| OMB APPROVAL |
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| OMB Number: 3235-0045<br>Estimated average burden<br>hours per response...........38 |

*Required fields are shown with yellow backgrounds and asterisks.*



SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2012 - * 077
Amendment No. (req. for Amendments *)

Proposed Rule Change by NASDAQ Stock Market

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

| Initial * | Amendment * | Withdrawal | Section 19(b)(2) * | Section 19(b)(3)(A) * | Section 19(b)(3)(B) * |
|---|---|---|---|---|---|
| ☑ | ☐ | ☐ | ☐ | ☑ | ☐ |

Pilot ☐ — Extension of Time Period for Commission Action * ☐ — Date Expires *

Rule

| 19b-4(f)(1) | 19b-4(f)(2) | 19b-4(f)(3) | 19b-4(f)(4) | 19b-4(f)(5) | 19b-4(f)(6) |
|---|---|---|---|---|---|
| ☐ | ☐ | ☐ | ☐ | ☐ | ☑ |

Exhibit 2 Sent As Paper Document ☐ Exhibit 3 Sent As Paper Document ☐

**Description**

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

A proposed rule change correcting various NASDAQ Options Market rules.

**Contact Information**

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name * Edith Last Name * Hallahan
Title * Principal Associate General Counsel
E-mail * edith.hallahan@nasdaqomx.com
Telephone * (215) 496-5179 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 06/26/2012
By Edward S. Knight
(Name *)

Executive Vice President and General Counsel
(Title *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Edward S Knight,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

| | |
|---|---|
| **Form 19b-4 Information (required)**<br>Add Remove View | The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act. |
| **Exhibit 1 - Notice of Proposed Rule Change (required)**<br>Add Remove View | The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3) |
| **Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**<br>Add Remove View<br>Exhibit Sent As Paper Document<br>☐ | Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G. |
| **Exhibit 3 - Form, Report, or Questionnaire**<br>Add Remove View<br>Exhibit Sent As Paper Document<br>☐ | Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change. |
| **Exhibit 4 - Marked Copies**<br>Add Remove View | The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working. |
| **Exhibit 5 - Proposed Rule Text**<br>Add Remove View | The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change. |
| **Partial Amendment**<br>Add Remove View | If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions. |

1. Text of the Proposed Rule Change

(a) The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("Commission") a proposal for the NASDAQ Options Market ("NOM") to amend the following provisions: Chapter I, Section 3 to add additional exchanges to the list of those rules incorporated by reference; Chapter V, Section 3 to provide that market maker interest is cancelled during a halt; Chapter VI, Section 1(d) to delete Attributable and Non-Attributable orders; Chapter VI, Section 1(e)(3) to provide that Minimum Quantity Orders are treated as having a time-in-force designation of Immediate or Cancel ("IOC");Chapter VI, Section 1(e)(8), to provide that Intermarket Sweep Orders ("ISOs") may have any time-in-force designation except WAIT; Chapter VI, Section 2(a) to provide that option contracts on certain fund shares or broad-based indexes may close as of 4:15 p.m.; Chapter VI, Section 6(a)(1) to make clear that Market Orders are accepted; Chapter VI, Section 11, to provide that routing is limited to System Securities; and Chapter VII, Section 12, Commentary .03 to update the reference to non-displayed trading interest. NASDAQ also proposes minor typographical changes to several rules, as explained further below.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

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

2 17 CFR 240.19b-4.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of NASDAQ pursuant to authority delegated by the Board of Directors of NASDAQ on August 19, 2011. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to Edith Hallahan at 215-496-5179.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

NASDAQ proposes to correct and clarify various provisions in NOM rules. Specifically, NASDAQ proposes to amend Chapter I, Section 3, to add to the list of those rules incorporated by reference. Currently, the rule refers to the Financial Industry Regulatory Authority ("FINRA"), but not to the Chicago Board Options Exchange nor to the New York Stock Exchange, which are now proposed to be added. NASDAQ believes that the proposed change is not controversial, because it merely codifies two additional exchanges into the provision that covers rules that are incorporated by reference.

NASDAQ proposes to amend Chapter V, Section 3, to provide that market maker interest is cancelled during a halt. Currently, this provision states that during a halt, the Exchange will maintain existing orders on the book, accept orders, and process cancels. However, Market Maker interest entered pursuant to the obligations contained in Chapter VII, Section 5 is cancelled. Therefore, NASDAQ proposes to add this language to the rule to more accurately reflect what occurs during a halt. Furthermore, it is not reasonable for a Market Maker to determine an option's price without taking into account the event that caused the halt in that option, and it is not beneficial to the market to maintain the quotes of Market Makers when an option halts. Therefore, NASDAQ believes that the proposed change is not controversial.

NASDAQ proposes to amend Chapter VI, Section 6(a)(1) to delete reference to a limit price to be clear that market orders are accepted. NASDAQ believes that this proposal is not controversial, because another rule already provides that market orders are accepted.[3] Specifically, it will now provide that all System orders shall indicate whether they are a call or put and buy or sell and a price, if any.

NASDAQ also proposes to amend Chapter VI, Section 1(e)(3), to provide that Minimum Quantity Orders are treated as having a time-in-force designation of Immediate or Cancel ("IOC"). The current language of Chapter VI, Section 1(e)(3) states that Minimum Quantity Orders may only be entered with a time-in-force designation of IOC; however, in actuality, Minimum Quantity Orders with any time-in-force designation may be entered and will be treated as IOC. Accordingly, the provision should say that Minimum Quantity Orders are treated as having a time-in-force designation of IOC, regardless of the time-in-force designation on the order. This has been the case since NOM launched in 2008 and NASDAQ recently realized that the language should be corrected. NASDAQ does not believe that this is a controversial change to NOM's rules, because it accurately described the operation of the System, and, NASDAQ notes that the System has been accepting *more* orders, which is useful to order entry firms. In addition,

3 See Chapter VI, Section 1(e)(5).

treating a Minimum Quantity Order as IOC regardless of the time-in-force designation on the order is akin to how NOM handles All-or-None orders today, which are very similar.[4]

NASDAQ proposes to amend Chapter VI, Section 1(d) to delete Attributable and Non-Attributable Orders. Attributable orders are orders that are designated for display (price and size) next to the Participant's MPID.[5] Non-Attributable Orders are orders that are entered by a Participant that is designated for display (price and size) on an anonymous basis in the order display service of the System. NOM no longer offers Attributable Orders, such that, as of September 29, 2011, all orders on NOM are non-attributable. NASDAQ does not believe that this is controversial, because Attributable Orders were rarely used on NOM.[6]

In addition, NASDAQ proposes to amend Chapter VI, Section 1(e)(8), to provide that ISOs may have any time-in-force designation except WAIT. The current language implies that all ISOs have a time-in-force designation of IOC, but that is not the case. ISOs can have a time-in-force of Day, GTC or IOC; ISOs that are marked as Day or GTC lose the ISO designation once posted on the book, meaning the order is no longer considered an ISO when posted on the book. If an entering firm cancel/replaces that resting Day ISO order, the replacement order cannot be marked as ISO. NASDAQ does

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4 See Securities Exchange Act Release No. 64983 (July 28, 2011), 76 FR 46869 (August 3, 2011)(SR-NASDAQ-2011-098).

5 See NASDAQ Rule 4611(d), which, among other things, defines an MPID.

6 Since NOM stopped offering them, no one has requested Attributable Orders. At least one other exchange, Phlx, does not have attributable orders.

not believe that this is controversial, because it is useful to order entry firms to be able to submit ISOs other than IOC and another exchange also permits this.[7]

NASDAQ also proposes to amend Chapter VI, Section 2(a) to provide that option contracts on *certain* fund shares or broad-based indexes will close as of 4:15 p.m., not all fund shares. Many options on fund shares stop trading at 4:00 p.m. both on NOM as well as other options exchanges.[8] Thus, the rule is more accurate, as proposed to be amended. NASDAQ does not believe that this is controversial, because NASDAQ provides product-specific notice of the trading hours on its website.

Further, NASDAQ proposes to amend Chapter VI, Section 11, to provide that routing is limited to System Securities. System Securities are all options that are currently trading on NOM pursuant to Chapter IV. All other options are Non-System Securities.[9] At one time, NOM offered routing of Non-System Securities but has not offered such routing since November 30, 2011. NASDAQ notes that this routing feature was rarely used and was discontinued.[10] Currently, NOM only routes securities that are listed on NOM. Accordingly, the language relating to routing of Non-System Securities is being deleted. Specifically, NASDAQ proposes to delete Section 11(b), which pertains solely to the routing of Non-System Securities. In addition, the portion of Section 11(e) describing NASDAQ Options Services LLC's ("NOS") role in routing Non-System

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7 See CBOE Rule 6.53(p).

8 http://www.nasdaqtrader.com/dynamic/SymDir/options.txt for a list of products traded on NOM with the indicator "N" for a 4 p.m. closing.

9 See Chapter VI, Section 1(b).

10 At least one other exchange only routes securities that trade on that exchange. See e.g., Phlx Rule 1080(m).

Securities is being deleted. NASDAQ does not believe that this is controversial, because most exchanges do not offer this feature, the feature was rarely used and, in general, exchanges are not required to route orders in securities they do not offer for trading.

NASDAQ also proposes to amend Chapter VII, Section 12, Commentary .03 to delete the reference to non-displayed trading interest. NOM no longer has any order types with non-displayed interest; previously, NOM offered Discretionary Orders and Reserve Orders on NOM, but both have been eliminated.[11] NASDAQ notes that although NOM still offers Price Improving Orders, such orders do not have non-displayed interest.[12] Chapter VII, Section 12, Commentary .03 will now provide that respecting Price Improving Orders, the exposure requirement of subsection (i) is satisfied if the displayable portion of the order is displayed at its displayable price for one second.[13] NASDAQ does not believe that this is controversial, because it merely corrects rule language to be more specific to the only relevant order type that remains.

NASDAQ also proposes minor typographical changes to the following rules: Chapter III, Section 13(c) (Mandatory Systems Testing); Chapter III, Section 14(a)

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11 See Securities Exchange Act Release No. 65873 (December 2, 2011), 76 FR 76786 (December 8, 2011)(SR-NASDAQ-2011-164).

12 "Price Improving Orders" are orders to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security. Price Improving Orders may be entered in increments as small as one cent. Price Improving Orders that are available for display shall be displayed at the minimum price variation in that security and shall be rounded up for sell orders and rounded down for buy orders. See Chapter VI, Section 1(e)(6).

13 The order exposure requirement is that, with respect to orders routed to NOM, Options Participants may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on NOM for at least one (1) second or (ii) the Options Participant has been bidding or offering on NOM for at least one (1) second prior to receiving an agency order that is executable against such bid or offer. See Chapter VII, Section 12.

(Limit on Outstanding Uncovered Short Positions); Chapter III, Section 15(g) (Significant Business Transactions of Options Clearing Participants); Chapter IV, Section 6(g) (Series of Options Contracts Open for Trading); Chapter XII, Section 3(b) (Locked and Crossed Markets); and Chapter XIV, Section 3(b)(12) (Designation of a Broad-Based Index).

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Section 6(b)(5) of the Act[15] in particular, in that it is designed to promote just and equitable principles of trade by making various deletions and corrections that each contributes to the maintenance of fair and orderly markets. Adding reference to which exchange rules are incorporated by reference helps Participants better understand what rules apply, which should promote just and equitable principles of trade. Cancelling Market Maker interest during a trading halt helps Market Makers reasonably manage their risk, consistent with just and equitable principles of trade. Leaving a Market Maker's quote in the market during a halt could lead to dislocated prices when the security resumes trading after the halt, which would be confusing to investors. NASDAQ believes it is better to remove Market Maker quotes so that Market Makers can re-enter a fresh set of two-sided quotes that reflect the information that was disseminated during the halt. These fresh quotes should provide investors and the market as a whole with better and more accurate prices. Treating Minimum Quantity Orders as having a time-in-force designation of IOC also promotes

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14 15 U.S.C. 78f(b).

15 15 U.S.C. 78f(b)(5).

just and equitable principles of trade by helping order entry firms manage their risk. Furthermore, allowing Minimum Quantity Orders to rest on the book potentially introduces complexity and confusion without adding value, because investors who might see Minimum Quantity Orders through a data feed may not understand why they are not able to trade with those orders. If an incoming order is smaller than the minimum quantity designated on the resting Minimum Quantity Order, it will not execute. Accordingly, NASDAQ believes that it is simpler for investors to interact with the market if Minimum Quantity Orders are treated as IOC.

In addition, making clearer that Market Orders are accepted should promote just and equitable principles of trade, by removing an inconsistency between two rules so firms know that such orders are permitted. Furthermore, accepting Market Orders in addition to Limit Orders provides investors with additional tools for market participation. Additional order choices helps Participants achieve their investment objectives when interacting with the market. At least one other exchange recognizes this and allows both limit and market orders.[16]

Deleting the terms Attributable Order and Non-Attributable Order also promotes just and equitable principles of trade by making clear that all orders are non-attributable. NASDAQ experienced no demand for the ability to provide attribution to orders. Neither consumers of NASDAQ data, nor the providers of orders requested attribution functionality. As such, NASDAQ removed this ability to simplify its systems and the related rules.

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[16] See e.g., Phlx Rule 1080(b).

Permitting ISOs to have a time-in-force designation other than IOC assists order entry firms in managing ISOs, because some firms may seek to have such orders post on the book if they do not immediately execute, which promotes just and equitable principles of trade. Allowing a Participant to post an ISO, after having properly submitted the required ISOs to other exchanges with equal or better prices, should provide the market and investors with superior prices. It also helps the Participant who submitted the ISO to more accurately reflect the value they assign to the security designated on the order.

Specifying that option contracts on certain fund shares or broad-based indexes may close at 4:15 p.m. is intended to correct the rule to be clear that some such products close at 4:00 p.m., which should promote just and equitable principles of trade. Generally, the more information that is available to the market, the better it is for investors. In particular, the more accurate the information is, the better market participants can manage their objectives. Correcting this language will make it clear to investors that some products close at 4:00 p.m. and some close at 4:15 p.m. The ability to get the closing times for specific funds from the NOM website will provide participants with the precise information they need.

Limiting routing to System Securities is common, such that eliminating the routing of Non-System Securities should not have a significant effect on Participants and correcting the rule makes this clear, which should promote just and equitable principles of trade. As stated above, it is common practice for options exchanges to only route orders for securities that are listed on the exchange. In fact, it is NASDAQ's understanding that NOM was the only exchange that offered routing for securities not listed on NOM. NOM experimented with the feature to explore whether there was an underserved customer segment and discovered that the feature often led to confusion and operational headaches for Participants and thus was rarely used.

Deleting the reference to non-displayed trading interest is merely a correction to address that previously available order types are no longer covered by this provisions, which provides better clarity, and thereby promotes just and equitable principles of trade. As discussed above, this reference was in place to reflect how NOM viewed the exposure rule in relation to Reserve Orders., which were eliminated. NASDAQ inadvertently left this language in the rulebook which created confusion for members. Clarity with respect to the exposure rule provides Participants with a better understanding of how to comply with this rule.

Accordingly, NASDAQ believes that all of the changes proposed herein should promote just and equitable principles of trade, consistent with Section 6(b)(5).

4. 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 not necessary or appropriate in furtherance of the purposes of the Act.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b-4(f)(6)[18] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not 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. The Exchange believes that the proposal is non-controversial, as described above.

Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. Furthermore, a proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act[19] normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)[20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable, except as specified above.

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[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b-4(f)(6).

[19] 17 CFR 240.19b-4(f)(6).

[20] 17 CFR 240.19b-4(f)(6).

9. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

5. Text of proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-NASDAQ-2012-077)

June __, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Correcting Various NASDAQ Options Market Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b-4[2] thereunder, notice is hereby given that on June 26, 2012, 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 with the Commission a proposal for the NASDAQ Options Market ("NOM") to amend the following provisions: Chapter I, Section 3 to add additional exchanges to the list of those rules incorporated by reference; Chapter V, Section 3 to provide that market maker interest is cancelled during a halt; Chapter VI, Section 1(d) to delete Attributable and Non-Attributable orders; Chapter VI, Section 1(e)(3) to provide that Minimum Quantity Orders are treated as having a time-in-force designation of Immediate or Cancel ("IOC");Chapter VI, Section 1(e)(8), to provide that Intermarket Sweep Orders ("ISOs") may have any time-in-force designation except

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

2 17 CFR 240.19b-4.

WAIT; Chapter VI, Section 2(a) to provide that option contracts on certain fund shares or broad-based indexes may close as of 4:15 p.m.; Chapter VI, Section 6(a)(1) to make clear that Market Orders are accepted; Chapter VI, Section 11, to provide that routing is limited to System Securities; and Chapter VII, Section 12, Commentary .03 to update the reference to non-displayed trading interest. NASDAQ also proposes minor typographical changes to several rules, as explained further below.

The text of the proposed rule change is available from NASDAQ's website at http://nasdaq.cchwallstreet.com/Filings/ , 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, 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 proposes to correct and clarify various provisions in NOM rules. Specifically, NASDAQ proposes to amend Chapter I, Section 3, to add to the list of those rules incorporated by reference. Currently, the rule refers to the Financial Industry Regulatory Authority ("FINRA"), but not to the Chicago Board Options Exchange nor to the New York Stock Exchange, which are now proposed to be added. NASDAQ believes that the proposed change is not controversial, because it merely codifies two additional exchanges into the provision that covers rules that are incorporated by reference.

NASDAQ proposes to amend Chapter V, Section 3, to provide that market maker interest is cancelled during a halt. Currently, this provision states that during a halt, the Exchange will maintain existing orders on the book, accept orders, and process cancels. However, Market Maker interest entered pursuant to the obligations contained in Chapter VII, Section 5 is cancelled. Therefore, NASDAQ proposes to add this language to the rule to more accurately reflect what occurs during a halt. Furthermore, it is not reasonable for a Market Maker to determine an option's price without taking into account the event that caused the halt in that option, and it is not beneficial to the market to maintain the quotes of Market Makers when an option halts. Therefore, NASDAQ believes that the proposed change is not controversial.

NASDAQ proposes to amend Chapter VI, Section 6(a)(1) to delete reference to a limit price to be clear that market orders are accepted. NASDAQ believes that this proposal is not controversial, because another rule already provides that market orders are accepted.[3] Specifically, it will now provide that all System orders shall indicate whether they are a call or put and buy or sell and a price, if any.

NASDAQ also proposes to amend Chapter VI, Section 1(e)(3), to provide that Minimum Quantity Orders are treated as having a time-in-force designation of Immediate or Cancel ("IOC"). The current language of Chapter VI, Section 1(e)(3) states that Minimum Quantity Orders may only be entered with a time-in-force designation of IOC; however, in actuality, Minimum Quantity Orders with any time-in-force designation may

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[3] See Chapter VI, Section 1(e)(5).

be entered and will be treated as IOC. Accordingly, the provision should say that Minimum Quantity Orders are treated as having a time-in-force designation of IOC, regardless of the time-in-force designation on the order. This has been the case since NOM launched in 2008 and NASDAQ recently realized that the language should be corrected. NASDAQ does not believe that this is a controversial change to NOM's rules, because it accurately described the operation of the System, and, NASDAQ notes that the System has been accepting *more* orders, which is useful to order entry firms. In addition, treating a Minimum Quantity Order as IOC regardless of the time-in-force designation on the order is akin to how NOM handles All-or-None orders today, which are very similar.[4]

NASDAQ proposes to amend Chapter VI, Section 1(d) to delete Attributable and Non-Attributable Orders. Attributable orders are orders that are designated for display (price and size) next to the Participant's MPID.[5] Non-Attributable Orders are orders that are entered by a Participant that is designated for display (price and size) on an anonymous basis in the order display service of the System. NOM no longer offers Attributable Orders, such that, as of September 29, 2011, all orders on NOM are non-attributable. NASDAQ does not believe that this is controversial, because Attributable Orders were rarely used on NOM.[6]

In addition, NASDAQ proposes to amend Chapter VI, Section 1(e)(8), to provide that ISOs may have any time-in-force designation except WAIT. The current language

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4 See Securities Exchange Act Release No. 64983 (July 28, 2011), 76 FR 46869 (August 3, 2011)(SR-NASDAQ-2011-098).

5 See NASDAQ Rule 4611(d), which, among other things, defines an MPID.

6 Since NOM stopped offering them, no one has requested Attributable Orders. At least one other exchange, Phlx, does not have attributable orders.

implies that all ISOs have a time-in-force designation of IOC, but that is not the case. ISOs can have a time-in-force of Day, GTC or IOC; ISOs that are marked as Day or GTC lose the ISO designation once posted on the book, meaning the order is no longer considered an ISO when posted on the book. If an entering firm cancel/replaces that resting Day ISO order, the replacement order cannot be marked as ISO. NASDAQ does not believe that this is controversial, because it is useful to order entry firms to be able to submit ISOs other than IOC and another exchange also permits this.[7]

NASDAQ also proposes to amend Chapter VI, Section 2(a) to provide that option contracts on *certain* fund shares or broad-based indexes will close as of 4:15 p.m., not all fund shares. Many options on fund shares stop trading at 4:00 p.m. both on NOM as well as other options exchanges.[8] Thus, the rule is more accurate, as proposed to be amended. NASDAQ does not believe that this is controversial, because NASDAQ provides product-specific notice of the trading hours on its website.

Further, NASDAQ proposes to amend Chapter VI, Section 11, to provide that routing is limited to System Securities. System Securities are all options that are currently trading on NOM pursuant to Chapter IV. All other options are Non-System Securities.[9] At one time, NOM offered routing of Non-System Securities but has not offered such routing since November 30, 2011. NASDAQ notes that this routing feature

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7 See CBOE Rule 6.53(p).

8 http://www.nasdaqtrader.com/dynamic/SymDir/options.txt for a list of products traded on NOM with the indicator "N" for a 4 p.m. closing.

9 See Chapter VI, Section 1(b).

was rarely used and was discontinued.[10] Currently, NOM only routes securities that are listed on NOM. Accordingly, the language relating to routing of Non-System Securities is being deleted. Specifically, NASDAQ proposes to delete Section 11(b), which pertains solely to the routing of Non-System Securities. In addition, the portion of Section 11(e) describing NASDAQ Options Services LLC's ("NOS") role in routing Non-System Securities is being deleted. NASDAQ does not believe that this is controversial, because most exchanges do not offer this feature, the feature was rarely used and, in general, exchanges are not required to route orders in securities they do not offer for trading.

NASDAQ also proposes to amend Chapter VII, Section 12, Commentary .03 to delete the reference to non-displayed trading interest. NOM no longer has any order types with non-displayed interest; previously, NOM offered Discretionary Orders and Reserve Orders on NOM, but both have been eliminated.[11] NASDAQ notes that although NOM still offers Price Improving Orders, such orders do not have non-displayed interest.[12] Chapter VII, Section 12, Commentary .03 will now provide that respecting Price Improving Orders, the exposure requirement of subsection (i) is satisfied if the displayable portion of the order is displayed at its displayable price for one

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10 At least one other exchange only routes securities that trade on that exchange. See e.g., Phlx Rule 1080(m).

11 See Securities Exchange Act Release No. 65873 (December 2, 2011), 76 FR 76786 (December 8, 2011)(SR-NASDAQ-2011-164).

12 "Price Improving Orders" are orders to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security. Price Improving Orders may be entered in increments as small as one cent. Price Improving Orders that are available for display shall be displayed at the minimum price variation in that security and shall be rounded up for sell orders and rounded down for buy orders. See Chapter VI, Section 1(e)(6).

second.[13] NASDAQ does not believe that this is controversial, because it merely corrects rule language to be more specific to the only relevant order type that remains.

NASDAQ also proposes minor typographical changes to the following rules: Chapter III, Section 13(c) (Mandatory Systems Testing); Chapter III, Section 14(a) (Limit on Outstanding Uncovered Short Positions); Chapter III, Section 15(g) (Significant Business Transactions of Options Clearing Participants); Chapter IV, Section 6(g) (Series of Options Contracts Open for Trading); Chapter XII, Section 3(b) (Locked and Crossed Markets); and Chapter XIV, Section 3(b)(12) (Designation of a Broad-Based Index).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Section 6(b)(5) of the Act[15] in particular, in that it is designed to promote just and equitable principles of trade by making various deletions and corrections that each contributes to the maintenance of fair and orderly markets. Adding reference to which exchange rules are incorporated by reference helps Participants better understand what rules apply, which should promote just and equitable principles of trade. Cancelling Market Maker interest during a trading halt helps Market Makers reasonably manage their risk, consistent with just and equitable principles of

13 The order exposure requirement is that, with respect to orders routed to NOM, Options Participants may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on NOM for at least one (1) second or (ii) the Options Participant has been bidding or offering on NOM for at least one (1) second prior to receiving an agency order that is executable against such bid or offer. See Chapter VII, Section 12.

14 15 U.S.C. 78f(b).

15 15 U.S.C. 78f(b)(5).

trade. Leaving a Market Maker's quote in the market during a halt could lead to dislocated prices when the security resumes trading after the halt, which would be confusing to investors. NASDAQ believes it is better to remove Market Maker quotes so that Market Makers can re-enter a fresh set of two-sided quotes that reflect the information that was disseminated during the halt. These fresh quotes should provide investors and the market as a whole with better and more accurate prices. Treating Minimum Quantity Orders as having a time-in-force designation of IOC also promotes just and equitable principles of trade by helping order entry firms manage their risk. Furthermore, allowing Minimum Quantity Orders to rest on the book potentially introduces complexity and confusion without adding value, because investors who might see Minimum Quantity Orders through a data feed may not understand why they are not able to trade with those orders. If an incoming order is smaller than the minimum quantity designated on the resting Minimum Quantity Order, it will not execute. Accordingly, NASDAQ believes that it is simpler for investors to interact with the market if Minimum Quantity Orders are treated as IOC.

In addition, making clearer that Market Orders are accepted should promote just and equitable principles of trade, by removing an inconsistency between two rules so firms know that such orders are permitted. Furthermore, accepting Market Orders in addition to Limit Orders provides investors with additional tools for market participation. Additional order choices helps Participants achieve their investment objectives when interacting with the market. At least one other exchange recognizes this and allows both limit and market orders.[16]

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[16] See e.g., Phlx Rule 1080(b).

Deleting the terms Attributable Order and Non-Attributable Order also promotes just and equitable principles of trade by making clear that all orders are non-attributable. NASDAQ experienced no demand for the ability to provide attribution to orders. Neither consumers of NASDAQ data, nor the providers of orders requested attribution functionality. As such, NASDAQ removed this ability to simplify its systems and the related rules.

Permitting ISOs to have a time-in-force designation other than IOC assists order entry firms in managing ISOs, because some firms may seek to have such orders post on the book if they do not immediately execute, which promotes just and equitable principles of trade. Allowing a Participant to post an ISO, after having properly submitted the required ISOs to other exchanges with equal or better prices, should provide the market and investors with superior prices. It also helps the Participant who submitted the ISO to more accurately reflect the value they assign to the security designated on the order.

Specifying that option contracts on certain fund shares or broad-based indexes may close at 4:15 p.m. is intended to correct the rule to be clear that some such products close at 4:00 p.m., which should promote just and equitable principles of trade. Generally, the more information that is available to the market, the better it is for investors. In particular, the more accurate the information is, the better market participants can manage their objectives. Correcting this language will make it clear to investors that some products close at 4:00 p.m. and some close at 4:15 p.m. The ability to get the closing times for specific funds from the NOM website will provide participants with the precise information they need.

Limiting routing to System Securities is common, such that eliminating the routing of Non-System Securities should not have a significant effect on Participants and correcting the rule makes this clear, which should promote just and equitable principles of trade. As stated above, it is common practice for options exchanges to only route orders for securities that are listed on the exchange. In fact, it is NASDAQ's understanding that NOM was the only exchange that offered routing for securities not listed on NOM. NOM experimented with the feature to explore whether there was an underserved customer segment and discovered that the feature often led to confusion and operational headaches for Participants and thus was rarely used.

Deleting the reference to non-displayed trading interest is merely a correction to address that previously available order types are no longer covered by this provisions, which provides better clarity, and thereby promotes just and equitable principles of trade. As discussed above, this reference was in place to reflect how NOM viewed the exposure rule in relation to Reserve Orders., which were eliminated. NASDAQ inadvertently left this language in the rulebook which created confusion for members. Clarity with respect to the exposure rule provides Participants with a better understanding of how to comply with this rule.

Accordingly, NASDAQ believes that all of the changes proposed herein should promote just and equitable principles of trade, consistent with Section 6(b)(5).

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 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)[17] of the Act and Rule 19b-4(f)(6)(iii) thereunder[18] 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.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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17 15 U.S.C. 78s(b)(3)(A).

18 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

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-NASDAQ-2012-077 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-2012-077. 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. 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-2012-077 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.[19]

Kevin M. O'Neill
Deputy Secretary

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[19] 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

Proposed new language is underlined; proposed deletions are in brackets.

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## Chapter I General Provisions

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### Sec. 3 Regulation of Nasdaq and its Members

Nasdaq and the Financial Industry Regulatory Authority ("FINRA") are parties to the Regulatory Services Agreement dated as of June 28, 2000, as amended ("Regulatory Contract"). Pursuant thereto, FINRA has agreed to perform certain functions described in these Rules on behalf of Nasdaq. NOM Rules that refer to Nasdaq Regulation, Nasdaq Regulation staff, NOM staff, and NOM departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the Regulatory Contract.

Notwithstanding the fact that Nasdaq has entered into the Regulatory Contract with FINRA Regulation to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions.

In addition, Nasdaq has incorporated by reference certain FINRA<u>, Chicago Board Options Exchange (“CBOE”), and New York Stock Exchange (“NYSE”)</u> rules. Nasdaq members shall comply with these rules and interpretations as if such rules and interpretations were part of Nasdaq's rules.

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## Chapter III Business Conduct

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### Sec. 13 Mandatory Systems Testing

(a) – (b) No change.

(c) An Options Participant that is subject to this Section 13 and that fails to conduct or participate in the tests, fails to file the required reports, or fails to maintain the required documentation, may be subject to a summary suspension or other action taken pursuant to Chapter [I]X of these Rules and/or a disciplinary action pursuant to the Rule 9000 Series of the Rules of the Exchange (Disciplining of Members).

**Sec. 14 Limit on Outstanding Uncovered Short Positions**

(a) Whenever it is determined from the reports of uncovered short positions submitted pursuant to Section 2 of Chapter [VII]IX of these Rules (Reports of Uncovered Short Positions), viewed in light of current market conditions in options and in underlying securities, that there are outstanding an excessive number of uncovered short positions in options contracts of a given class traded on NOM or that an excessively high percentage of outstanding short positions in options contracts of a given class traded on NOM are uncovered, Nasdaq Regulation may determine to prohibit Options Participants from any further opening writing transactions on any exchange in options contracts of that class unless the resulting short position will be covered, and Nasdaq Regulation may prohibit the uncovering of any existing covered short positions in one or more series of options of that class, as it deems appropriate in the interest of maintaining a fair and orderly market in options contracts or in underlying securities.

(b) No change.

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**Sec. 15 Significant Business Transactions of Options Clearing Participants**

(a) – (f) No change.

(g) The provisions of this Section 15 do not preclude summary action under Chapter X, Discipline and Summary Suspensions, of these Rules, or other Nasdaq Regulation action pursuant to the NOM Rules.

(h) No change.

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**Chapter IV Securities Traded on NOM**

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**Sec. 6 Series of Options Contracts Open for Trading**

(a) - (f) No change.

(g) New series of equity options, options on Exchange Traded Funds, and options on Trust Issued Receipts opened for trading shall be subject to the range limitations set forth in Supplementary Material .0[9]1 to this Section 6.

**Supplementary Material to Section 6**

No change.

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**Chapter V Regulation of Trading on NOM**

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**Sec. 3 Trading Halts**

(a) *Halts*. Nasdaq Regulation may halt trading in any option contract in the interests of a fair and orderly market. The following are among the factors that shall be considered in determining whether the trading in an option contract should be halted:

i. – v. No change.

vi. Trading Pauses. Trading on the Exchange in any option contract shall be halted whenever trading in the underlying security has been paused by the primary listing market.

(A) No change.

(B) During the halt, the Exchange will maintain existing orders on the book, accept orders, and process cancels, except that Market Maker interest entered pursuant to the obligations contained in Chapter VII, Section 5 is cancelled.

(b) – (c) No change.

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**Chapter VI Trading Systems**

**Sec. 1 Definitions**

The following definitions apply to Chapter VI for the trading of options listed on NOM.

(a) - (c) No change.

(d) The term "Order" shall mean a single order submitted to the System by a Participant that is eligible to submit such orders. [and shall include:

(1) "Attributable Orders," orders that are designated for display (price and size) next to the Participant's MPID;

(2) "Non-Attributable Orders," orders that are entered by a Participant that is designated for display (price and size) on an anonymous basis in the order display service of the System; and]

(e) The term "Order Type" shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1) - (2) No change.

(3) "Minimum Quantity Orders" are orders that require that a specified minimum quantity of contracts be obtained, or the order is cancelled. Minimum Quantity Orders [may only be entered with] are treated as having a time-in-force designation of Immediate or Cancel. Minimum Quantity Orders received prior to the opening cross or after market close will be rejected.

(4) - (7) No change.

(8) "Intermarket Sweep Order" or "ISO" are limit orders that are designated as ISOs in the manner prescribed by Nasdaq and are executed within the System by Participants at multiple price levels without respect to Protected Quotations of other Eligible Exchanges as defined in Chapter XII, Section 1. ISOs may have any time-in-force designation except WAIT, are handled [immediately executable or cancelled] within the System pursuant to Chapter VI, Section 10 and shall not be eligible for routing as set out in Chapter VI, Section 11.

Simultaneously with the routing of an ISO to the System, one or more additional limit orders, as necessary, are routed by the entering party to execute against the full displayed size of any protected bid or offer (as defined in Chapter XII, Section 1) in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified as an intermarket sweep order (as defined in Chapter XII, Section 1). These additional routed orders must be identified as ISOs.

(9) - (11) No change.

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**Sec. 2 Days and Hours of Business**

(a) The System operates and shall be available to accept bids and offers and orders from the time prior to market open specified by the Exchange on its website to market close on each business day, unless modified by NOM. Orders and bids and offers shall be open and available for execution as of 9:30 a.m. Eastern Time and shall close as of 4:00 p.m. Eastern Time except for option contracts on certain fund shares or broad-based indexes which will close as of 4:15 p.m. Eastern Time.

(b) – (c) No change.

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**Sec. 6 Acceptance of Quotes and Orders**

All bids or offers made and accepted on NOM in accordance with the NOM Rules shall constitute binding contracts, subject to applicable requirements of the Rules of the Exchange and the Rules of the Clearing Corporation.

(a) General - A System order is an order that is entered into the System for display and/or execution as appropriate. Such orders are executable against marketable contra-side orders in the System.

(1) All System Orders shall indicate [limit price and] whether they are a call or put and buy or sell and a price, if any. Systems Orders can be designated as Immediate or Cancel ("IOC"), Good-till-Cancelled ("GTC"), Day ("DAY") or WAIT.

(2) A System order may also be designated as a Limit Order, a Minimum Quantity Order, a Market Order, a Price Improving Order, an All-or-None Order, or a Post-Only Order.

(b) - (c) No change.

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**Sec. 11 Order Routing**

(a) No change.

(b) Reserved. [For Non-System securities, the order routing process shall be available to Participants from 9:30 a.m. Eastern Time until market close and shall route orders based on the participant's instructions. Notwithstanding the foregoing, the order routing process will not be available to route Non-System Securities to a facility of an exchange that is an affiliate of Nasdaq other than the Boston Options Exchange or NASDAQ OMX PHLX.]

(c) – (d) No change.

(e) NOM shall route orders in options via Nasdaq Options Services LLC, a broker-dealer that is a member of an unaffiliated SRO which is the designated examining authority for the broker-dealer. Nasdaq Options Services LLC serves as the Routing Facility of NOM. The sole function of the Routing Facility will be to route orders in options listed and open for trading on NOM to away markets pursuant to NOM rules solely on behalf of NOM. The Routing Facility is subject to regulation as a facility of Nasdaq, including the requirement to file proposed rule changes under Section 19 of the Act.

[Nasdaq Options Services LLC also routes orders in options that are not listed and actually trading on NOM. When routing orders in options that are not listed and open for trading on NOM, Nasdaq Options Services is not a facility of NASDAQ and is not regulated as a facility of Nasdaq but as a broker-dealer regulated by its designated examining authority.]

Use of Nasdaq Options Services LLC to route orders to other market centers is optional. Parties that do not desire to use Nasdaq Options Services LLC must designate orders as not available for routing.

NOM shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including the Routing Facility), and any other entity.

The books, records, premises, officers, directors, agents, and employees of the Routing Facility, as a facility of the Exchange, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the Exchange for purposes of and subject to oversight pursuant to the Exchange Act. The books and records of the Routing Facility, as a facility of the Exchange, shall be subject at all times to inspection and copying by the Exchange and the Commission.

(f) No change.

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**Chapter VII Market Participants**

**Sec. 1 - 11** No change.

**Sec. 12 Order Exposure Requirements**

No change.

Commentary:

.01 - .02 No change.

.03 With respect to [non-displayed trading interest] Price Improving Orders [including the reserve portion], the exposure requirement of subsection (i) is satisfied if the displayable portion of the order is displayed at its displayable price for one second.

.04 No change.

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**Chapter XII Options Order Protection and Locked and Crossed Market Rules**

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**Sec. 3 Locked and Crossed Markets**

(a) *Prohibition.* Except for quotations that fall within the provisions of paragraph (b) of this Rule, Members shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a Protected Quotation.

(b) Exceptions.

(1) The locking or crossing quotation was displayed at a time when the Exchange was experiencing a failure, material delay, or malfunction of its systems or equipment;

(2) The locking or crossing quotation was displayed at a time when there is a Crossed Market; or

(3) The Member simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer.

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**Chapter XIV Index Rules**

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**Sec. 3 Designation of a Broad-Based Index**

(a) No change.

(b) NOM may trade options on a broad-based index pursuant to Rule 19b-4(e) of the Securities Exchange Act of 1934, if each of the following conditions is satisfied:

(1) - (11) No change.

(12) NOM reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of NOM's current [ISCA] <u>Independent System Capacity Advisor</u> allocation and the number of new messages per second expected to be generated by options on such index;

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