

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76123; File No. SR-NASDAQ-2015-096)

October 9, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change to Adopt a Kill Switch for NOM

I. Introduction

On August 7, 2015, The NASDAQ Stock Market LLC filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt a risk protection functionality referred to as a kill switch that will be available to all Participants of the NASDAQ Options Market (“Exchange” or “NOM”). The proposed rule change was published for comment in the Federal Register on August 26, 2015.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to offer to all its members a new optional risk protection functionality for options to help members control their quote and order activity on NOM.⁴ Referred to as a “Kill Switch,” the functionality will allow NOM Participants to remove quotes and cancel open orders, and will prevent the submission of new quotes and orders until the Exchange re-enables access to the NOM System for the Participant.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4

³ See Securities Exchange Act Release No. 75743 (August 26, 2015), 80 FR 51850 (“Notice”).

⁴ See id.

⁵ Orders submitted by NOM Market Makers over Ouch to Trade Options (“OTTO”) interface will be treated as quotes for purposes of this rule. See Notice, supra note 3, at 51850.

To use the Kill Switch, a Participant will send a message⁶ to the NOM System to: (i) promptly remove quotes; and/or (ii) promptly cancel orders for certain specified Identifiers (e.g., a particular Exchange account, port, or badge or mnemonic, or for a group of Identifiers).⁷ The Exchange's proposal does not allow Participants to remove quotes or cancel orders by symbol. The NOM System will send an automated message to the Participant when it has processed a Kill Switch request.

The NOM Participant will be unable to enter any new quotes or orders using the affected Identifier(s) until the Participant makes a verbal request to the Exchange and Exchange staff enables re-entry. Once enabled for re-entry, the Exchange will send a message to the Participant and, if it requests to receive such notifications, to the Participant's clearing firm as well.

III. Discussion and Commission 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,⁸ and, in particular, the requirements of Section 6 of the Act.⁹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

⁶ NOM Participants will be able to utilize an interface to send a message to the Exchange to initiate the Kill Switch, or they may contact the Exchange directly. See Notice, supra note 3, at note 3.

⁷ Permissible groups could be formed only within a single broker-dealer. For example, a group could include, but would not be limited to, all market maker accounts or all order entry ports. See Notice, supra note 3, at 51850.

⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

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 and that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

According to the Exchange, the proposed rule change is designed to protect Participants in the event that the Participant encounters a situation, like a systems issue, for which they would like to withdraw temporarily from the market.¹¹ The Exchange further notes that the proposed Kill Switch is designed to increase systemic protections and, in so doing, should encourage liquidity generally while removing impediments to market participation.¹² To the extent that the Exchange's proposal provides member firms with greater control over their quotes and orders, and allows firms to remove quotes and cancel orders in an appropriate manner, then the proposal may encourage firms to provide liquidity on NOM and thus contribute to fair and orderly markets in a manner that protects the public interest, protects investors, and is not designed to permit unfair discrimination.

Further, the Commission agrees that it would be appropriate to notify a Participant's clearing member, at the clearing member's request, once a Participant's selected Identifiers are re-enabled following the Participant's use of the Kill Switch. Because the clearing member accepts financial responsibility for clearing the Participant's trades, notifying the applicable clearing member of a Participant's re-enabled Identifiers following use of the Kill Switch may be appropriate and help the clearing member manage the risk associated with the Participant's trading activity.

¹¹ See Notice, supra note 3, at 51851.

¹² See id.

The Commission notes that the Exchange represented in its proposal that the Kill Switch will operate consistently with a broker-dealer’s firm quote obligations pursuant to Rule 602 of Regulation NMS,¹³ and that the proposal does not diminish a market-maker’s obligation to provide continuous two-sided quotes on a daily basis under NOM rules.¹⁴ Specifically, the Exchange represents that “any interest that is executable against a NOM Participant’s quotes and orders that are received by the Exchange prior to the time the Kill Switch is processed by the System will automatically execute at the price up to the NOM Participant’s size.”¹⁵ In that respect, the Exchange further represented that “[t]he Kill Switch message will be accepted by the System in the order of receipt in the queue and will be processed in that order so that interest that is already accepted into the System will be processed prior to the Kill Switch message.”¹⁶ Based on these representations, the Commission believes that the proposal is designed to promote just and equitable principles of trade and perfect the mechanism of a free and open market.

Accordingly, the Commission finds that the Exchange’s proposal is consistent with the Act, including Section 6(b)(5) thereof, in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

¹³ See id.

¹⁴ See id.

¹⁵ Id.

¹⁶ Id.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-NASDAQ-2015-096) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Robert W. Errett
Deputy Secretary

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).