

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64032; File No. SR-NASDAQ-2011-029)

March 4, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Minor Rules Violation Plan of the Nasdaq Options Market With Respect to Standardized Options

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 February 18, 2011, 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, 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 the Substance of the Proposed Rule Change

NASDAQ proposes to modify the Minor Rules Violation Plan with respect to standardized options as set forth in Chapter X, Section 7 of the Nasdaq Options Market (“NOM”) rules.

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at NASDAQ’s principal office, on the Commission’s website at <http://www.sec.gov>, 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

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. 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 Minor Rules Violation Plan (“MRVP”) fosters compliance with applicable rules and also helps to reduce the number and extent of rule violations committed by Options Participants and associated persons. The MRVP is particularly useful in reducing both the number and extent of rule violations because the text of the rule, located at Chapter X, Section 7, enables staff to promptly impose a limited but meaningful financial penalty soon after the violations are detected. The prompt imposition of a financial penalty helps to quickly educate and improve the conduct of Options Participants and associated persons that have engaged in inadvertent or otherwise minor violations of the Exchange’s rules, particularly those parties who may not pay attention to mere warnings that they are violating Exchange rules. By promptly imposing a meaningful financial penalty for such violations, the MRVP focuses on correcting conduct before it gives rise to more serious enforcement action.

The Exchange believes its proposal places the Exchange on par with all other options exchanges. Currently, all options exchanges have entered into a plan pursuant to Rule 17d-2 of the Act (the “Plan”) to agree to allocate regulatory responsibility for certain rules common to all options exchanges. Adding the proposed rules to the Exchange’s minor rule plan promotes consistency with the minor rule violations plans of the other exchanges, particularly with respect to rule [sic] that are classified as common rules pursuant to the Plan.

In light of recent amendments to Exchange rules, the Exchange is proposing to make amendments to the MVRP as described in greater detail below. While the MRVP will continue to be used for inadvertent and occasional rule violations, serious violations of Exchange rules will continue to be addressed through formal enforcement action.³

LOPR Reporting and Position Limit Violations

Proposed new subsection (d) of Chapter X, Section 7 will govern minor violations of the rules regarding Large Option Position Report (“LOPR”) Reporting and Position Limits as set forth in Chapter III, Sections 7-10. This section applies to position limits and maintaining and furnishing reports related to applicable position limits for options contracts. For minor rule violations of LOPR Reporting, the fine for a first offense would be \$1,000; the fine for a second offense would be \$2,500; and for any subsequent offense the fine would be \$5,000. For minor rule violations of position limits, the fine for a first offense would be \$500; for a second offense the fine would be \$1,000; and for any subsequent offense the fine would be \$2,500. The scope of this proposed subsection is substantially similar to and is applicable to the conduct covered by the MRVP provision of Rule 476A, Part 1C(i)(17) of the NYSE Amex Exchange (“Amex”). Specifically, Amex Rule 476A, Part 1C(i)(17), entitled “Position Limit or Exercise Limit Violation. (Rule 904, 904C, 905, 905C, 1107, 1108)” governs violations of position and exercise limits set forth in the enumerated Amex rules. Furthermore, proposed new subsection (d) references Chapter III, Sections 7, 8, and 9 of the Exchange Rules and also govern violations of position (Sections 7 and 8) and exercise (Section 9) limits. Likewise, Amex Rule 476A, Part 1C(i)(38), entitled “Reporting of options positions. (Rule 906(a) and 906C(a))” governs a failure to report options positions as set forth in Amex Rule 906 (Reporting of Options Positions), which

³ See Exchange Section 9200 Series Rules.

is similar to Exchange Rule Chapter III, Section 10 (Reports Related to Position Limits). Based on the similarity of rules between the Exchange and Amex and the overlap between NOM and Amex members, the Exchange believes that the proposal is non-controversial.

Expiring Exercise Declaration Rule Violations

Proposed new subsection (e) would govern minor violations regarding exercise of options contracts, allocation of exercise notices and delivery and payment of the underlying security set forth in Chapter VIII, Sections 1-3 of the Exchange's Rules. For these minor rules violations by individuals, the fine for a first offense would be \$500, the fine for a second offense would be \$1,000, and for any subsequent offense the fine would be \$2,500. For these minor rules violations by a firm, the fine for a first offense would be \$1,000, the fine for a second offense would be \$2,500, and for any subsequent offense the fine would be \$5,000. The language of this proposed subsection is identical to and applicable to the conduct covered by the MRVP provision in Chapter X, Section 2(f) of the rules of the rules of Boston Options Exchange ("BOX").

Audit Trail Submissions and Record Keeping Requirements Violations

Proposed new subsection (f) would govern minor violations of the Audit Trail Submissions and Record Keeping Requirements set forth in Chapter V, Section 7 and Chapter IX, Sections 1-3 of the Exchange's Rules. These rules address the submission of audit trail information and require information to be recorded, retained and provided upon request by the Exchange's Regulation or other applicable regulatory entity. For minor rules violations regarding the submission of audit trail information, the fine for a first offense would be \$1,500, the fine for a second offense would be \$3,000, and for any subsequent offense the fine would be \$5,000. The proposed provision is substantially similar to and applicable to conduct covered by

Rule 10.12(h)(2) entitled “Failure to comply with order formal and system entry requirements of Rule 6.67” and Rule 10.12(k)(i)(2) of the rules of the NYSE Arca, Inc. (“NYSE Arca”).

Likewise, the fine amounts are mirror NYSE Arca for minor rules violations regarding recordkeeping requirements and requirements for providing records upon request - the fine for a first offense would be \$2,000, the fine for a second offense would be \$4,000, and for any subsequent offense the fine would be \$5,000. The proposed provision is substantially similar to and applicable to conduct covered by Rule 10.12(j)(10) entitled “Failure to comply with the books and records requirements of Rule 9.17” and Rule 10.12(k)(iii)(10) of the rules of NYSE Arca.

Representation of Orders Violations

Proposed new subsection (g) will govern minor violations of the rules regarding Representation of Orders set forth in Chapter VII, Section 12 of the Exchange Rules. These rules restrict options participant executions of principal orders they represent as agent unless proper exposure parameters are applied. For these minor rules violations, the fine for a first offense would be \$1000, the fine for a second offense would be \$2,500, and for any subsequent offenses the fine would be \$5,000. This proposed provision is substantially similar to and applicable to the same conduct and fines covered by Rules 10.12(h)(34) entitled “Failure to satisfy the Order Exposure Requirements set forth in Rule 6.47A and its Commentary” and Rule 10.12(k)(i)(34) of the rules of NYSE Arca. NYSE Arca Rule 6.47A governs requirements for exposed orders.

Trade Reporting Violations

Proposed new subsection (h) will govern minor violations of the Trade Reporting rules set forth in Chapter VI, Sections 14 and 15 of the Exchange Rules. These rules require that all

transactions effected on the Exchange: (i) be submitted for clearance to The Options Clearing Corporation; (ii) that Options Participants report the name of the Clearing Participants; and (iii) the prompt reporting of any change in this identity to the Exchange. For these minor rules violations, the fine for a first offense would be \$1,500, the fine for a second offense would be \$3,000, and for any subsequent offense the fine would be \$5,000. This proposed provision is substantially similar to and applicable to the same conduct and fines covered by Rule 10.12(h)(38) entitled “Failure to comply with the reporting duties of Rule 6.69)” of the rules of NYSE Arca. Specifically, NYSE Arca Rule 6.69(e) governs the submission of trade reporting information regarding clearing through The Options Clearing Corporation.

Locked and Cross Market Violations

Proposed new subsection (i) will govern Locked and Cross Market Violations as set forth in Chapter XII, Section 3 of the Exchange Rules. The Locked and Crossed Markets rules address violations of the rules regarding avoidance of Locked or Crossed Markets. For these minor rules violations, the fine for a first offense would be \$500, the fine for a second offense would be \$1,000, and for any subsequent offense the fine would be \$2,500. The language of this proposed subsection is identical to and applicable to the conduct and fines covered by Rule 10.12(h)(35) entitled “Failure to avoid locking a market (Rule 6.95)” and 10.12(k)(i)(35) of the rules of NYSE Arca. The underlying provisions of the Exchange and NYSE Arca rules are all based on the same provisions of the Options Order Protection and Locked/Crossed Market Plan.⁴

⁴ On August 31, 2009, the Nasdaq Stock Market, LLC and NASDAQ OMX PHLX LLC (herein collectively referred to as “NASDAQ”) entered into the “Options Order Protection and Locked/Crossed Market Plan” (“Plan”) amongst other Participants, which was approved by the Securities and Exchange Commission (“SEC”) pursuant to Section 11A(a)(3)(B) of the Exchange Act and Rule 608, effective on August 28, 2009, Release No. 34-60582.

Trade-Through Violations

Proposed new subsection (j) would govern Trade-Through Violations that occur pursuant to Chapter XII, Section 2(a) of the Exchange Rules. The Trade-Through Rules prevent market participants from executing orders at prices that are inferior to other displayed quotations. For these minor rules violations, the fine for a First Offense would be \$500, the fine for a second offense would be \$1,000, and for any subsequent offense the fine would be \$2,500. The language of this proposed subsection is substantially applicable to the conduct and fines covered by Rule 10.12(h)(29) entitled “Failure to comply with the requirements for avoidance of trade-throughs set forth in Rule 6.94(a)” and Rule 10.12(k)(i)(29) of the rules of NYSE Arca. The underlying provisions of the Exchange and NYSE Arca rules are all based on the same provisions of the Options Order Protection and Locked/Crossed Market Plan.

Failure to Timely File Amendments to Form U4, Form U5 and Form BD Violations

Proposed new subsection (k) would govern Failure to Timely File Amendments to Form U4, Form U5 and Form BD. Any member and/or participant organization that is required to file Form U4, Form U5 or Form BD pursuant to Section 1031 of the Exchange Rules, the Act, and/or the rules promulgated thereunder, is required to amend the applicable Form U4, Form U5 or Form BD to keep such forms current at all times. Members and/or participant organizations must amend Form U4, Form U5 and Form BD within thirty days after the filer knew of or should have known of the need for the amendment. For these minor rules violations, implemented on a running twelve (12) month period the fine for a first offense would be \$500, the fine for a second offense would be \$1,000, and for any subsequent offense the fine would be \$2,000. The language of this proposed subsection is identical to and applicable to the conduct and fines

covered by the MRVP provision in Chapter X, Section 2(e) of the rules of BOX, which addresses the same provisions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and Section 6(b)(5) of the Act⁶, in particular, because 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change is consistent with the statute in that it directly addresses fraudulent and manipulative acts and practices by NOM members.

The proposed rule change is consistent with Section 6(b)(6) of the Act⁷ which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. The establishment and modification of a MRVP directly addresses such requirement.

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

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(6).

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

Pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder,⁹ The [sic] Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for thirty days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. 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.

The Exchange believes that the filing may appropriately be designated for filing under Rule 19b-4(f)(6) because the filing eliminates inconsistencies between the Exchange’s MRVP and those of other exchanges. The proposed rules of the Exchange are substantially similar to the rules of other exchanges. This similarity is the basis for the Exchange’s belief that the proposed rule change is non-controversial. Since no significant issues have been raised with this “copycat” filing, the Exchange believes that this filing will afford it the same operability regarding the MRVP as the other exchanges.¹⁰ In addition, the proposal will improve the regulation of NOM and its members, and enhance investor protection on the Exchange.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ See Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008) at 40151, where the Securities and Exchange Commission acknowledges that “any

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 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 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, as amended, 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-2011-029 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-2011-029. 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

increase in the number of proposed rule changes that may become effective upon filing with the Commission should improve the ability of SROs to amend their rules efficiently, particularly with respect to rules relating to trading systems and “copycat” proposals, which will enhance their ability to respond to competitive pressures by allowing them to file changes to their systems on an immediately-effective basis”.

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-2011-029, 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.¹¹

Cathy H. Ahn
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).