previously opened.

By definition, Quarterly Option Series on an option class can never expire in the same week in which monthly option series on the same class expires. The same, however, is not the case with regards to Short Term Option Series. Quarterly Option Series and Short Term Option Series on the same options class may expire concurrently. However, to avoid any confusion in the market place, the Exchange will not list a Short Term Option Series on an options class whose expiration coincides with that of a Quarterly Option Series on the same options class. In other words, the Exchange will not list a Short Term Options Series on an ETF or an index if a Quarterly Option Series on that ETF or index were to expire on a Friday, the only day of the week during which both Quarterly Option Series and a P.M.-settled Short Term Option Series can potentially expire concurrently.

There being one exception to this rule. The Exchange may list a P.M.-settled Quarterly Option Series on an options class concurrent with an A.M.-settled Short Term Options Series on that same options class, both of which may expire on a Friday. In other words, the Exchange may list a P.M.-settled

Quarterly Option Series on an ETF on an index concurrent with an A.M.-settled Short Term Option Series on that ETF or index and both of which expire on a Friday. The Exchange believes that the concurrent listing of an A.M.-settled Short Term Option Series and a P.M.-settled Quarterly Option Series on the same underlying ETF or index will provide investors with yet another hedging mechanism. Finally, the interval between strike prices on Quarterly Option Series shall be the same as the interval for strike prices for series in the same options class that expires in accordance with the normal monthly expiration cycles.

The Exchange presently lists and trades Quarterly Option Series on the following six ETF option classes as part of the QOS Program: DIAMONDS Trust (DIA), Standard and Poor's Depository Receipts/SPDRs (SPY), iShares Russell 2000 Index Fund (IWM), PowerShares QQQ Trust (QQQQ), Energy Select SPDR (XLE), and the KBW Bank Index (BXX). NYSE Arca believes the QOS Program has been successful and well received by its members and the investing public for the nearly three years that it has been in operation as a pilot program.

NYSE Arca is now proposing to make the QOS Program permanent. In support of approving the QOS Program on a permanent basis, the Exchange has submitted to the Commission a Pilot Program Report ("Report") detailing the Exchange's experience with the QOS Program. Specifically, the Report contains data and written analysis regarding the six ETF option classes included in the QOS Program. The Report was submitted under separate cover and seeks confidential treatment under the Freedom of Information Act.

The Exchange believes there is sufficient investor interest and demand in the QOS Program to warrant its permanent approval. The Exchange believes that the QOS Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange has not experienced any capacity-related problems with respect to Quarterly Option Series. The Exchange also represents that it has the necessary system capacity to continue to support the option series listed under the QOS Program.

This proposal is substantially similar to the recently approved proposal by the Chicago Board Options Exchange

("CBOE"), to make permanent their Quarterly Options Series Program.³

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁴ of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)⁵ 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the QOS Program promotes just and equitable principles of trade and further believes the QOS Program has been successful and well received by the investing public for the nearly three years that it has been in operation as a pilot program.

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 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 after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(6) thereunder.⁷

³ See Securities Exchange Act Release No. 60164 (June 23, 2009), 74 FR 31333 (June 30, 2009) (order approving SR-CBOE-2009-29).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file

The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange can permanently establish a Quarterly Options Series Program that is consistent with those of other options exchanges.⁸ In addition, the Commission notes that the Exchange's QOS Program currently is scheduled to expire on July 10, 2009. The Commission therefore has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will enable the Exchange to permanently establish the QOS program without disruption.⁹ Therefore, the Commission designates the proposal operative upon filing.

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-NYSEArca-2009-66 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-NYSEArca-2009-66. This file number should be included on the subject line if e-mail is used. To help the

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.

⁸ See Securities Exchange Act Release No. 60164, *supra* note 3 (approving the quarterly options series program on a permanent basis).

⁹ For 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).

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 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-NYSEArca-2009-66 and should be submitted on or before August 7, 2009.

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

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-17007 Filed 7-16-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60276; File No. SR-NASDAQ-2009-042]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change To Amend Its Limited Liability Agreement and By-Laws

July 9, 2009.

On April 29, 2009, The NASDAQ Stock Market LLC ("NASDAQ Exchange" 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 amend its Limited Liability

Agreement ("Agreement") and By-Laws.³ The proposed rule change was published for comment in the **Federal Register** on May 20, 2009.⁴ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

I. Description of the Proposed Rule Change

Currently, the NASDAQ Exchange board and the board of its parent company, NASDAQ OMX Group, Inc. ("NASDAQ OMX"), maintain their own audit committee and management compensation committees. As more fully discussed in the Notice, the Exchange states that it has found the work of these committees to overlap substantially.⁵ As a result, the Exchange proposes to revise its Agreement to allow for the elimination of its audit and management compensation committees.

The Exchange also proposes to amend the Agreement to allow for the elimination of its arbitration and mediation committee, provided that the NASDAQ Exchange's arbitration and mediation program is operated by the Financial Industry Regulatory Authority ("FINRA"), which the NASDAQ Exchange states is currently the case.

In addition, as discussed in the Notice, the Exchange proposes changes to its rules governing the selection of Member Representative Directors, as well as to update certain aspects of its Agreement.⁶

II. Discussion and Commission Findings

After careful review, 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.⁷ In particular, the Commission finds that the proposed rule change is consistent with Section

6(b)(1) of the Act,⁸ 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 Commission also finds that the proposed rule change is consistent with Section 6(b)(3) of the Act,⁹ which requires that the rules of a national securities exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission further finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁰ in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, 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 previously approved a structure in which certain committees of the board of directors of NYSE Euronext, including the audit and compensation committees, were authorized to perform functions for various subsidiaries, including the New York Stock Exchange, LLC ("NYSE").¹¹

A. Elimination of the Exchange's Audit and Management Compensation Committees

Currently, the NASDAQ Exchange audit committee is primarily charged with: (1) Oversight of the NASDAQ Exchange's financial reporting; (2) oversight of the systems of internal controls established by management and the NASDAQ Exchange board, as well as the legal and compliance process; (3) selection and evaluation of independent auditors; and (4) direction and oversight of the internal audit function. The Exchange states that the responsibilities of the NASDAQ Exchange's audit committee are fully duplicated¹² by the

³ The Agreement includes and incorporates an exhibit designated as the By-Laws of the NASDAQ Stock Market LLC. Accordingly, the By-Laws are part of the Agreement. See Securities Exchange Act Release No. 59907 (May 12, 2009), 74 FR 23761 ("Notice"), 23761 n.3.

⁴ See Notice, *supra* note 3.

⁵ See Notice, 74 FR at 23761.

⁶ Specifically, the Exchange would: reflect the name change of The Nasdaq Stock Market, Inc. to The NASDAQ OMX Group, Inc.; reflect the name change of National Association of Securities Dealers, Inc. to FINRA; correct typographical errors in the definition of "Industry member" in Article I of the By-Laws and in Section 6 of the Agreement; and redesignate the Agreement as the "Second Amended Limited Liability Company Agreement of The NASDAQ Stock Market LLC."

⁷ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(1).

⁹ 15 U.S.C. 78f(b)(3).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR-NYSE-2006-120).

¹² Specifically the NASDAQ Exchange states the NASDAQ OMX audit committee, described *infra* at n.13, has broad authority to review the financial information that will be provided to shareholders and others, systems of internal controls, and audit, financial reporting and legal and compliance processes and, because NASDAQ OMX's financial

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.