



8011-01p

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83421; File No. SR-NASDAQ-2018-044]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend The Nasdaq Options Market LLC (“NOM”) Rules at Supplementary Material to Chapter III, Section 7, Entitled “Position Limits,” and Section 9, Entitled “Exercise Limits”

June 13, 2018.

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 June 11, 2018, 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 Supplementary Material to Chapter III, Section 7, entitled “Position Limits,” and Section 9, entitled “Exercise Limits,” to amend position limits for options on the SPDR® S&P 500® exchange-traded fund (“SPY ETF” or “SPY”), which list and trade under the symbol “SPY.”

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

NOM Rules at Supplementary Material to Chapter III, Section 7, entitled "Position Limits" and Section 9, entitled "Exercise Limits" indicate the manner in which positions for aggregate positions in option contracts are treated on the Exchange. SPY is among the certain select underlying securities listed in each such Rule. Indicates [sic] the manner in which positions for aggregate positions in option contracts are treated on the Exchange.³ SPY is among the certain select underlying securities listed in each such Rule. Currently, these Rules provide that there are no position limits and there are no exercise limits on options overlying SPY

³ See Chapter III, Section 9 for applicable exercise limits.

pursuant to a pilot program, which is scheduled to expire on July 12, 2018 (“SPY Pilot Program”).⁴

The Exchange proposes to amend Chapter III, Section 7 to allow the SPY Pilot Program to terminate on July 12, 2018, the current expiration date of the SPY Pilot Program. In lieu of extending the SPY Pilot Program for another year, the Exchange proposes to allow the SPY Pilot Program to terminate and to establish position and exercise limits of 1,800,000 contracts, for options on SPY, with such change becoming operative on July 12, 2018, so that there is no lapse in time between termination of the SPY Pilot Program and the establishment of the new limits. Furthermore, as a result of the termination of the SPY Pilot Program, the Exchange does not believe it is necessary to submit a SPY Pilot Program Report at the end of the SPY Pilot Program. Based on the prior SPY Pilot Program Reports provided to the Commission,⁵ the Exchange believes it is appropriate to terminate the SPY Pilot Program and that permanent position and exercise limits should be established for SPY.

Position limits are designed to address potential manipulative schemes and adverse market impact surrounding the use of options, such as disrupting the market in the security underlying the options. The potential manipulative schemes and adverse market impact are balanced against the potential of setting the limits so low as to discourage participation in the options market. The level of those position limits must be balanced between curtailing potential manipulation and the cost of preventing potential hedging activity that could be used for

⁴ See Securities Exchange Act Release No. 69180 (March 19, 2013), 78 FR 17962 (March 25, 2013) (SR-NASDAQ-2013-046); 72142 (May 9, 2014), 79 FR 27961 (May 15, 2014) (SR-NASDAQ-2014-052); 75413 (July 9, 2015), 80 FR 41519 (July 15, 2015) (SR-NASDAQ-2015-072); 78123 (June 22, 2016), 81 FR 42030 (June 28, 2016) (SR-NASDAQ-2016-084); and 81090 (July 7, 2017), 82 FR 32394 (July 13, 2017) (SR-NASDAQ-2017-063).

⁵ Id.

legitimate economic purposes.

The SPY Pilot Program was established in 2013 in order to eliminate position and exercise limits for physically-settled SPY options.⁶ In 2005, the position limits for SPY options were increased from 75,000 contracts to 300,000 contracts on the same side of the market.⁷ In July 2011, the position limit for these options was again increased from 300,000 contracts to 900,000 contracts on the same side of the market.⁸ Then, in 2013, the position limits for SPY options were eliminated as part of the SPY Pilot Program.⁹

The underlying SPY tracks the performance of the S&P 500 Index and the Exchange notes that the SPY and SPY options have deep, liquid markets that reduce concerns regarding manipulation and disruption in the underlying markets. In support of this proposed rule change, the Exchange has collected the following trading statistics for SPY and SPY Options: (1) the average daily volume (“ADV”) to date (as of May 15, 2018) for SPY is 108.32 million shares; (2) the ADV to date in 2018 for SPY options is 3.9 million contracts per day; (3) the total shares outstanding for SPY are 965.43 million; and (4) the fund market cap for SPY is 261.65 billion. The Exchange represents further that there is tremendous liquidity in the securities that make up the S&P 500 Index.

Accordingly, the Exchange proposes to amend Chapter III, Section 7 [sic] to set forth that the position and exercise limits for options on SPY would be 1,800,000 contracts on the same

⁶ See Securities Exchange Act Release No. 69180 (March 19, 2013), 78 FR 17962 (March 25, 2013) (SR-NASDAQ-2013-046).

⁷ See Securities Exchange Act Release No. 51041 (January 14, 2005), 70 FR 3408 (January 24, 2005)(SR-CBOE-2005-06). NOM’s position limit in SPY in 2005 was based on The Chicago Board Options Exchange, Inc.’s current rule.

⁸ See Securities Exchange Act Release No. 64928 (July 20, 2011), 76 FR 44633 (July 26, 2011)(SR-CBOE-2011-065). NOM’s position limit in SPY in 2005 was based on The Chicago Board Options Exchange, Inc.’s current rule.

⁹ See note 5 above.

side of the market. These position and exercise limits equal the current position and exercise limits for options on QQQ, which the Commission previously approved to be increased from 900,000 contracts on the same side of the market, to 1,800,000 contracts on the same side of the market.¹⁰ The Exchange also notes that SPY is more liquid [sic] than QQQ.¹¹ The Exchange believes that establishing position and exercise limits for the SPY options in the amount of 1,800,000 contracts on the same side of the market subject to this proposal would allow for the maintenance of the liquid and competitive market environment for these options, which will benefit customers interested in these products. Under the proposal, the reporting requirement for the options would be unchanged.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ 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 establishing permanent position and exercise limits for SPY options subject to this proposal will encourage Market Makers to continue to provide sufficient liquidity in SPY options on the Exchange, which will enhance the process of price discovery conducted on the Exchange. The proposal will also benefit

¹⁰ See Securities Exchange Act Release No. 82770 (February 23, 2018), 83 FR 8907 (March 1, 2018)(SR-CBOE-2017-057). NOM's current rule is based on Cboe Exchange, Inc.'s rule.

¹¹ From the beginning of the year, through May 15, 2018, the ADV for SPY was 108.32 million shares while the ADV for QQQ was 46.64 million shares (calculated using data from Yahoo Finance as of May 15, 2018).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

institutional investors as well as retail traders, and public customers, by continuing to provide them with an effective trading and hedging vehicle. In addition, the Exchange believes that the structure of the SPY options subject to this proposal and the considerable liquidity of the market for those options diminishes the opportunity to manipulate this product and disrupt the underlying market that a lower position limit may protect against.

Increased position limits for select actively traded options, such as that proposed herein (increased as compared to the 900,000 limit in place prior to the SPY Pilot Program),¹⁴ is not novel and has been previously approved by the Commission. For example, the Commission has previously approved a rule change permitting the Exchange to double the position and exercise limits for FXI, EEM, IWM, EFA, EWZ, TLT, QQQ, and EWJ.¹⁵ Furthermore, as previously mentioned, the Commission specifically approved a proposal by the Exchange to increase the position and exercise limits for options on QQQ from 900,000 contracts on the same side of the market to 1,800,000 contracts on the same side of the market; similar to the current proposal for options on SPY.¹⁶ The Exchange also notes that SPY is more liquid than QQQ.¹⁷

Lastly, the Commission expressed the belief that implementing higher position and exercise limits may bring additional depth and liquidity without increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.¹⁸ The Exchange's existing surveillance and reporting safeguards are designed to deter and detect

¹⁴ See note 9.

¹⁵ See note 11 above.

¹⁶ Id.

¹⁷ See note 12 above.

¹⁸ See note 11 above.

possible manipulative behavior which might arise from increasing position and exercise limits (increased as compared to the 900,000 limit in place prior to the SPY Pilot Program).¹⁹

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the entire proposal is consistent with Section (6)(b)(8) of the Act²⁰ in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes the proposal promotes competition because it will enable the option exchanges to attract additional order flow from the over-the-counter market, who in turn compete for those orders. The Exchange believes that the proposed rule change will result in continued opportunities to achieve the investment and trading objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish uniform position limits for additional multiply listed option classes. Furthermore, the Exchange believes that the other options exchanges will file similar proposals with the Commission.

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.

¹⁹ See note 9 above

²⁰ 15 U.S.C. 78(f)(b)(8).

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 Act²¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.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

²¹ 15 U.S.C. 78s(b)(3)(A)(iii).

²² 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.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2018-044 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 -2018-044. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. 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-2018-044 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.²³

Eduardo A. Aleman,
Assistant Secretary.

²³ 17 CFR 200.30-3(a)(12).

[FR Doc. 2018-13080 Filed: 6/18/2018 8:45 am; Publication Date:
6/19/2018]