

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72920; File No. SR-NASDAQ-2014-084)

August 26, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NOM Market Maker Requirements

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 21, 2014, 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 proposes to amend Chapter VII (Market Participants) at Section 6 (Market Maker Quotations) on The NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options.

The text of the proposed rule change is set forth below. Proposed new language is underlined; proposed deletions are in brackets.

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Chapter VII Market Participants

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Sec. 6 Market Maker Quotations

(a) – (c) No change.

(d) *Continuous Quotes*. A Market Maker must enter continuous bids and offers for the options to which it is registered, as follows:

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.

1) To satisfy this requirement [with respect to quoting a series], a Market Maker must quote [such series 90]60% of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as Nasdaq may announce in advance. Nasdaq Regulation may consider exceptions to the requirement to quote [90]60% (or higher) of the trading day based on demonstrated legal or regulatory requirements or other mitigating circumstances. This obligation will apply to all of a Market Maker's registered options collectively to all appointed issues, rather than on an option-by-option basis. Compliance with this obligation will be determined on a monthly basis. However, determining compliance with the continuous quoting requirement on a monthly basis does not relieve a Market Maker of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet the continuous quoting obligation each trading day.

2) and 3) No Change

ii. - iii. No change.

(e) No change.

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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 amend quoting obligations applicable to NOM Market Makers. Currently, Chapter VII, Section 6(d) provides that 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. It further provides that, to satisfy this requirement with respect to quoting a series, a Market Maker must quote such series 90% of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as the Exchange may announce in advance. Nasdaq Regulation may consider exceptions to the requirement to quote 90% (or higher) of the trading day based on demonstrated legal or regulatory requirements or other mitigating circumstances.

The Exchange proposes to better align its Market Maker quoting requirement with that of NASDAQ OMX BX, Inc. ("BX"). BX recently amended its market maker quoting requirements in a similar manner.³ Specifically, the Exchange proposes to reduce the quoting requirement for NOM Market Makers as follows: a Market Maker must quote such options 60% of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as NOM may announce in advance. Nasdaq Regulation may consider exceptions to the requirement to quote 60% (or higher) of the trading day based on demonstrated legal or regulatory requirements or other mitigating circumstances. This obligation will apply to all of a Market Maker's registered options collectively, rather than on an option-by-option basis.

³ See BX Rules at Chapter VII, Section 6.

Compliance with this obligation will be determined on a monthly basis. This is the same requirement as on BX.⁴

The Exchange believes that this is appropriate for two reasons. First, the Exchange's current Market Maker quoting requirement is much more stringent than BX.⁵ Quoting each series 90% of the trading day is much more stringent than looking at all options in which a Market Maker is registered, because it allows for some number of series not to be quoted at all, as long as the overall standard is met. This better accommodates the occasional issues that may arise in a particular series, whether technical or manual. The existing requirement may at times discourage liquidity in particular options series because a Market Maker is forced to focus on a momentary lapse rather than using the appropriate resources to focus on the options series that need and consume additional liquidity. The Exchange believes that it can better attract Market Makers to NOM and grow its market if its quoting obligation is more in line with that of other exchanges.

The Exchange believes that the amendments to Section 6(d)(i)(1) of Chapter VII, which would allow applying the quoting requirements for Market Makers collectively across all options classes, is a fair and more efficient way for the Exchange and market participants to evaluate compliance with the continuous quoting requirements. Applying the continuous quoting requirement collectively across all option classes rather than on an issue-by-issue basis is beneficial to Market Makers by providing some flexibility to choose which series in their appointed classes they will continuously quote--increasing the continuous quoting obligation in the series of one class to allow for a decrease in the continuous quoting obligation in the series of another class. This flexibility does not, however, diminish the Market Maker's obligation to

⁴ See BX Rules at Chapter VII, Section 6.

⁵ Id.

continuously quote a significant part of the trading day in a significant percentage of series. Flexibility is important for classes that have relatively few series and may prevent the Market Maker, in particular, from breaching the continuous quoting requirement when failing to meet the specified quote amount during the trading day (as proposed) in more than one series in an appointed class. Nasdaq Regulation may consider exceptions to the requirement to quote 60% (or higher) of the trading day based on demonstrated legal or regulatory requirements or other mitigating circumstances. This quoting obligation will apply to all of a Market Maker's registered options collectively on a daily basis, rather than on an option-by-option basis. This quoting obligation will be reviewed on a monthly basis, and allows the Exchange to review the Market Makers' daily compliance in the aggregate and determine the appropriate disciplinary action for single or multiple failures to comply with the continuous quoting requirement during the month period. However, determining compliance with the continuous quoting requirement on a monthly basis does not relieve a Market Maker of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet the continuous quoting obligation each trading day. This is the same requirement as on other options exchanges.⁶

The Exchange believes that the proposal will not diminish, and in fact may increase, market making activity on the Exchange, by establishing quoting compliance standards that are reasonable and are already in place on other options exchanges. By amending Section 6 of Chapter VII to state that quoting obligations apply to a Market Maker's appointed issues collectively, this proposal is similar to that of other options markets and puts the Exchange on an

⁶ See NYSE Arca Rule 6.37B(c) and NYSE MKT Rule 925.1NY(c).

equal competitive footing.⁷ Moreover, as discussed the Exchange believes that the proposal may increase market making activity on the Exchange by establishing quoting compliance standards that are reasonable and already in place on other options exchanges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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. NOM operates in an intensely competitive environment and seeks to offer the same services that its competitors offer and in which its customers find value.

The Exchange believes that requiring NOM Market Makers to provide continuous two-sided quotations 60% of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as the Exchange may announce in advance continues to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities. Further, the Exchange would apply the propose rule change to all of a Market Maker's registered options collectively to all appointed issues, rather than on an option-by-option basis and compliance with this obligation will be determined on a monthly basis.

⁷ The proposed rule text is, as noted, similar in all material respects to BX Rules at Chapter VII, Section 6.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

The proposal supports the quality of the Exchange's market by helping to ensure that Market Makers will continue to be obligated to quote in series when necessary. Ultimately, the benefit the proposed rule change confers upon Market Makers is offset by the continued responsibilities to provide significant liquidity to the market to the benefit of market participants. While under the proposal there are quoting requirements changes, the Exchange does not believe that these changes reduce the overall obligations applicable to Market Makers.¹⁰ Moreover, the Exchange believes that the proposal may increase market making activity on the Exchange and the quality of the Exchange's market by establishing quoting compliance standards that are reasonable and already in place on other options exchanges.¹¹

The proposed rule change also protects investors and the public interest by creating more uniformity and consistency among the Exchange's rules related to NOM Market Maker quoting obligations. Providing Market Makers with flexibility by providing the continuous quoting obligation collectively across all option classes will not diminish the Market Makers' obligation to continuously quote a significant part of the trading day in a significant percentage of series. Additionally, with respect to compliance standards, the Exchange believes that adopting the proposed standards will enhance compliance efforts by Market Makers and the Exchange, and are consistent with requirements currently in place on BX.¹² The proposal ensures that compliance standards for continuous quoting, in particular regarding quoting obligations applying to all of a Market Maker's appointed issues collectively, will be the same on the

¹⁰ In this respect, the Exchange notes that such Market Makers are subject to many obligations aside from quoting, including, for example, the obligation to maintain a fair and orderly market in their appointed classes, and the obligation to conduct the opening and enter continuous quotations in all of the series of their appointed options classes within maximum spread requirements.

¹¹ See BX Rules at Chapter VII, Section 6.

¹² Id.

Exchange as on other options exchanges. The Exchange believes that the proposal will not diminish and in fact may increase, market making activity on the Exchange by establishing quoting compliance standards that are reasonable and already in place on other options exchanges.

BX's recent rule proposal lowered the BX Market Maker's obligations in the same manner as proposed herein. BX also heightened its requirements¹³ with respect to Lead Market Makers ("LMM") because LMM's were also being offered certain participation entitlements¹⁴ that are not offered BX Market Makers that were not LMMs. In that filing, BX reasoned, "[t]he Exchange believes that offering LMMs participation entitlements promotes just and equitable principles of trade because LMMs will be held to a higher standard as compared to other market participants including Market Makers. A Market Maker would be required, pursuant to this proposal, to quote 60% of the trading day. LMMs are being held to a higher obligation and therefore are being rewarded with participation entitlements. Similar to Market Makers, LMMs add value through continuous quoting and the commitment of capital."¹⁵ Further, "[a]ccordingly, the proposed rule change supports the quality of the Exchange's trading markets

¹³ A BX LMM must provide continuous two-sided quotations throughout the trading day in its appointed issues for 90% of the time the Exchange is open for trading in each issue. Such quotations must meet the legal quote width requirements. These obligations will apply to all of the LMMs appointed issues collectively, rather than on an option-by-option basis. Compliance with this obligation will be determined on a monthly basis. BX Regulation may consider exceptions to the requirement to quote 90% (or higher) of the trading day based on demonstrated legal or regulatory requirements or other mitigating circumstances. However, determining compliance with the continuous quoting requirement on a monthly basis does not relieve an LMM of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against an LMM for failing to meet the continuous quoting obligation each trading day.

¹⁴ See BX Rules at Chapter VI, Section 10 for LMM participation entitlements.

¹⁵ See Securities Exchange Act Release No. 72883 (August 20, 2014), 79 FR 50971 (August 26, 2014) (SR-BX-2014-035).

by helping to ensure that LMMs will be required to meet a higher quoting standard in order to reap the benefits of the participation entitlements.”¹⁶ The Exchange is not offering NOM Market Makers such participation entitlements as BX offers its LMMs.

Finally, the Exchange believes that subjecting NOM Market Makers to the same requirements as those offered on other exchanges removes impediments to and allows for a free and open market. NOM Market Makers would have the same requirements as BX Options Market Makers.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Market Makers will be subject to quoting obligations which are similar to those at BX.¹⁷ The Exchange would apply to all of a Market Maker’s registered options collectively to all appointed issues, rather than on an option-by-option basis and compliance with this obligation will be determined on a monthly basis. Further, the Exchange believes that because this proposal establishes quoting compliance standards that are already in place on other options exchanges, the proposal will not diminish, and in fact may increase, market making activity on the Exchange and thereby enhance intermarket competition. Moreover, the proposed rule change will not impose any burden on intramarket competition because it will affect all Market Makers the same.

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

¹⁶ Id.

¹⁷ See BX Rules at Chapter VII, Section 6.

Because the foregoing 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁹

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. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change

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-2014-084 on the subject line.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(6).

Paper Comments:

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

All submissions should refer to File Number SR-NASDAQ-2014-084. 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-2014-084 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.²⁰

Kevin M. O'Neill
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).