

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100858; File No. SR-NASDAQ-2024-048)

August 28, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 3, Sections 8, 15 and 25

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 20, 2024, 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 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 The Nasdaq Options Market LLC (“NOM”) Rules at Options 3, Sections 8, 15 and 25.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

NOM proposes to amend Options 3, Section 8, Opening and Halt Cross, and Options 8 [sic], Section 25, Anonymity, to permit trade reports to reveal certain additional information concerning contra parties. The Exchange also proposes an amendment to Options 3, Section 15, Risk Protections. Each change will be described below.

Anonymity

Today, transaction reports produced by the System indicate the details of the transactions, but do not reveal “contra party identities” pursuant to Options 3, Section 25(a). In limited circumstances, NOM will reveal a Participant’s identity as described in Options 3, Section 25(b).³

Background

Today, NOM does not display any market participant capacity information⁴ prior to execution, nor does NOM provide transaction reports that include contra party identities.⁵ For

³ Pursuant to Options 3, Section 25(b), NOM will reveal a Participant’s identity: (1) when a registered clearing agency ceases to act for a participant, or the Participant’s clearing firm, and the registered clearing agency determines not to guarantee the settlement of the Participant’s trades; (2) for regulatory purposes or to comply with an order of an arbitrator or court; (3) if both Participants to the transaction consent; and (4) Unless otherwise instructed by a Member, NOM will reveal to a member, no later than the end of the day on the date an anonymous trade was executed, when the member’s Order has been decremented by another Order submitted by that same member.

⁴ A market participant capacity is a code that correlates to the capacity of an order at The Options Clearing Corporation (“OCC”).

⁵ The contra party identity is the mnemonic for the contra side of the trade. The term “mnemonic” means an acronym comprised of letters and/or numbers assigned to Participants pursuant to Options 1, Section 1(a)(25). A Participant account may be associated with multiple mnemonics. A house account is a number provided by the Exchange to identify members.

example, NOM does not reveal the market capacity in its NOM Best of Nasdaq Options (“BONO”) feed.⁶ Additionally, NOM provides a Clearing Trade Interface⁷ message for post-trade reporting and a Trade Details report⁸ that do not display contra party identities.

Unlike NOM, other options exchanges are not anonymous and display market participant capacity prior to execution and provide transaction reports with contra party identities.⁹ For example, Phlx displays market participants capacity information in its PHLX Orders feed,¹⁰ and MIAX provides a Clearing Trade Drop report¹¹ with the contra party MPID displayed.

With this amendment, NOM’s CTI would provide the house account of the contra party and NOM’s Trade Detail report would provide the mnemonic, firm name, and other relevant clearing information of the contra party. These changes would be identical to the CTI and Trade

⁶ Pursuant to Options 3, Section 23(a)(2), Best of Nasdaq Options (BONO) is a data feed that provides the NOM Best Bid and Offer and last sale information for trades executed on NOM. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on NOM and identifies if the series is available for closing transactions only.

⁷ Pursuant to NOM Options 3, Section 23(b)(1), the Clearing Trade Interface (“CTI”) is a real-time clearing trade update message that is sent to a member after an execution has occurred and contains trade details specific to that member. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or “CMTA” or “OCC” number; (ii) Exchange badge or house number; (iii) the Exchange internal firm identifier; (iv) an indicator which will distinguish electronic and non-electronically delivered orders; (v) liquidity indicators and transaction type for billing purposes; and (vi) capacity.

⁸ The Trade Details report is a report containing all of a member’s executed trades along with all relevant trade information, and clearing information.

⁹ See e.g. Nasdaq Phlx, LLC (“Phlx”), Nasdaq ISE, LLC (“ISE”), Nasdaq GEMX, LLC (“GEMX”) and Nasdaq MRX, LLC (“MRX”) and MIAX.

¹⁰ Pursuant to Options 3, Section 23(a)(2), PHLX Orders is a real-time full Limit Order book data feed that provides pricing information for orders on the PHLX Order book for displayed order types as well as market participant capacity. PHLX Orders is currently provided as part of the TOPO Plus Orders data product. PHLX Orders provides real-time information to enable users to keep track of the single and complex order book(s). The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, leg information on complex strategies and whether the option series is available for trading on Phlx and identifies if the series is available for closing transactions only. The feed also provides auction and exposure notifications and order imbalances on opening/reopening (size of matched contracts and size of the imbalance).

¹¹ For example, see Miami International Securities Exchange LLC (“MIAX”) Clearing Trade Drop specifications at: https://www.miaxglobal.com/sites/default/files/page-files/Clearing_Trade_Drop_CTD_v2.6c.pdf.

Detail Report contra party information provided by Phlx, ISE, GEMX and MRX and analogous to the contra party information that MIAX provides its members.

Ovation

In terms of workflow, today, NOM's System executes an order, the trade information for that order is sent to OCC and includes contra party identities. OCC then disseminates trade messages that contain a matched trade per record with both buy and sell sides of an order, also revealing contra party identities.

OCC announced that it will amend its platform, with project Ovation, in 2025.¹² Among other changes, OCC will amend trade reporting and will split the trade into two trade messages; one for the buyer and one for the seller. As a result of this change, OCC Clearing Members will only receive the clearing message relevant to their side(s) of the trade and exchanges will receive both messages and will need to link each trade by clearing sequence numbers, exchange and business date.¹³ Therefore, NOM Participants will no longer receive trade message information from OCC that reveals contra party identities. NOM Participants have requested that the Exchange offer contra party identities, similar to other exchanges, on its post-trade reporting because this information is essential information for reconciliations when there are errors or clearing breaks especially on an expiring option or option with a pending corporate action. Additionally, contra party identities are important in the event of an obvious or catastrophic error. Without this information, a representing broker dealer would be less able to input trade

¹² See <https://www.theocc.com/company-information/occ-transformation>.

¹³ See https://www.theocc.com/getmedia/0db1ac5e-ca85-43b6-a109-4354a572d912/Ovation-Platform-Changes-and-Enhancements_Trade-Sources_Jan2024.pdf.

detail to the Exchange in a timely manner.

Proposal

At this time, at the request of several NOM Participants, NOM proposes to amend Options 3, Section 25, Anonymity, to permit the Exchange to reveal contra party identities, post-trade, to provide NOM Participants with information that OCC provides today and that other options exchanges also provide today.¹⁴ Specifically, the Exchange proposes to amend Options 3, Section 25(a) which currently states, “The transaction reports produced by the System will indicate the details of the transactions and shall not reveal contra party identities.” As amended, Options 3, Section 25(a) would provide, “Orders and quotes entered into the System will be displayed anonymously and, as such, will trade anonymously. Transaction reports produced by the System (i.e., the Clearing Trade Interface and the Trade Details report) will indicate the details of the transactions, and will include contra party identities.” The Exchange also proposes to amend Options 3, Section 8, Opening and Halt Cross, to remove the phrase “trade reported anonymously” as that language would no longer be relevant with the amendment.

Today, options trades on NOM are not completely anonymous through settlement as they are submitted by the Exchange to OCC with contra-side OCC member information. The Exchange believes that this amendment will continue to provide Participants with anonymity when transacting options orders on NOM, while also providing Participants with post-trade contra party identities as a replacement for the data that OCC is providing today and will no longer be provided with OCC’s technology migration. NOM’s post trade reporting (i.e., the Clearing Trade Interface and the Trade Details report) would provide information identical to or

¹⁴ See supra note 9.

analogous to other options exchanges that display contra party identities.¹⁵

Acceptable Trade Range

The Exchange proposes to amend Options 3, Section 15(b)(1), which describes the Acceptable Trade Range. Today, NOM's System calculates an Acceptable Trade Range to limit the range of prices at which an order/quote will be allowed to execute. The Acceptable Trade Range is calculated by taking the reference price, plus or minus a value to be determined by the Exchange. (i.e., the reference price - (x) for sell orders/quotes and the reference price + (x) for buy orders/quotes). Upon receipt of a new order/quote, the reference price is the NBB or internal best bid for sell orders/quotes and the NBO or internal best offer for buy orders/quotes or the last price at which the order/quote is posted whichever is higher for a buy order/quote or lower for a sell order/quote.

If an order/quote reaches the outer limit of the Acceptable Trade Range (the "Threshold Price") without being fully executed, it will be posted at the Threshold Price for a brief period, not to exceed one second ("Posting Period"), to allow more liquidity to be collected. Upon posting, either the current Threshold Price of the order/quote or an updated NBB for buy orders/quotes or the NBO for sell orders/quotes (whichever is higher for a buy order/quote lower for a sell order/quote) then becomes the reference price for calculating a new Acceptable Trade Range. If the order/quote remains unexecuted after the Posting Period, a New Acceptable Trade Range will be calculated and the order/quote will execute, route, or post up to the new Acceptable Trade Range Threshold Price. This process will repeat until either (i) the order/quote is executed, cancelled, or posted at its limit price or (ii) the order/quote has been subject to a configurable number of instances of the Acceptable Trade Range as determined by the Exchange

¹⁵ See supra note 9.

(in which case it will be returned).

Today, the System permits a NOM Participant to request that their order be returned to them if posted at the outer limit of the Acceptable Trade Range instead of executing, routing or posting to the order book. This functionality, which is not specified in the current rule, provides a NOM Participant with additional choice as to the price at which their order could execute. The Exchange proposes to reflect this existing functionality in Options 3, Section 15(b)(1)(A) to make clear that the choice exists to have an order returned. Today, Phlx offers this functionality.¹⁶

Implementation

The Exchange proposes to implement the amendments to Options 3, Sections 8 and 25 on or before March 31, 2025. The Exchange would announce the date of implementation in an Options Trader Alert ahead of the implementation date. No implementation is necessary for the change to the Acceptable Trade Range rule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ 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.

Anonymity

NOM's proposal to amend Options 3, Sections 8 and 25 to reveal contra party identities

¹⁶ See Phlx Options 3, Section 15(b)(1)(B).

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

post-trade promotes just and equitable principles of trade, and removes impediments to and perfect the mechanism of a free and open market and a national market system because it would provide NOM Participants with identical or analogous post trade information (i.e. the Clearing Trade Interface and the Trade Details report) that OCC and other options exchanges¹⁹ provide these market participants today. NOM Participants have requested that the Exchange offer contra party identities, similar to other exchanges, on its post-trade reporting because this information is essential information for reconciliations when there are errors or clearing breaks especially on an expiring option or option with a pending corporate action. Additionally, contra party identities are important in the event of an obvious or catastrophic error. Without this information, a representing broker dealer would be less able to input trade detail to the Exchange in a timely manner.

Today, options trades are not completely anonymous through settlement as they are submitted by the Exchange to OCC with contra-side identities. This amendment will continue to provide NOM Participants with anonymity when transacting options orders on NOM pre-trade, while also providing Participants with post-trade contra party identities as a replacement for the data that OCC is providing today and will no longer provide with OCC's technology migration.

Acceptable Trade Range

The Exchange's proposal to amend Options 3, Section 15(b)(1), which describes the Acceptable Trade Range, to note that, "...unless a Participant has requested that their orders be returned if posted at the outer limit of the Acceptable Trade Range (in which case, the order will be returned)..." protects investors and the public interest because it permits NOM Participants to elect to have their orders returned to them if posted at the outer limit of the Acceptable Trade

¹⁹ See supra note 9.

Range instead of executing, routing or posting to the order book. This functionality provides Participants with additional choice as to the price at which their order could execute. The Acceptable Trade Range functionality is intended to reduce the negative impacts of sudden, unanticipated volatility in individual options, and serve to preserve an orderly market in a transparent and uniform manner, enhance the price-discovery process, increase overall market confidence, and promote fair and orderly markets and the protection of investors. The Exchange proposes to reflect this existing functionality in Options 3, Section 15(b)(1)(A) to make clear that the option exists to have an order returned. Today, Phlx offers this functionality.²⁰

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.

Anonymity

The Exchange's proposal does not impose an undue burden on intramarket competition because all NOM Participants currently have the ability to view contra party identities at OCC once the trade executes. With this amendment, all Participants will be able to continue to have the ability to view contra party identities through NOM's post trade reporting. Further, to the extent that NOM fails to provide equivalent post trade information to its Participants as other options exchanges provide today, it would be at a competitive disadvantage as market participants have expressed the importance to receiving this information.

The Exchange's proposal does not impose an undue burden on intermarket competition because other options exchanges²¹ provide contra party identities today post-trade. Other options

²⁰ See Phlx Options 3, Section 15(b)(1)(B).

²¹ See supra note 9.

markets could also adopt an anonymity rule similar to NOM.

Acceptable Trade Range

The Exchange's proposal to amend Options 8 [sic], Section 15(b)(1) does not impose an undue burden on intramarket competition because all Participants would have the ability to have their orders returned to them.

The Exchange's proposal to amend Options 3, Section 15(b)(1) does not impose an undue burden on intermarket competition because other options exchanges could adopt similar functionality.

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

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 Act²² and subparagraph (f)(6) of Rule 19b-4 thereunder.²³

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

²² 15 U.S.C. 78s(b)(3)(A)(iii).

²³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. The Exchange has satisfied this requirement.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-048 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-2024-048. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-048 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Sherry R. Haywood,

Assistant Secretary.

²⁴ 17 CFR 200.30-3(a)(12).