

of the Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>15</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that this proposal is in keeping with those principles by providing data that is administrative in nature or that is used to attract liquidity to the Exchange in response to an auction.

#### *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*

No written comments were either solicited or received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6)<sup>17</sup> thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay and designate the proposed rule change to become operative during the week of October 11, 2010. The Exchange has represented that it is important to the Exchange's

internal technology roll-out to be able to have SQF 6.0 in place by this time in order for other technological plans to be implemented. The Exchange has also represented that the proposed rule change is a non-controversial system change to data and would not affect the execution of trades. The Exchange has argued that the prompt implementation of the proposal would extend the benefits and new features of SQF 6.0 to its users promptly. On the basis of the Exchange's representations, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change as operative on October 11, 2010.<sup>18</sup>

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2010-124 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-Phlx-2010-124. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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-Phlx-2010-124 and should be submitted on or before October 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010-25395 Filed 10-7-10; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63028; File No. SR-NASDAQ-2010-099]

### **Self-Regulatory Organizations; NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change To Adopt a Definition of Professional and Require That All Professional Orders Be Appropriately Marked**

October 1, 2010.

#### **I. Introduction**

On August 6, 2010, The NASDAQ Stock Market ("NASDAQ"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Chapter I, Section 1 (Definitions) of the rules of the Nasdaq Options Market ("NOM") to adopt a definition of "Professional" and require that all Professional orders be appropriately marked by NOM

<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 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 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.

<sup>18</sup> 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).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

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

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

Participants ("NOM Rules"). The proposed rule change was published for comment in the **Federal Register** on August 20, 2010.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

## II. Description

Under the proposal, new Chapter I, Section 1(a)(48) will state that the term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Participant<sup>4</sup> or a Public Customer<sup>5</sup> may, without limitation, be a Professional. Moreover, in order to properly represent orders entered on the Exchange according to the new definition, a Participant will be required to appropriately mark all Professional orders.<sup>6</sup> To comply with this requirement, Participants will be required to review their Public Customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Professional orders.<sup>7</sup> The Exchange will issue a notice to Participants via OTA or ORA outlining the procedures for the implementation of the proposal.

The professional order designation rule will apply to NOM members,

<sup>3</sup> See Securities Exchange Act Release No. 62724 (August 16, 2010), 75 FR 51509 ("Notice").

<sup>4</sup> A member of NOM is known as a Participant. Some participants are also members of other options exchanges such as, for example, International Securities Exchange, LLC ("ISE"), Chicago Board Options Exchange, Incorporated ("CBOE"), and NASDAQ OMX PHILX LLC ("Phlx"). See Notice, *supra* note 3. See also Chapter I, Section 1(a)(40) of the NOM Rules.

<sup>5</sup> Public Customer is defined in Chapter I, Section 1(a)(48) as a person that is not a broker or dealer in securities.

<sup>6</sup> The Exchange intends to require Participants to identify Professional orders submitted electronically by identifying them in the customer type field, and will notify Participants via an Options Trader Alert ("OTA") or Options Regulatory Alert ("ORA") regarding this requirement.

<sup>7</sup> According to NASDAQ, Participants will be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five business days after the end of each calendar quarter. While Participants will only be required to review their accounts on a quarterly basis, if during a quarter NOM identifies a customer for which orders are being represented as other than Professional orders but that has averaged more than 390 orders per day during a month, NOM will notify the Participant and the Participant will be required to change the manner in which it is representing the customer's orders within five business days. This is similar to the process of other options exchanges that have adopted a Professional designation. See, e.g., Securities Exchange Act Release No. 61802 (March 30, 2010), 75 FR 17193 (April 5, 2010) (SR-Phlx-2010-05).

including NASDAQ Options Services LLC ("NOS"). NOS is NOM's exclusive order router for all orders that come through the Exchange.<sup>8</sup> Under the proposal, NOS, a member of several exchanges that have rules requiring a Professional designation, will be able to route Professional orders to those options exchanges that require Professional orders to be designated as such.<sup>9</sup>

The Professional definition will not revise the Exchange's price/time order entry (priority) rules. For example, unlike other options exchanges with the Professional designation, the proposed rule change does not affect on NOM the priority of orders designated as Professional. Instead, the proposal is intended to make certain that Participants mark Professional orders properly regardless of whether the order is entered on NOM or routed to another options exchange that has the Professional designation. Moreover, when the proposed Professional designation is in place, NOM will be able to accept orders that are marked as Professional.<sup>10</sup>

The designation of an order as Professional will not result in any different treatment of such orders for purposes of NOM rules concerning away market protection. That is, all non-broker-dealer orders, including those orders that meet the definition of Professional, will continue to be treated equally for purposes of NOM's away market protection rules.<sup>11</sup>

## III. Discussion and Commission's 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.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with Section

<sup>8</sup> See Notice, *supra* note 3.

<sup>9</sup> The Professional definition proposed by NOM comports with the Professional designation that has been implemented by Phlx, CBOE, ISE, and NYSE Amex LLC ("NYSE Amex"). See Securities Exchange Act Release Nos. 61802 (March 30, 2010), 75 FR 17193 (April 5, 2010) (SR-Phlx-2010-05); 61198 (December 17, 2009), 74 FR 68880 (December 29, 2009) (SR-CBOE-2009-078); 59287 (January 23, 2009), 74 FR 5694 (January 30, 2009) (SR-ISE-2006-26); and 61818 (March 31, 2010), 75 FR 17457 (April 6, 2010) (SR-NYSEAmex-2010-18).

<sup>10</sup> According to NASDAQ, NOM only accepts orders that are marked as customer, firm, market maker, or away market maker orders.

<sup>11</sup> See, e.g., Chapter VI, Section 11 and Chapter XII.

<sup>12</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that NOM's proposed definition of Professional and requirement that Professional orders be properly marked are consistent with the rules of other exchanges relating to Professional orders, which previously were approved by the Commission.<sup>13</sup> The Commission notes that the proposal will not amend NOM's price/time order entry (priority) rules with respect to the treatment of orders submitted to NOM. The proposal in effect allows NOM to accept orders marked as Professional and, if necessary to comply with its order protection rules, to route them via NOS to an away market that maintains the Professional order designation, in accordance with that exchange's order marking requirements. The Commission believes that conforming NOM's rules to those of the other exchanges that have the Professional order designation will reduce disparate rules in this area and may help reduce regulatory arbitrage.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-NASDAQ-2010-099) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## DEPARTMENT OF STATE

### [Public Notice 7200]

### 60-Day Notice of Proposed Information Collection: Form DS-3057, Medical Clearance Update, OMB 1405-0131

**ACTION:** Notice of request for public comments.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the

<sup>13</sup> See *supra* note 9.

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).