

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67722; File No. SR-NASDAQ-2012-095)

August 23, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate Market Maker Pre-Opening Obligations on NOM

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 August 10, 2012, The NASDAQ Stock Market LLC (“NASDAQ” or “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 modify Chapter VII, Section 6 (Market Maker Quotations) of the NASDAQ Options Market, LLC (“NOM”), to eliminate market maker pre-opening obligations on NOM. The Exchange also proposes to modify Chapter VII, Section 5 (Obligations of Market Makers) to conform it to Section 6.

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 modify Chapter VII, Section 6 of the NOM rulebook to remove obligations imposed on NOM market makers ("Market Makers")³ to participate in the pre-opening phase in terms of continuous quotes; and to conform Section 5 to Section 6 as modified. This is done to put Market Makers on par with the market makers on other options Exchanges that do not have pre-market continuous quoting obligations.⁴

Currently, Section 6 of Chapter VII requires that a Market Maker must enter continuous bids and offers in options in which the Market Maker is registered on NOM, an all-electronic market. Specifically, Section 6(d)(i) requires that on a daily basis a Market Maker must: 1) participate in the pre-opening phase; and 2) thereafter make markets consistent with the applicable quoting requirements specified in NOM rules, on a continuous basis in at least sixty percent (60%) of the series in options in which the Market Maker is registered. Additionally, subsection 6(d)(i)1) indicates that to satisfy the Section 6(d)(i) requirement with respect to quoting a series, a Market Maker must: 3) quote such series 90% of the trading day (as a

³ A Market Maker is a NOM participant that is registered with the Exchange as a Market Maker and has certain rights and bears certain responsibilities beyond those of other Options Participants. All Market Makers are designated as specialists on NOM. See Chapter VII, Section 2.

⁴ NASDAQ OMX Phlx ("Phlx"), and International Securities Exchange, LLC ("ISE") have market pre-opening phases. However, Phlx and ISE do not, as discussed in the proposal, impose pre-opening obligations on their respective options market makers; none of the exchanges require continuous quoting prior to the regular options trading market. The regular trading market opens on both exchanges at 9:30 Eastern Time.

percentage of the total number of minutes in such trading day) or such higher percentage as Nasdaq may announce in advance.⁵ The Exchange does not propose to change any of the continuous quoting requirements applicable to a Market Maker (e.g. continuous quoting in 60% of the Market Maker's registered series for 90% of the trading day)⁶ other than to eliminate the requirement to participate in the pre-opening phase in Section 6(d)(i), which is noted in 1) above.

Subsequent to this proposal, a Market Maker will continue to have all of the other quoting obligations that the Market Maker now has pursuant to Section 6, and pursuant to Section 6(d)(i), during regular market hours will be responsible to quote on a continuous basis in at least sixty percent (60%) of the series in options in which the Market Maker is registered for 90% of the trading day (as a percentage of the total number of minutes in such trading day). The change that the Exchange is proposing to Section 6(d)(i) is removal of the Market Maker pre-opening quoting obligation and the insertion of text clarifying that the quoting obligation is during regular market hours.⁷ As a result of the Exchange's proposed rule filing, the NOM continuous quoting requirement on NOM's electronic market makers will not have a pre-opening

⁵ Subsection (6)(d)(i)2) establishes that three different types of option series are exempted from the continuous quote requirements: quarterly option series, adjusted option series, and series with an expiration of nine months or greater.

For continuous quotation requirements on NOM generally, see Chapter XIV, Section 6(d).

⁶ The NOM trading day, which represents the regular market hours, is 9:30 a.m. to 4:00 p.m. Eastern Time, except for option contracts on fund shares or broad-based indexes which will close as of 4:15 p.m. Eastern Time. Chapter VI, Section 2.

⁷ Proposed Section 6(d)(i) states, in relevant part:

i. On a daily basis, a Market Maker must during regular market hours make markets consistent with the applicable quoting requirements specified in these rules, on a continuous basis in at least sixty percent (60%) of the series in options in which the Market Maker is registered.

quoting obligation, just as other options exchanges (e.g. Phlx and ISE) do not impose a pre-opening obligation on their electronic market makers.

Phlx and ISE have a continuous quoting obligation during their regular market hours, which are similar to NOM's market hours.⁸ However, Phlx and ISE do not have an obligation for their market makers to participate in a pre-opening phase. On Phlx, for example, a Remote Streaming Quote Trader ("RSQT"),⁹ which is similar in nature to a NOM Market Maker, has an obligation during trading hours to quote markets in not less than 60% of the series in which such RSQT is assigned (this is akin to NOM Market Maker registration in a series). Unlike a NOM Market Maker, which currently has a pre-opening obligation, a Phlx RSQT does not have a pre-opening market maker obligation.¹⁰ And as a second example, there is a quoting requirement for an ISE market maker. However, just like Phlx, and unlike NOM, ISE does not have a pre-opening market maker obligation.¹¹ The proposed filing establishes that NOM Market Makers, like Phlx and ISE market makers, will not have a pre-opening quoting obligation prior to market open.¹²

⁸ See supra note 6.

⁹ A Phlx RSQT is a Registered Options Trader that is a member or member organization with no physical trading floor presence that may generate and submit option quotations electronically in assigned options. See Phlx Rule 1014(b)(ii)(B). While the designation of RSQT does not exist on NOM, a NOM Market Maker enters quotes electronically on NOM just as an RSQT does on Phlx pursuant to specific quoting obligations. See NOM Chapter VII, Section 6(d) and Phlx Rule 1014(b)(ii)(D).

¹⁰ For the Phlx continuous quoting rule, see Phlx Rule 1014(b)(ii)(D)(1).

¹¹ ISE rule 804(e)(2)(iii) states, in relevant part, that a Competitive Market Maker must maintain continuous quotations in an options class to which it is appointed and at least 60% of the series of the options class listed on the Exchange until the close of trading that day.

¹² The two-sided quote obligation is noted also in Chapter VII, Section 5(a)(i), which states that during trading hours a Market Maker must maintain a two-sided market, pursuant to Section 6(d)(i) of Chapter VII, in those options in which the Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market.

Exchange Market Makers have noted that unlike NOM, other options exchanges do not have a pre-opening quoting obligation for their market makers, and have requested NOM to eliminate the pre-opening obligation so that NOM rules are similar to those of other options exchanges such as, for example, Phlx. This proposed rule change levels the playing field in respect of pre-opening obligations while leaving all other NOM quoting requirements intact.¹³

Moreover, the Exchange believes that its proposal to put NOM market makers in the same position as market makers on other exchanges will not have a negative effect on NOM investors and traders (“NOM participants”). In particular, the Exchange believes the removal of pre-opening market maker obligations on NOM will have no impact on the functioning of the NOM opening process and in turn will not negatively impact NOM participants. The Exchange generally requires two other option markets to be open prior to NOM initiating an opening process.¹⁴ In addition, orders and quotes executed during the opening process on NOM will continue to be protected by the National Best Bid or Offer (“NBBO”). As such, the Exchange believes that NOM participants will continue to have a similar experience and quality of execution on the opening on NOM as they do today.

The Exchange believes further that the proposed rule change eliminating pre-opening obligations should be pro-competitive in that it will attract more Market Makers, and additional

Recognizing the requirement to maintain a two-sided market during trading hours per Section 5(a)(i), the Exchange is removing reference in Section 5(a)(ii) to a Market Maker having to enter two-sided quotes before market open by participating in opening the market. This is done for purposes of conforming Section 5(a)(ii) with proposed Section 6(d)(i), which eliminates quoting obligations in the pre-opening phase before the market opens.

¹³ Chapter VII, Section 6(d).

¹⁴ For the NOM opening process, see Chapter VI, Section 8; and for a description of the two options market opening process, see http://www.nasdaqtrader.com/content/technicalsupport/NOM_SystemSettings.pdf.

liquidity, onto NOM. This should be advantageous to traders and investors executing trading and hedging strategies on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁶ in particular, in that the 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 the proposal to conform Market Maker obligations to the requirements of competing markets will promote the application of consistent trading practices. Therefore, the Exchange believes the proposal promotes just and equitable principles of trade and serves to protect investors and the public interest.

Additionally, the Exchange believes the proposal removes a market maker quoting requirement that is unnecessary, as evidenced by the fact that it does not exist on other competitive markets. The Exchange operates in a highly competitive market comprised of ten U.S. options exchanges in which sophisticated and knowledgeable market participants can, and do, send order flow to competing exchanges if they deem trading practices at a particular exchange to be onerous or cumbersome. With this proposal, the Market Maker will be relieved of a market maker requirement that does not materially improve the quality of the markets. On the contrary, the pre-open phase obligation creates an additional obligation and burden on NOM Market Makers that does not exist on numerous other competitive markets. The Exchange believes that in this competitive marketplace, the impact of the pre-open trading practice that

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

exists on the Exchange today compels this proposal. It will allow Market Makers on the Exchange to follow rules that are similar to the rules of other options exchanges that do not impose pre-opening obligations on their market makers, and will allow Market Makers to focus on aspects of their operations that contribute to the market in a more efficient and meaningful way.

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. NASDAQ's proposal to eliminate the pre-trading obligation for Market Makers is consistent with what is already occurring on other markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor 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 Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸ At any time within 60 days of the filing of such proposed rule change, the

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of 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.

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. Please include File Number SR-NASDAQ-2012-095 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-2012-095. 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 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-NASDAQ-2012-095 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.¹⁹

Kevin M. O'Neill
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).