

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80217; File No. SR-NASDAQ-2017-021)

March 10, 2017

Self-Regulatory Organizations; NASDAQ Stock Market, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Chapter X, Section 7(a) of the Exchange's Options Rules

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> notice is hereby given that on March 6, 2017, NASDAQ Stock Market, LLC (the "Exchange") 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. 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 Chapter X, Section 7(a) of the Exchange's Rules applicable to the NASDAQ Options Market, LLC ("NOM"), as described in further detail below.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, 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

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

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

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Chapter X, Section 7(a) of the Exchange's rules (the "Rules") applicable to NOM, which sets forth NOM's minor rule violation penalties and in particular, penalties for violating Chapter III, Section 7 of the Rules pertaining to position limits, so that these penalties are consistent with those of NOM's sister exchange, the International Securities Exchange, LLC ("ISE"), as well as other competing options exchanges.

Chapter III, Section 7 of the Exchange's Rules imposes position limits for Options Participants in certain circumstances. Meanwhile, Chapter X, Section 7(a) of the Rules assesses fines for minor rule violations, including position limits violations, as follows.

First, for violations occurring in customer accounts, Section 7(a)(i) assesses fines based upon the cumulative number of violations that occur over the course of a two year rolling period. For the first six violations that occur during any such period, an Option Participant will either be issued a letter of caution (to the extent that the violations are up to five percent in excess of applicable limits) or assessed \$1 per contract (to the extent that the violations are more than five percent in excess of applicable limits). For the seventh through twelfth violations that occur during any such period, the fine is \$1 per contract over the limit, regardless of the extent of the violations. Finally, for the thirteenth or any additional violations that occur during any such period, the fine increases to \$5 per contract over the limit. Notwithstanding the above, the Rule provides that the minimum fine that the Exchange shall assess is \$100.

Second, for violations that occur in the accounts of Options Participants (i.e., proprietary accounts and accounts of other Options Participants), Section 7(a)(ii) again assesses fines based upon the cumulative number of violations that occur over the course of a two year rolling period. For the first three violations that occur in any such period, an Option Participant will either be assessed a letter of caution (to the extent that the violations are up to five percent in excess of applicable limits) or \$1 per contract (to the extent that the violations are more than five percent in excess of applicable limits). For the fourth through the sixth violations that occur during any such period, the fine is \$1 per contract over the limit, regardless of the extent of the violations. Finally, for the seventh or any additional violations that occur during any such period, the fine increases to \$5 per contract over the limit. Notwithstanding the above, the Rule provides that the minimum fine that the Exchange shall assess is \$100.

The Exchange proposes to replace NOM's schedule of fines for position limit violations to mirror the schedule of fines that ISE and other exchanges apply to such violations. The ISE schedule of position limits fines set forth in ISE Rule 1614(d)(1) is simpler and, in certain instances, more stringent than the NOM schedule of fines. It provides that for any cumulative violations of the ISE position limits rule<sup>3</sup> that occur during any rolling two year period, ISE assesses a fine of \$500 for the first offense, \$1,000 for the second offense, \$2,500 for the third offense, and \$5,000 for the fourth and each subsequent offense. The ISE rule is identical to that

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<sup>3</sup> ISE Rule 1614(d)(1) counts as a single violation, provided that such a violation is inadvertent: (i) a 1 trade date overage; (ii) a consecutive string of trade date overage violations where the position does not change or where a steady reduction in the overage occurs; or (iii) a consecutive string of trade date overage violations resulting from other mitigating circumstances.

which several other exchanges employ.<sup>4</sup> The proposed rule change conforms the fine schedule of NOM to that of ISE.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</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 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 its proposed Rule change will be more effective than the existing Rule in preventing manipulative acts and practices and protecting investors because under the proposed Rule, the Exchange will immediately impose a fine upon an Options Participant that violates its position limits, and it will do so regardless of the extent of the violation, as opposed to only imposing a fine (rather than a caution letter) after the first six violations or to the extent that a violation exceeds 5 percent of the applicable limits.

Moreover, the proposed Rule change promotes fairness and consistency in the marketplace by harmonizing penalties across exchanges for the same conduct. As noted above, the proposed schedule of fines would be identical to the schedules of fines that ISE, BATS BZX, and C2 Options Exchange presently employ, and similar to that which NYSE Arca employs.

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<sup>4</sup> See BATS BZX Exchange, Inc. Rule 25.3(a); C2 Options Exchange Rule Chapter 17 (incorporating by reference CBOE Rule 17.50(g)(1); see also NYSE Arca, Inc. Rule 10.12(k)(i)(21) (imposing fines of \$1,000, \$2,500, and \$5,000 for the first, second, and third violations, respectively while omitting corresponding verbiage that defines the nature of a single violation subject to a fine).

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

<sup>6</sup> 15 U.S.C. 78f(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. The proposal will adopt the same schedule of fines as exists at other exchanges and it will apply the same schedule of fines to all Options 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 has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> 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 prior to 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.

A proposed rule change filed under Rule 19b-4(f)(6) under the Act<sup>9</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>10</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> Id.

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

Exchange has stated that it is requesting this waiver so that it may implement the proposed rule change at the earliest point in time possible. The Exchange further stated that the proposed rule change promotes the protection of investors and the public interest by imposing more immediate and significant sanctions for violations of Exchange rules.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal harmonizes the Exchange's schedule of fines with respect to position limit violations with fines currently imposed by other exchanges, and thus does not raise any new or novel issues. For this reason, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.<sup>11</sup>

At any time within 60 days of the filing of such 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>12</sup> of the Act to determine whether the proposed rule change 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:

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<sup>11</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>12</sup> 15 U.S.C. 78s(b)(2)(B).

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-NASDAQ-2017-021 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2017-021. 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, 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 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-NASDAQ-2017-021, 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.<sup>13</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).