

allocating regulatory responsibility.¹¹ The plan, as amended, is intended to reduce regulatory duplication for firms that are common members of Nasdaq and NASD. Included in the plan is an attachment ("The Nasdaq Stock Market LLC Rules Certification for 17d-2 Agreement with NASD" referred to herein as the "Nasdaq Certification") that clearly delineates regulatory responsibilities with respect to specified Nasdaq rules and specified federal securities laws. The Nasdaq Certification lists every Nasdaq rule that is identical or substantially similar to a NASD rule for which, under the plan, the NASD would bear responsibility for examining, and enforcing compliance by, common members. The Nasdaq Certification also includes the federal securities laws for which, under the plan, the NASD would bear responsibility for examining, and enforcing compliance by, common members.

II. Discussion

The Commission finds that the proposed plan is consistent with the factors set forth in Section 17(d) of the Act and Rule 17d-2(c)¹² in that the proposed plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among self-regulatory organizations, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed plan could reduce unnecessary regulatory duplication by allocating to the NASD certain responsibilities for common members that would otherwise be performed by both Nasdaq and NASD. The proposed plan promotes efficiency by reducing costs to common members. Furthermore, because Nasdaq and NASD will coordinate their regulatory functions in accordance with the plan, the plan should promote investor protection.

The Commission notes that Nasdaq and NASD have allocated regulatory responsibility for all Nasdaq rules that are identical or substantially similar to NASD rules, as set forth in the Nasdaq Certification.¹³ According to the plan,

Nasdaq and NASD will undergo an annual review of the Nasdaq Certification to add Nasdaq rules that are identical or substantially similar to NASD rules; delete Nasdaq rules that are no longer identical or substantially similar to NASD rules; and confirm that the remaining rules on the Nasdaq Certification continue to be Nasdaq rules that are identical or substantially similar to NASD rules. The Commission today is declaring effective and approving a plan that allocates regulatory responsibility to NASD for the oversight and enforcement of all Nasdaq rules that are identical or substantially similar to the rules of the NASD for common members of Nasdaq and NASD. Therefore, modifications to the Nasdaq Certification need not be filed with the Commission as an amendment to the plan provided that the parties are only adding to, deleting from or confirming changes to Nasdaq rules in the Nasdaq Certification that are identical or substantially similar to NASD rules. However, should Nasdaq or NASD decide to add a Nasdaq rule to the Nasdaq Certification that is not identical or substantially similar to an NASD rule, or delete a Nasdaq rule from the Nasdaq Certification that is identical or substantially similar to an NASD rule, or leave on the Nasdaq Certification a Nasdaq rule that is no longer identical or substantially similar to an NASD rule, such a change would be an amendment to the plan which must be filed with the Commission pursuant to Rule 17d-2 under the Act.

Nasdaq and NASD have also set forth the federal securities laws, and the rules and regulations thereunder, in the Nasdaq Certification for which, under the plan, NASD will bear responsibility for examining, and enforcing compliance by, common members. The Commission notes that any changes to this list of federal securities laws, and the rules and regulations thereunder, would be an amendment to the plan between Nasdaq and NASD and therefore must be filed with the Commission pursuant to Rule 17d-2 under the Act.

The plan further provides that NASD shall not assume regulatory responsibility, and Nasdaq will retain full responsibility, for surveillance and enforcement of trading activities or practices solely involving Nasdaq's own marketplace.

The plan also permits Nasdaq and NASD to terminate the plan for various

reasons, including the non-payment of fees, for cause, and for convenience. The Commission notes, however, that while the plan permits the parties to terminate the plan, the allocation to NASD of the regulatory responsibilities set forth in the plan cannot be reallocated by the parties themselves under the terms of the plan. Rule 17d-2 requires that any allocation or re-allocation of regulatory responsibilities be filed with the Commission pursuant to Rule 17d-2.

III. Conclusion

This Order gives effect to the plan filed with the Commission in File No. 4-517. The parties to the plan shall notify all members affected by the plan of their rights and obligations under the plan.

It is therefore ordered, pursuant to Sections 17(d) and 11A(a)(3)(B) of the Act, that the plan, in File No. 4-517, between Nasdaq and NASD filed pursuant to Rule 17d-2 is approved and declared effective.

It is therefore ordered that Nasdaq is relieved of those responsibilities allocated to NASD under the plan in File No. 4-517.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54131; File No. SR-Amex-2006-66]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Short Term Option Series Pilot Program

July 12, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 10, 2006, the American Stock Exchange LLC ("Exchange" or "Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amex has designated this proposal as noncontroversial under

¹¹ Nasdaq and NASD made clarifying changes in the amended plan, and included a list of the federal securities laws, and the rules and regulations thereunder, in the Nasdaq Certification for which, under the plan, the NASD would bear responsibility for examining, and enforcing compliance by, common members. These changes are non-substantive, and therefore the Commission is not seeking comment on the amended joint plan.

¹² 15 U.S.C. 78q(d) and 17 CFR 240.17d-2(c).

¹³ Nasdaq has represented that there are no Nasdaq rules that are identical or substantially

similar to NASD rules that are not included in the Nasdaq Certification. Telephone call between Jeffrey Davis, Nasdaq Office of General Counsel, and Rebekah Liu, Special Counsel, Division of Market Regulation, Commission, on June 19, 2006.

¹⁴ 17 CFR 200.30-3(a)(34).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. 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 Amex Rules 903(h) and 903C(a)(v) to extend until July 12, 2007, its pilot program for listing and trading Short Term Option Series ("Pilot Program"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.amex.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 Exchange 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 purpose of the proposed rule change is to extend the Pilot Program for an additional year, through July 12, 2007.⁵ The Pilot Program allows Amex to list and trade Short Term Option Series, which expire one week after the date on which a series is opened. Under the Pilot Program, Amex may select up to five approved options classes on which Short Term Option Series could be opened.⁶ A series could be opened

on any Friday that is a business day and would expire on the next Friday that is a business day. If a Friday were not a business day, the series could be opened (or would expire) on the first business day immediately prior to that Friday. Short Term Option Series would be P.M.-settled, except for Short Term Option Series on indexes, which would be A.M.-settled.

For each class selected for the Pilot Program, the Exchange usually would open five Short Term Option Series in that class for each expiration date. The strike price of each Short Term Option Series would be fixed at a price per share, with at least two strike prices above and two strike prices below the value of the underlying security or calculated index value at about the time that the Short Term Option Series is opened. Amex would not open a Short Term Option Series in the same week that the corresponding monthly options series is expiring, because the monthly options series in its last week before expiration is functionally equivalent to the Short Term Option Series. The intervals between strike prices on a Short Term Option Series would be the same as the intervals between strike prices on the corresponding monthly options series.

The Exchange believes that Short Term Option Series can provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie option contracts. At the same time, the Exchange is cognizant of the need to be cautious in introducing a product that can increase the number of outstanding strike prices. While the Exchange has not listed any Short Term Option Series during the first year of the Pilot Program, there has been significant investor interest in trading short-term options at the Chicago Board Options Exchange ("CBOE").⁷ To have the ability to respond to potential customer interest, and to remain competitive, the Exchange proposes the continuation of the Pilot Program.

In the original proposal to establish the Pilot Program, the Exchange stated that if it were to propose an extension, expansion, or permanent approval of the

Short Term Option Series on any options class that is selected by another exchange that employs a similar pilot program.

⁷ CBOE filed a report with the Commission on June 13, 2006, stating that CBOE has listed Short Term Options Series in four different options classes. See Securities Exchange Act Release No. 53984 (June 14, 2006), 71 FR 35718 (June 21, 2006) (extending CBOE's Short Term Option Series pilot program).

program, the Exchange would submit, along with any filing proposing such amendments to the program, a report providing an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect.⁸ Since the Exchange did not list any One Week Options Series during the first year of the Pilot Program, there is no data available to compile such a report at this time. Therefore the Exchange did not submit a report with its proposal to extend the Pilot Program.

2. Statutory Basis

The Exchange believes that Short Term Option Series could stimulate customer interest in options and provide a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie option contracts. For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁹ in general and furthers the objectives of Section 6(b)(5) of the Act¹⁰ in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹² Because the foregoing

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Commission approved the Pilot Program on July 12, 2005. See Securities Exchange Act Release No. 52014 (July 12, 2005), 70 FR 41244 (July 18, 2005) (SR-Amex-2005-035). Under Amex Rules 903(h) and 903C(a)(v), the Pilot Program is scheduled to expire on July 12, 2006.

⁶ A Short Term Option Series could be opened in any options class that satisfied the applicable listing criteria under Amex rules (*i.e.*, stock options, options on exchange traded funds as defined under Commentary .06 of Amex Rule 915, or options on indexes). The Exchange could also list and trade

⁸ See Form 19b-4 for File No. SR-Amex-2005-035, filed March 23, 2005.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not 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 and Rule 19b-4(f)(6)(iii) thereunder.¹³

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to waive the operative delay if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the operative delay to permit the Pilot Program extension to become effective prior to the 30th day after filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the benefits of the Pilot Program to continue without interruption.¹⁴ Therefore, the Commission designates that the proposal will become operative on July 12, 2006.¹⁵

¹³ Rule 19b-4(f)(6)(iii) requires the Exchange to give written notice to the Commission of its intent to file the proposed rule change five business days prior to filing. The Commission has determined to waive the five-day pre-filing requirement for this proposal.

¹⁴ 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).

¹⁵ As set forth in the Exchange's original filing proposing the Pilot Program, if the Exchange were to propose an extension, expansion, or permanent approval of the Pilot Program, the Exchange would submit, along with any filing proposing such amendments to the program, a report that would provide an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect. The report would include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which Short Term Option Series were opened; (2) an assessment of the appropriateness of the options classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of Amex, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how Amex addressed such problems; (5) any complaints that Amex received during the operation of the Pilot Program and how Amex addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program. The report must be submitted to the Commission at least 60 days prior to the expiration date of the Pilot Program. See Form 19b-4 for File No. SR-Amex-2005-035, filed March 23, 2005.

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 No. SR-Amex-2006-66 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2006-66. 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 such 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-Amex-2006-66 and should

be submitted on or before August 8, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54134; File No. SR-NASD-2005-079]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Amendments Nos. 1, 2 and 3 to Proposed Rule Change To Revise Rule 10322 of the NASD Code of Arbitration Procedure Which Pertains to Subpoenas and the Power To Direct Appearances

July 12, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 29, 2006, May 12, 2006, and July 7, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendments Nos. 1, 2, and 3, respectively, to the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by NASD. On June 17, 2005, the NASD filed with the Commission the proposed rule change. On July 13, 2005, the Commission published for comment the proposed rule change in the **Federal Register**.³ NASD filed Amendments Nos. 1, 2, and 3 to respond to the comments received, after the publication of the proposed rule change in the **Federal Register**, and to make revisions to the rule change as described herein.⁴ The Commission is

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 51981 (July 6, 2005), 70 FR 40411 (July 13, 2005).

⁴ Amendment No. 1 addresses comment letters received by the Commission in response to the publication of the proposed rule change in the **Federal Register** (for initial notice of proposed rule change see Securities Exchange Act Release No. 51981 (July 6, 2005), 70 FR 40411 (July 13, 2005)) and proposes certain amendments in response to these comments, including requiring that all subpoenas be issued by an arbitrator. Amendment No. 2 revises the regulation text and certain sections of the rule filing in order to clarify the process for issuing a subpoena to both parties and non-parties. Amendment No. 3 revises Amendment No. 2 to