SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70897; File No. SR-NASDAQ-2013-139)

November 19, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Post-Only Orders Received Prior to the Opening

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 November 8, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") 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 to modify Chapter VI (Trading Systems), Section 1 (Definitions) of the NASDAQ Options Market, LLC ("NOM"), to indicate that Post-Only Orders received prior to the opening will be eligible for execution during the opening cross. The text of the proposed rule change is set forth immediately below.

Deleted text is [bracketed]. New text is underlined.

NASDAQ Stock Market Rules

Options Rules

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Chapter VI Trading Systems

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

2 17 CFR 240.19b-4.

Sec. 1 Definitions

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

(a) – (d) No Change.

(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) – (10) No Change.

(11) "Post-Only Orders" are orders that will not remove liquidity from the System. Post-Only Orders are to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another market. Post-Only Orders are evaluated at the time of entry with respect to locking or crossing other orders as follows: (i) if a Post-Only Order would lock or cross an order on the System, the order will be re-priced to $.01 below the current low offer (for bids) or above the current best bid (for offers) and displayed by the System at one minimum price increment below the current low offer (for bids) or above the current best bid (for offers); and (ii) if a Post-Only Order would not lock or cross an order on the System but would lock or cross the NBBO as reflected in the protected quotation of another market center, the order will be handled pursuant to Chapter VI, Section 7(b)(3)(C). Participants may choose to have their Post-Only Orders returned whenever the order would lock or cross the NBBO or be placed on the book at a price other than its limit price. Post-Only Orders received prior to the opening [cross or]will be eligible for execution during the opening cross and will be processed as per Chapter VI, Section 8. Post-Only Orders received after market close will be rejected. Post-Only Orders may not have a time-in-force designation of Good Til Cancelled or Immediate or Cancel.

(f) – (h) No Change.

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The text of the proposed rule change is available from NASDAQ's website at http://nasdaq.cchwallstreet.com, 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

The purpose of the proposed rule change is to modify NOM Chapter VI, Section 1(e)(11) to indicate that Post-Only Orders received prior to the opening will now be eligible for execution during the opening cross.[3]

Currently, subsection (e) of Section 1 states that "Order Type" means the unique processing prescribed for designated orders that are eligible for entry into the System[4] by NOM Participants and Market Makers.[5] Subsection (e)(11) states that one of these order types, specifically "Post-Only Orders", are orders[6] that will not remove liquidity from the System. Post-Only Orders are ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another market. Post-Only Orders are evaluated at the time of entry with respect to locking or crossing other orders as follows: (i) if a Post-Only Order would lock or cross an order on the System, the order will be re-priced to $.01 below the current low offer (for bids) or above the current best bid (for offers) and displayed by the System at one minimum price

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3 The Exchange will explain the proposed change to its participants via an Options Trading Alert.

4 The term "System" means, in relevant part, the automated system for order execution and trade reporting owned and operated by NOM. See Chapter VI, Section 1(a).

5 Options Participants registered as Market Makers have certain rights and bear certain responsibilities beyond those of other Options Participants. All Market Makers are designated as specialists on NOM for all purposes under the Exchange Act or Rules thereunder. See Chapter VII, Section 2. An Options Participant that has qualified as an Options Market Maker may register to make markets in individual options. See Chapter VII, Section 3(a).

6 The term "order" means a firm commitment to buy or sell options contracts. See Chapter 1, Section 1(a)(44).

increment below the current low offer (for bids) or above the current best bid (for offers); and (ii) if a Post-Only Order would not lock or cross an order on the System but would lock or cross the NBBO as reflected in the protected quotation of another market center, the order will be handled pursuant to Chapter VI, Section 7(b)(3)(C).[7] Participants may choose to have their Post-Only Orders returned whenever the order would lock or cross the NBBO or be placed on the book at a price other than its limit price. Post-Only Orders may not have a time-in-force designation of Good Til Cancelled or Immediate or Cancel.[8] Post-Only Orders received prior to the opening cross or after market close will be rejected. [9] Thus, if today at 9:29:00 Market Maker A submits a buy Post-Only Order to buy 100 MSFT calls at $1.25, that order will be rejected. The Exchange is proposing to update how such pre-market orders will be handled.

The Exchange is proposing to state in subsection (e)(11) of Section 1 that Post-Only Orders received prior to market open will be allowed to execute as part of the opening process. The Exchange believes that this narrow change is, as discussed below, desirable in today's market and will significantly reduce unnecessary complexity to the benefit of traders and market participants.

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7 Section 7(b)(3)(C) states regarding Trade-Through and Locked and Crossed Markets: An order will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. An order that is designated by the member as routable will be routed in compliance with applicable Trade-Through and Locked and Crossed Markets restrictions. An order that is designated by a member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions.

8 See Securities Exchange Act Release No. 65761 (November 16, 2011), 76 FR 72230 (November 22, 2011)(SR-NASDAQ-2011-152)(notice of filing and immediate effectiveness adopting a "Post-Only Order" type on NOM)(the "Post-Only Order proposal").

9 The Exchange's options market is open from 9:30 a.m. to 4:00 p.m. Eastern Time ("ET"), except for option contracts on certain fund shares or broad-based indexes which close as of 4:15 p.m. See Chapter VI, Section 2.

It has come to the attention of the Exchange that rejecting all Post-Only Orders prior to the opening cross causes unnecessary complexity for Market Makers that provide liquidity to the Exchange as part of the opening process. Currently, in order to provide liquidity at the market open, Market Makers must not mark orders as Post-Only, as they will be rejected; rather they must mark the orders as regular orders. Immediately after the opening process has concluded, however, Market Makers have to switch over to marking orders as Post-Only Orders. The process of switching from regular to Post-Only Orders is further complicated because each symbol on the Exchange opens at a unique time. The Exchange's open for options requires that the underlying security be open, which may not necessarily be exactly at 9:30 a.m. ET, and also requires that two other options exchanges begin trading the option, as evidenced by dissemination of a firm quote to the Options Price Reporting Authority ("OPRA").[10] The nature of the opening process thus results in varying opening times across many hundreds of thousands of different options symbols that open for trading every day on the Exchange. As a result, Market Makers must know exactly when a particular symbol is open for trading before the switch can be made from regular orders to Post-Only Orders. This complexity unnecessarily increases risk to Market Makers and thus the trading environment. The Exchange is proposing to accept Post-Only Orders received prior to the market open. The Exchange believes that this will significantly reduce complexity and risk for Market Makers wishing to provide liquidity for the opening auction and thereby improve prices at the open. The Exchange believes that the proposal may, in addition, result in message traffic reduction by eliminating the need for Market Makers to cancel and re-enter orders depending on time of opening.

[10] Chapter VI, Section 8.

For example, if a Market Maker submits a non-Post-Only bid of $1.00 for 100 CSCO calls at 9:29:50, it will be available for execution in the opening cross because the bid is not marked as Post-Only. Assume that the underlying then opens at 9:30:03, and two other options exchanges open by 9:30:07, and the CSCO calls open on the Exchange. The Market Maker will now need to mark new bids as Post-Only. Moreover, if at 9:30:10 the Market Maker wants to update the size of his bid to 50, the Market Maker will need to cancel the non-Post-Only bid and submit a new bid: $1.00 (50). Under the proposed rule, the Market Maker would be able to mark its pre-market bid as Post-Only. After the market is open, if the Market Maker wishes to update its bid, only one message is needed. The Market Maker simply reduces the bid size with one message rather than having to send a cancellation of the non-Post-Only bid followed by a new Post-Only bid.

By modifying the handling of Post-Only Orders received prior to opening, the proposal serves to reduce confusion and unnecessary complexity regarding orders that come in prior to market opening, and serves to promote liquidity at a crucial time for the market to the benefit of traders and market participants.[11]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(5) of the Act[13] in particular, in that the

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11 The Exchange believes that its proposal will not add any surveillance burden that cannot be managed by current surveillance systems; and the proposal will not have any negative influence on Exchange capacity. Moreover, the Exchange notes that this proposal is written from the perspective of Market Makers because they are by far the largest users of Post-Only Orders, and as such stand to benefit from the proposal. The Exchange does not believe that this change raises any concerns in respect of non-Market Maker users of Post-Only Orders as the change will similarly benefit them.

12 15 U.S.C. 78f(b).

13 15 U.S.C. 78f(b)(5).

proposal is 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. The Exchange believes that this minor rule change will simplify its market structure, minimize or negate unnecessary complexity, and encourage liquidity at the crucial time of market open. The Exchange believes this change will make the transition from the pre-open period to regular market trading more efficient and thus promote just and equitable principles of trade and serve 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 not necessary or appropriate in furtherance of the purposes of the Act. While the Exchange does not believe that the proposal should have an impact on competition, it believes the proposal will reduce order entry complexity, enhance market liquidity, and be beneficial to market participants.

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

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)[14] of the Act and Rule 19b-4(f)(6)(iii) thereunder[15] because the foregoing proposed rule change does not: (i) significantly affect the

14 15 U.S.C. 78s(b)(3)(A).

15 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,

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.

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-2013-139 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-2013-139. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NASDAQ. 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-2013-139 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.[16]

Kevin M. O'Neill
Deputy Secretary

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[16] 17 CFR 200.30-3(a)(12).