

• Decreasing depth at the inside could cause institutions to rely more on execution alternatives away from the exchanges, potentially increasing fragmentation in the securities markets.³⁶

The Commission believes that the limited exemption granted today should continue to promote competition between exchanges and OTC market makers in a manner that is reasonably designed to minimize the problems that the Commission identified when adopting the Sub-Penny Rule. Under the Program, sub-penny prices will not be disseminated through the consolidated quotation data stream, which should avoid quote flickering and its reduced depth at the inside quotation.

Furthermore, the Commission does not believe that granting this limited exemption and approving the proposal would reduce incentives for market participants to display limit orders. As noted in the RPI Approval Order, market participants that displayed limit orders at the time were not able to interact with marketable retail order flow because that order flow was almost entirely routed to internalizing OTC market makers that offered sub-penny executions.³⁷ The Program has attracted a small volume from the OTC market makers. As a result, enabling the Exchange to continue to compete for retail order flow through the Program should not materially detract from the current incentives to display limit orders, while potentially resulting in greater order interaction and price improvement for marketable retail orders on a public national securities exchange. To the extent that the Program may raise Manning and best execution issues for broker-dealers, these issues are already presented by the existing practices of OTC market makers.

This permanent and limited exemption from the Sub-Penny Rule is limited solely to the operation of the Program by the Exchange. This exemption does *not* extend beyond the scope of Exchange Rule 11.24. In addition, this exemption is conditioned on the Exchange continuing to conduct the Program, in accordance with Exchange Rule 11.24 and substantially as described in the Exchange's request for exemptive relief and the proposed rule change.³⁸ Any changes in Exchange

Rule 11.24 may cause the Commission to reconsider this exemption.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,³⁹ that the proposed rule change (SR-CboeBYX-2019-014) be, and it hereby is, approved.

It is further ordered that, pursuant to Rule 612(c) under Regulation NMS, that the Exchange shall be exempt from Rule 612(a) of Regulation NMS with respect to the operation of the Program as set forth in Exchange Rule 11.24 as described herein.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁰

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87160; File No. SR-NASDAQ-2019-078]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Protocol "Ouch To Trade Options"

September 30, 2019.

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 September 17, 2019, The Nasdaq Stock Market LLC ("Exchange" or "Nasdaq") 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 delay the protocol "Ouch to Trade Options" or "OTTO" on The Nasdaq Options Market LLC ("NOM").

The text of the proposed rule change is available on the Exchange's website 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

Nasdaq filed a rule change³ which adopted a new protocol "Ouch to Trade Options" or "OTTO"⁴ and proposed to rename and modify the current OTTO protocol as "Quote Using Orders" or "QUO."⁵ The Exchange subsequently filed a rule change to amend Chapter VI, Section 6(e), titled "Detection of Loss of Communication" which describes the impact to NOM protocols in the event of a loss of a communication. The Exchange accounted for both the new OTTO and renamed and modified QUO within this rule. Similarly, the Exchange amended Chapter VI, Section 8, "Nasdaq Opening and Halt Cross" to account for the new OTTO and renamed

³ See Securities Exchange Act Release No. 83888 (August 20, 2018), 83 FR 42954 (August 24, 2018) (SR-NASDAQ-2018-069) ("Prior Rule Change"). In the Prior Rule Change the Exchange stated that it would issue an Options Trader Alert introducing the new OTTO protocol in Q4 of 2018.

⁴ As modified by the Prior Rule Change, OTTO is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders to and from the Exchange. Features include the following: (1) Options symbol directory messages (*e.g.*, underlying); (2) system event messages (*e.g.*, start of trading hours messages and start of opening); (3) trading action messages (*e.g.*, halts and resumes); (4) execution messages; (5) order messages; and (6) risk protection triggers and cancel notifications. See NOM Rules at Chapter VI, Section 21(a)(i)(C).

⁵ QUO is an interface that allows NOM Market Makers to connect, send, and receive messages related to single-sided orders to and from the Exchange. Order Features include the following: (1) Options symbol directory messages (*e.g.*, underlying); (2) system event messages (*e.g.*, start of trading hours messages and start of opening); (3) trading action messages (*e.g.*, halts and resumes); (4) execution messages; (5) order messages; and (6) risk protection triggers and cancel notifications. Orders submitted by NOM Market Makers over this interface are treated as quotes. See NOM Rules at Chapter VI, Section 21(a)(i)(D).

³⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (Adopting Order for Regulation NMS).

³⁷ See RPI Approval Order, *supra* note 3, at 71658.

³⁸ See *supra* note 9.

³⁹ 15 U.S.C. 78s(b)(2).

⁴⁰ 17 CFR 200.30-3(a)(12) and 17 CFR 200.30-3(a)(83).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

and modified QUO within this rule. Finally, the Exchange amended Chapter VI, Section 19, “Data Feeds and Trade Information” to amend “OTTO DROP” to “QUO DROP” and noted within Chapter VI, Section 18(a)(1) related to Order Price Protection rule or “OPP” that OPP shall not apply to orders entered through QUO.⁶

Both the Prior Rule Change and the Subsequent Rule Change indicated the aforementioned rule changes would be implemented for QUO and OTTO in Q4 of 2018 with the date announced via an Options Traders Alert. The Exchange filed a rule change implementing QUO and delaying the introduction of the OTTO functionality until Q3 2019 by announcing the date of implementation via an Options Traders Alert.⁷ The Exchange further delayed the implementation of OTTO functionality until Q3 2019.⁸ At this time, the Exchange proposes to further delay the implementation of OTTO functionality until Q2 2020. The Exchange will issue an Options Trader Alert notifying Participants when this functionality will be available.

The Exchange proposes this delay to allow the Exchange additional time to implement this functionality and for Participants to sign-up for this new port and test with the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ 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 by delaying the OTTO functionality to allow the Exchange additional time to implement this functionality and for Participants to sign-up for this new port and test with the Exchange.

⁶ See Securities Exchange Act Release No. 84559 (November 9, 2019), 83 FR 57774 (November 16, 2018) (SR–NASDAQ–2018–085) (“Subsequent Rule Change”).

⁷ See Securities Exchange Act Release No. 84723 (December 4, 2018), 83 FR 63692 (December 11, 2018) (SR–NASDAQ–2018–097). The Exchange proposed to immediately implement QUO as of the effectiveness of SR–NASDAQ–2018–097 and delay the implementation of OTTO by issuing an Options Trader Alert announcing the implementation date in Q1 2019. The QUO implementation became effective upon filing on November 26, 2018.

⁸ See also Securities Exchange Act Release No. 85386 (March 21, 2019), 84 FR 11597 (March 27, 2019) (SR–NASDAQ–2019–016).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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. The Exchange’s proposal to delay the adoption of the OTTO functionality does not impose an undue burden on competition. Delaying the OTTO functionality will allow the Exchange additional time to implement this functionality and for Participants to sign-up for this new port and test with the Exchange.

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

A proposed rule change filed under Rule 19b–4(f)(6)¹¹ normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)¹² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the waiver will allow the Exchange additional time to implement this functionality and for Participants to sign-up for this new port and test with the Exchange and ensure a successful implementation of the OTTO. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change as operative upon filing.¹³

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

¹¹ 17 CFR 240.19b–4(f)(6).

¹² 17 CFR 240.19b–4(f)(6).

¹³ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change 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–2019–078 on the subject line.

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–2019–078. 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 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–078 and

should be submitted on or before October 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87153; File No. SR–NYSEArca–2019–67]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period for the Exchange Retail Liquidity Program Until October 31, 2019

September 30, 2019.

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 September 26, 2019, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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 extend the pilot period for the Exchange’s Retail Liquidity Program (the “Retail Liquidity Program” or the “Program”), which is currently scheduled to expire on September 30, 2019, until October 31, 2019. The proposed rule change is available on the Exchange’s website at www.nyse.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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

The Exchange proposes to extend the pilot period of the Retail Liquidity Program, currently scheduled to expire on September 30, 2019,³ until October 31, 2019.

Background

In December 2013, the Commission approved the Retail Liquidity Program on a pilot basis.⁴ The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than \$1.00 per share. Under the Program, Retail Liquidity Providers (“RLPs”) are able to provide potential price improvement in the form of a non-displayed order that is priced better than the Exchange’s best protected bid or offer (“PBBO”), called a Retail Price Improvement Order (“RPI”). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, indicating that such interest exists. Retail Member Organizations (“RMOs”) can submit a Retail Order to the Exchange, which would interact, to the extent possible, with available contra-side RPIs.

The Retail Liquidity Program was approved by the Commission on a pilot basis. Pursuant to NYSE Arca Rule 7.44–E(m), the pilot period for the Program is scheduled to end on September 30, 2019.

Proposal To Extend the Operation of the Program

The Exchange established the Retail Liquidity Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to

³ See Securities Exchange Act Release No. 86198 (June 26, 2019), 84 FR 31648 (July 2, 2019) (SR–NYSEArca–2019–45).

⁴ See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR–NYSEArca–2013–107) (“RPL Approval Order”).

submit RPIs to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide and consider the Exchange’s filing to make the filing permanent.⁵ As such, the Exchange believes that it is appropriate to extend the current operation of the Program.⁶ Through this filing, the Exchange seeks to amend NYSE Arca Rule 7.44–E(m) and extend the current pilot period of the Program until October 31, 2019.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ 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.

The Exchange believes that extending the pilot period for the Retail Liquidity Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price

⁵ See *id.*, 78 FR at 79529; see also Securities Exchange Act Release No. 86870 (September 4, 2019), 84 FR 47575 (September 10, 2019) (SR–NYSEArca–2019–63) (filing to make Rule 7.44–E, which sets forth the Exchange’s Retail Liquidity Program, permanent).

⁶ Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the undisplayed RPIs. See Letter from Martha Redding, Asst. Corporate Secretary, NYSE Group, Inc. to Secretary, Securities and Exchange Commission, dated September 26, 2019.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

¹⁴ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.