

comply with the firm quote obligations in Rule 602 of Regulation NMS.

C2 will require TPHs and Market-Makers to utilize these risk protection parameters and mechanisms. However, TPHs and Market-Makers will have discretion to customize the parameters in accordance with their respective risk management needs. In light of this flexibility, the Commission reminds TPHs to be mindful of their obligations, to among others, seek best execution of orders they handle on an agency basis and consider their best execution obligations when establishing parameters for the order entry, execution, price parameter rate checks, maximum contract size risk control, and QRM.⁴⁵ For example, an abnormally low order entry parameter should be carefully scrutinized, particularly if a TPH's order flow to the Exchange contains agency orders. To the extent that a TPH chooses sensitive parameters and those parameters apply to connections over which it transmits customer orders to the Exchange, a TPH should consider the effect of its chosen settings on its ability to receive a timely execution on marketable agency orders that it sends to the Exchange in various market conditions. The Commission cautions brokers considering their best execution obligations to be aware that an agency order they represent may be rejected as a result of these risk protections.

In addition, in light of the Exchange's decision not to set maximum or minimum values, or default values, the Commission expects C2 to periodically assess whether these risk protection measures are operating in a manner that is consistent with the promotion of fair and orderly markets, including whether not utilizing maximum and minimum parameters or default values continues to be appropriate and in accordance with the Act and the rules thereunder.

Further, the Commission believes that Proposed Rule 6.17(i), which creates an optional kill switch mechanism, is consistent with the Act as it may further enhance risk management capabilities of TPHs by providing them with the ability to manage their risk exposure if they experience a significant system failure. To the extent that the kill switch mechanism provides TPHs with an appropriate backstop in this manner, it may encourage firms to provide liquidity on C2 and thus contribute to fair and orderly markets in a manner

that protects investors and the public interest. 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,⁴⁶ and that the kill switch does not diminish or relieve a Market-Maker of its obligation to provide continuous two-sided quotes.⁴⁷ The Exchange also represented that the kill switch message will be accepted by the System in the order of receipt in the queue and will be processed in such order. As such, the System will process interest already in the System prior to receipt of the kill switch message prior to processing the kill switch message.⁴⁸ Based on these representations, the Commission believes that the kill switch is reasonably designed to promote just and equitable principles of trade and perfect the mechanism of a free and open market. Lastly, the Commission notes that in addition to the CBOE filing mentioned above, other exchanges have established kill switches that operate in a manner similar to that proposed by C2.⁴⁹

Finally, the Commission believes that the proposal to authorize C2 to share with Clearing TPHs the risk mitigation settings selected by a TPH for whom the Clearing TPH clears may assist Clearing TPHs manage their clearing risk exposure. In addition to the CBOE filing mentioned above, the Commission notes that other exchanges have adopted similar rules authorizing the sharing of similar risk settings with clearing members.⁵⁰

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁵¹ that the proposed rule change (SR-C2-2016-020), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵²

Robert W. Errett,

Deputy Secretary.

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⁴⁶ See Notice, *supra* note 3, at 76681.

⁴⁷ See *id.*

⁴⁸ See *id.*

⁴⁹ See, e.g., BOX Rule 7280(b) and PHLX Rule 1019(b).

⁵⁰ See, e.g., MIAX Rule 500; BX Chapter VI, Section 20; NYSE Arca Rule 6.2A(a); NYSE MKT Rule 902.1NY(a); and PHLX Rule 1016.

⁵¹ See *id.*

⁵² 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79546; File No. SR-NASDAQ-2016-165]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4770 (Compliance With Regulation NMS Plan To Implement a Tick Size Pilot)

December 14, 2016.

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 November 30, 2016, 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, 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 Nasdaq Rule 4770 to modify the Web site data publication requirements relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan") and to clarify the timing and format of publishing Market Maker registration statistics.

The text of the proposed rule change is available on the Exchange's Web site 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴⁵ See, e.g., Securities Exchange Act Release Nos. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (Order Handling Rules adopting release); 51808 (June 9, 2005), 70 FR 37496, 37537-8 (June 29, 2005) (Regulation NMS adopting release).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, Nasdaq, and several other self-regulatory organizations (the "Participants") filed with the Commission, pursuant to Section 11A of the Act³ and Rule 608 of Regulation NMS thereunder,⁴ the Plan to Implement a Tick Size Pilot Program.⁵ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.⁶ The Plan was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.⁷ The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.⁸ On November 6, 2015, the SEC exempted the Participants from implementing the Pilot until October 3, 2016.⁹ Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016. On September 13, 2016, the SEC exempted the Participants from the requirement to fully implement the Pilot on October 3, 2016, to permit the Participants to implement the pilot on a phased-in basis, as described in the Participants' exemptive request.¹⁰

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

Nasdaq adopted rule amendments to implement the requirements of the Plan, including relating to the Plan's data

collection requirements and requirements relating to Web site data publication.¹¹ Specifically, with respect to the Web site data publication requirements pursuant to Section VII and Appendices B and C to the Plan, Nasdaq Rule 4770(b)(2)(B) provides, among other things, that Nasdaq shall make the data required by Items I and II of Appendix B to the Plan, and collected pursuant to paragraph (b)(2) of Rule 4770, publicly available on the Nasdaq Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data. Nasdaq Rule 4770(b)(3)(C), provides, among other things, that Nasdaq shall make the data required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3) of Rule 4770, publicly available on the Nasdaq Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data. Commentary .08 to Rule 4770 provides, among other things, that the requirement that Nasdaq make certain data publicly available on the Nasdaq Web site pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period.

Nasdaq is proposing amendments to Rule 4770(b)(2)(B) (regarding Appendix B.I and B.II data) and Rule 4770(b)(3)(C) (regarding Appendix B.IV data) to provide that data required to be made available on Nasdaq's Web site be published within 120 calendar days following month end. In addition, the proposed amendments to Commentary .08 to Rule 4770 would provide that, notwithstanding the provisions of paragraphs (b)(2)(B), (b)(3)(C) and (b)(5), Nasdaq shall make data for the Pre-Pilot period publicly available on the Nasdaq Web site pursuant to Appendix B and C to the Plan by February 28, 2017.¹²

The purpose of delaying the publication of the Web site data is to address confidentiality concerns by providing for the passage of additional time between the market information

reflected in the data and the public availability of such information.

Nasdaq also proposes to amend Rule 4770(b)(5), which relates to the collection and transmission of Market Maker registration statistics. Currently, Rule 4770(b)(5) provides that the Exchange shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in a pipe delimited format within 30 calendar days following month end for (1) transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (2) transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period. Although the Plan requires that such data be made publicly available,¹³ Rule 4770(b)(5) does not currently include a provision requiring the Exchange to publish such data to its Web site. The Exchange therefore proposes to amend Rule 4770(b)(5) to provide that the Exchange shall make Market Maker registration data publicly available on the Exchange Web site within 120 calendar days following month end at no charge.

Nasdaq has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day operative delay, the operative date of the proposed rule change will be the date of filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ in particular, in that it 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, because it is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan and is in furtherance of the objectives of the Plan, as identified by the SEC.

In approving the Plan, the Commission recognized that requiring the publication of Market Maker data may raise confidentiality concerns, especially for Pilot Securities that may

³ 15 U.S.C. 78k-1.

⁴ 17 CFR 242.608.

⁵ See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

⁶ See Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

⁷ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

⁸ See Approval Order at 27533 and 27545.

⁹ See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

¹⁰ See Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated September 13, 2016; see also Letter from Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated September 9, 2016.

¹¹ See, e.g., Securities Exchange Act Release No. 77456 (March 28, 2016), 81 FR 18925 (April 1, 2016) (SR-NASDAQ-2016-043); see also Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated February 17, 2016.

¹² With respect to data for the Pilot Period, the requirement that Nasdaq make data publicly available on the Nasdaq Web site pursuant to Appendix B and C to the Plan shall continue to commence at the beginning of the Pilot Period. Thus, the first Web site publication date for Pilot Period data (covering October 2016) would be published on the Nasdaq Web site by February 28, 2017, which is 120 days following the end of October 2016.

¹³ See Section VII.A. 4 of the Plan.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

have a relatively small number of designated Market Makers.¹⁶ For this reason, the Commission modified the Plan so that the data that would be made publicly available would not contain profitability measures for each security, but would be aggregated by the Control Group and each Test Group. Nasdaq believes that this proposal is consistent with the Act in that it is designed to address confidentiality concerns by permitting Nasdaq to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. With respect to the change to Rule 4770(b)(5), Nasdaq believes this change will clarify the timing and format of publishing Market Maker registration statistics.

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 notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan.

The proposal is intended to address confidentiality concerns that may adversely impact competition, especially for Pilot Securities that may have a relatively small number of designated Market Makers, by permitting Nasdaq to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. The proposal also does not alter the information required to be submitted to the SEC.

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.¹⁷

¹⁶ See Approval Order at 27543–27544.

¹⁷ Nasdaq notes that Financial Information Forum (FIF) submitted a letter to the staff of the Commission raising concerns regarding the publication of certain Appendix B statistics on a disaggregated basis using a unique masked market participant identifier. See Letter from Mary Lou Von Kaenel, Managing Director, FIF, to David S. Shillman, Associate Director, Division of Trading and Markets, Commission, dated August 16, 2016, available at <https://www.fif.com/comment-letters>.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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)(iii) of the Act¹⁸ and subparagraph (f)(6) of Rule 19b–4 thereunder.¹⁹

A proposed rule change filed under Rule 19b–4(f)(6)²⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),²¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In this filing, the Exchange has asked that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing.

The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan. The proposal is intended to address confidentiality concerns by permitting the Exchange to delay Web site publication to provide for passage of additional time between the market information reflected in the data and public availability of such information. The proposal does not alter the information required to be submitted to the Commission.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement these proposed changes that are intended to address confidentiality concerns. The Commission notes that some Pilot data was scheduled to be published on November 30, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative on November 30, 2016.²²

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.

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 email to rule-comments@sec.gov. Please include File Number SR–NASDAQ–2016–165 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–2016–165. This file number should be included on the subject line if email 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 Web site (<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 Web site 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

¹⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁹ 17 CFR 240.19b–4(f)(6).

²⁰ *Id.*

²¹ 17 CFR 240.19b–4(f)(6)(iii).

²² For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

should refer to File Number SR–NASDAQ–2016–165 and should be submitted on or before January 10, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–30552 Filed 12–19–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79556; File No. SR–NASDAQ–2016–167]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Distributor Fees for ITTO and BONO Data Feeds

December 14, 2016.

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 December 2, 2016, 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 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 XV of the Options Rules for the Nasdaq Stock Market, entitled “Options Pricing,” at Section 4, which governs Nasdaq Options Market (“NOM”) data distributor fees. Specifically, the Exchange proposes to separate the distributor fees for the ITCH³ to Trade Options (“ITTO”) and Best of Nasdaq Options (“BONO”) data feeds, which are now charged as a single fee, into two separate fees, and conforming language to clarify that there will be no change to the Monthly Non-Display Enterprise License for ITTO and BONO. The proposal is described further below.

The text of the proposed rule change is available on the Exchange’s Web site 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 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 separate the distributor fees for the ITTO and BONO data feeds, which are now charged together as a single fee, into two separate fees.

ITTO and BONO are proprietary data feeds designed to facilitate trading in options markets. ITTO provides in-depth quote and order information, last sale information, and Net Order Imbalance (“NOI”) data for NOM. BONO provides top-of-market data for NOM, including best bid and offer and last sale information. The information provided in BONO can be derived from ITTO. Customers typically purchase either ITTO or BONO, but not both.

Nasdaq currently charges a monthly distributor fee of \$1,500 for the internal distribution of either ITTO or BONO or both, and a monthly external distributor fee of \$2,000 for the external distribution of either or both feeds. Nasdaq also offers an enterprise license for BONO and ITTO for a monthly fee of \$10,000.

Proposed Changes

The Exchange proposes to separate the internal and external distributor fees for ITTO and BONO. After the proposed changes take effect, a firm that distributes either ITTO or BONO, but not both, will be charged the current fee. A firm that elects to distribute both ITTO and BONO, however, will be charged a fee for the distribution of ITTO and a separate fee for the distribution of BONO. The proposal will not affect the other fees associated with ITTO and BONO: the monthly external and internal per user fees and the monthly enterprise license fee will remain the same.

The proposed fee change is reasonable and necessary because of the increase in the value of ITTO and BONO to customers resulting from the growth in NOM listings and recent infrastructure upgrades. NOM listings have increased from 663 in June of 2011 to over 2,800 today—over a 300 percent increase—while NOM’s market share has jumped more than 250 percent between July of 2011 and November of 2016, according to data from the Options Clearing Corporation. In addition, in August of 2016, NOM commenced a market-wide technology refresh for several options systems, including ITTO and BONO, to provide a more efficient and robust infrastructure for options trading. The increase in the value of ITTO and BONO to customers generated by the growth in NOM and infrastructure investments, together with Nasdaq’s reasonable objective to recoup costs associated with the growth of NOM and infrastructure investments, justify the proposed price increase.

The impact of the proposed change on firms that use BONO and ITTO will be minimal. Because BONO data is a subset of ITTO, most firms buy either ITTO or BONO, but not both. To the extent that firms use both BONO and ITTO, the higher fee is reasonable in light of the higher demands placed on Nasdaq’s infrastructure by those firms.

The proposed changes do not affect the enterprise license fee for BONO and ITTO. The Nasdaq Options Rules, Chapter XV, Section 4(a), currently present the Monthly Enterprise License (Non-Display) Fee of \$10,000 in the same chart that sets forth the distributor fees for ITTO and BONO. To avoid implying that the enterprise license fee for ITTO and BONO will be separated as well, the Exchange proposes taking the enterprise license fee out of that chart, and placing it in a separate paragraph under Section 4(a).

The new paragraph will not change current fees: the \$10,000 per month enterprise license fee will permit the distribution of BONO and ITTO as provided in Section 4(c), and the fee will be in addition to the monthly distributor fees set forth in Section 4(a). This is consistent with the current rule and practice.

The ITTO and BONO internal and external distributor fees are entirely optional in that they apply only to firms that opt to distribute ITTO and BONO. The proposed changes do not impact or raise the cost of any other Nasdaq product.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

²³ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ ITCH is a direct data feed interface for NOM.