Commission has received two other comment letters in response to the Order Instituting Proceedings.[8]

Section 19(b)(2) of the Act[9] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change.[10] The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.[11] The proposed rule change was published for comment in the **Federal Register** on May 6, 2015. November 2, 2015 is 180 days from that date, and January 1, 2016 (which is a Federal holiday) is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the comment letters and take action on the Exchange's proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[12] designates December 31, 2015, as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR–NYSE–2015–02).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

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proposed rule change dated August 31, 2015. In Amendment No. 1 the Exchange stated that it believed there was a potential ambiguity in the proposed rule language submitted as part of the original proposal. Amendment No. 1 amends the original proposed rule language to clarify that the proposed exemption from shareholder approval transactions involving the sale of stock for cash by an early stage company applies not only to a related party, as originally proposed, but also to a subsidiary, affiliate or other closely-related person of a related party; or any company or entity in which a related party has a substantial direct or indirect interest.

[8] *See* memorandum to the Commission from Rick. A. Fleming, Office of the Investor Advocate, Commission, dated October 16, 2015; and public comment email from Suzanne Shatto, dated October 16, 2015.

[9] 15 U.S.C. 78s(b)(2).

[10] 15 U.S.C. 78s(b)(2)(B)(ii)(I).

[11] 15 U.S.C. 78s(b)(2)(B)(ii)(II).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76317; File No. SR–BX–2015–060]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Risk Monitor Mechanism

October 30, 2015.

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 October 16, 2015, NASDAQ OMX BX, Inc. (''BX'' 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 VI, Section 19 entitled ''Risk Monitor Mechanism'' by reserving this rule and relocating the rule governing the Risk Monitor Mechanism into BX Rule at Chapter VII, Section 6(f)(i), entitled ''Market Maker Quotations'' which contains similar market maker[3] risk monitor tools. The Exchange is also modifying the language currently

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.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 filing is to relocate and amend the current rule text of the Risk Monitor Mechanism at Chapter VI, Section 19.[4] The Exchange is proposing to relocate the rule text into Chapter VII, Section 6, which currently describes two other risk mechanisms offered to BX Market Makers today.[5] Quoting across many series in an option creates the possibility of ''rapid fire'' executions that can create large, unintended principal positions that expose BX Market Makers, who are required to continuously quote in assigned options, to potentially significant market risk. The Risk Monitor Mechanism (hereinafter ''Percentage-Based Threshold'') permits BX Market Makers to monitor risk arising from multiple executions across multiple options series of a single underlying security.

The Exchange will require BX Market Makers to utilize either the Percentage-Based Threshold or the Volume-Based Threshold.[6] The Multi-Trigger Threshold will be optional.[7] Today, BX Market Makers are required to utilize the Percentage-Based Threshold.

Current Rule Text in Chapter VI, Section 19

BX Rules at Chapter VI, Section 19 specifically describes the counting program that is maintained by the System for each Participant in a particular option. Specifically, the counting program counts the number of contracts traded in an option by each Participant within a specified time period, not to exceed 15 seconds, established by each Participant known

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to BX Rules at Chapter VII, Section 5, entitled ''Obligations of Market Makers'', in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a BX Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

[4] The proposed amendments will conform the rule text to the manner in which the System operates today.

[5] The two risk protections, Volume-Based Threshold and the Multi-Trigger Threshold, are BX Market Maker protections, similar to the Risk Monitor Mechanism to assist BX Market Makers to control their trading risks.

[6] The Volume-Based Threshold is offered only to BX Market Makers.

[7] The Multi-Trigger Threshold is offered only to BX Market Makers.

in this rule as the ''specified time period.''

The specified time period commences for an option when a transaction occurs in any series in such option. The Exchange counts Specialized Quote Feed (''SQF'')[8] quotes only in determining the number of contracts traded and removed by the System. When a Participant trades the Specified Engagement Size during the specified time period, the Percentage-Based Threshold is triggered[9] and the System automatically removes such Participant's quotations from the Exchange's orders in all series of the particular option. The Percentage-Based Threshold is engaged when the counting program determines that the Issue Percentage equals or exceeds a percentage established by the Participant, not less than 100%.

The Specified Engagement Size is automatically offset by a number of contracts that are executed on the opposite side of the market in the same option issue during the specified time period known as the ''Net Offset Specified Engagement Size.'' Long call positions are only offset by short call positions, and long put positions are only offset by short put positions. The Percentage-Based Threshold is engaged once the Net Offset Specified Engagement Size represents a net number of contracts executed among all series in an option issue, during the specified time period, where the issue percentage is equal to or greater than the Specified Percentage.[10]

The System automatically resets the counting program and commences a new specified time period when: (i) A previous counting period has expired and a transaction occurs in any series in such option; or (ii) the Participant refreshes his/her quotation, in a series for which an order has been executed (thus commencing the specified time period) prior to the expiration of the specified time period.

Proposed Rule

The Exchange's amendments to the current rule text are described below in greater detail. The Exchange proposes to amend the current rule to first offer the Percentage-Based Threshold to BX Market Makers only. Today, the Percentage-Based Threshold is offered to all Participants. No other market participants, other than BX Market Makers, currently utilize the Percentage-Based Threshold today.[11] The proposed term ''BX Market Maker'' will be utilized throughout proposed Chapter VII, Section 6(f)(i).

Counting Program

Proposed Rule Chapter VII, Section 6(f)(i) provides, as in the current rule, the Percentage-Based Threshold determines: (i) The percentage that the number of contracts executed in that series represents relative to the Market Maker's disseminated[12] size of each side in that series (''Series Percentage''); and (ii) the sum of the Series Percentage in the option issue (''Issue Percentage''). An offset occurs during the Percentage-Based Specified Time Period.[13] The Exchange proposes to amend the rule text in proposed Rule Chapter VII, Section 6(f)(i) to state that the Percentage-Based Specified Time Period operates on a rolling basis among all series in an option in that there may be multiple Percentage-Based Specified Time Periods occurring simultaneously and such Percentage-Based Specified Time periods may overlap. The Exchange proposes to amend the rule text of proposed Rule Chapter VII, Section 6(f)(i) to state that the Percentage-Based Specified Time Period commences for an option every time an execution occurs in any series in such option and continues until the System removes quotes as described in current Chapter VII, Section 6(f)(iv), which is being amended to include the Percentage-Based Specified Time Period, or the Percentage-Based Specified Time Period expires.

Rounding

The Exchange proposes to add amended rule text to proposed Rule Chapter VII, Section 6(f)(i) to state that if the Issue Percentage, rounded to the nearest integer, equals or exceeds a percentage established by a Market Maker, not less than 100% (''Specified Percentage''), the System automatically removes a Market Maker's quotes in all series of the underlying security submitted through designated BX protocols, as specified by the Exchange, during the Percentage-Based Specified Time Period.[14] The current text of Chapter IV, Section 6 states that the Percentage-Based Threshold is engaged when the counting program determines that the Issue Percentage equals or exceeds a percentage established by the Market Maker, not less than 100%. The Exchange's proposal adds amended rule text to proposed Rule Chapter VII, Section 6(f)(i) to state, that if the Issue Percentage, *rounded to the nearest integer*, equals or exceeds a percentage established by the Market Maker, not less than 100% (''Specified Percentage''), the System automatically removes a Market Maker's quotes in all series of an underlying security submitted through designated BX protocols, as specified by the Exchange, during the Percentage-Based Specified Time Period.

Today, the System tracks and calculates the net impact of positions in the same option issue during the Percentage-Based Specified Time Period. The System tracks transactions, *i.e.*, the sum of buy-side put percentages, the sum of sell-side put percentages, the sum of buy-side call percentages, and the sum of sell-side call percentages, and then calculates the absolute value of the difference between the buy-side puts and the sell-side puts plus the absolute value of the difference between the buy-side calls and the sell-side calls. With this proposal, when these values are rounded, if that number is greater than the Specified Percentage, the Percentage-Based Threshold would be triggered.

Reset

The Exchange proposes to amend the manner in which the System resets. The System will automatically remove quotes in all option series of an underlying security when the Percentage-Based Threshold is reached and then the Percentage-Based Specified

[8] SQF permits the receipt of quotes. SQF Auction Responses and market sweeps are also not included.

[9] A trigger is defined as the event which causes the System to automatically remove all quotes in all options series in an underlying issue.

[10] Any marketable orders or quotes that are executable against a Participant's disseminated quotation that are received prior to the time the Percentage-Based Threshold is engaged are automatically executed at the disseminated price up to the Participant's disseminated size, regardless of whether such an execution results in executions in excess of the Participant's Specified Engagement Size. In the event that the specialist's quote is removed by the Percentage-Based Threshold and there are no other Participants quoting in the particular option, the System will automatically provide two-sided quotes that comply with the Exchange's Rules concerning quote spread parameters on behalf of the specialist until such time as the specialist revises the quotation. All quotations generated by the Exchange on behalf of a specialist shall be considered ''firm quotations'' and shall be the obligation of the specialist.

[11] The System counts SQF quotes. SQF is available only to BX Market Makers.

[12] The disseminated size is the original size quoted by the Participant.

[13] A specified time period is established by the BX Market Maker and may not to exceed 15 seconds. *See* proposed Chapter VII, Section 6(f)(i).

[14] The System's count of the number of contracts executed is based on trading interest resting on the Exchange book. The Volume-Based Specified Time Period, in current Chapter VII, Section 6(f)(ii), designated by the BX Market Maker must be the same time period as designated for purposes of the Percentage-Based Threshold. The Exchange references protocols more specifically in this rule. The Exchange counts SQF quotes only in determining the number of contracts traded and removed by the System. *See* note 8.

Time Period is reset. The System will send a Purge Notification Message [15] to the Market Maker for all affected options when the threshold has been reached. Pursuant to this proposal, when the System removes quotes as a result of the Percentage-Based Threshold, the Market Maker will be required to send a re-entry indicator to re-enter the System.[16] If a Market Maker requests the System to remove quotes in all options series in an underlying issue, the System will automatically reset the Percentage–Based Specified Time Period(s) and new Percentage-Based Specified Time Period(s) will commence for the Percentage-Based Threshold. With this proposal, when the System removes quotes as a result of the Percentage-Based Threshold, the Market Maker will be required to send a re-entry indicator to re-enter the System. The proposed rule text adds specificity to the manner in which the Market Maker re-enters the market after a trigger.

Firm Quote

The Exchange represents that its proposal operates consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS.

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, by enhancing the risk protections available to Exchange members. Each of the proposed amendments do not raise a novel regulatory issue, rather these proposed amendments provide for operational transparency.

The proposed rule text continues to offer BX Market Makers a risk protection tool, in addition to other available risk tools,[19] to decrease risk and increase stability. The Exchange offers this risk tool to BX Market Makers, in order to encourage them to provide as much liquidity as possible and encourage market making generally, the proposal removes impediments to and perfects the mechanism of a free and open market and a national market system and protect investors and the public interest. Further, it is important to note that any interest that is executable against a BX Market Maker's quotes that are received [20] by the Exchange prior to the trigger of the Percentage-Based Threshold, which is processed by the System, automatically executes at the price up to the Market Maker's size. Further, the Purge Notification Message is accepted by the System in the order of receipt in the queue and is processed in that order so that interest that is already accepted into the System is processed prior to the message.

Offering the Risk Tool to Market Makers

The Exchange believes that offering the risk tool to BX Market Makers as compared to all Participants is just and equitable because quoting across many series in an option creates the possibility of ''rapid fire'' executions that can create large, unintended principal positions that expose BX Market Makers, who are required to continuously quote in assigned options, to potentially significant market risk. The Percentage-Based Threshold permits BX Market Makers to monitor risk arising from multiple executions across multiple options series of a single underlying security. Other BX Participants do not bear the burden of the risk and do not have the obligations that BX Market Makers are obligated by rule to comply with on a continuous basis.[21] Also, BX Market Makers are the only participants that utilize the risk tool today and therefore no other market participant is being denied access to a tool as they never had the ability to utilize the risk tool because only SQF quotes are impacted.

Counting Program

The Exchange's amendment to the operation of the counting program to describe that it operates on rolling basis, with a time window after each transaction, not singular and sequential time segments is consistent with the Act because the purpose of the risk tool is to provide BX Market Makers with the ability to monitor its transactions. The proposed counting program provides a tracking method for BX Market Makers related to the specified time period. The System captures information to determine whether a removal of quotes is necessary. The proposed function of this counting program will enable the Exchange to provide the BX Market Maker with information relative to that BX Market Maker's interest currently at risk in the market.

Rounding

The Exchange's amendment which states that if the Issue Percentage, rounded to the nearest integer, equals or exceeds the Specified Percentage, the System automatically removes a Market Maker's quotes in all series of an underlying security is consistent with the Act because investors will be protected by providing BX Market Makers with a risk tool which allows BX Market Makers to properly set their risk protections at a level that they are able to meet their obligations and also manage their risk. This specificity provides more detail so that BX Market Makers may properly set their risk controls. Understanding the manner in which the System will round is important in determining when the System will trigger a risk control. Also, today, BX discusses rounding in its Rulebook.[22] Rounding to the nearest integer is not novel.

Reset

The Exchange's proposal to amend the rule text related to resets provides guidance to BX Market Makers as to the manner in which they may re-enter the System after a removal of quotes. This amendment is consistent with the Act because the Exchange desires to provide BX Market Makers with access to the market at all times. BX Market Makers perform an important function in the marketplace and the Exchange desires to provide its market participants with access to the market. If the Market Maker is removed from the market due to a trigger of the Percentage-Based risk tool, the Exchange will permit re-entry to the market provided the Market Maker sends a re-entry indicator to re-enter the System. This is important because it informs the Exchange that the Market Maker is ready to re-enter the market. Also, the Exchange currently has risk mechanisms in place which provide guidance as to the manner in which a Market Maker may re-enter the System after a removal of quotes.[23]

Quoting Obligations—Market Makers

The Exchange further represents that the System operates consistently with the firm quote obligations of a broker-

[15] A message entitled ''Purge Notification Message'' is systemically sent to the BX Market Maker upon the removal of quotes due to the Percentage-Based Threshold. *See* proposed Chapter VI, Section 6(f)(iii).

[16] The re-entry indicator must be marked as such to cause the System to reset.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* note 5.

[20] The time of receipt for an order or quote is the time such message is processed by the Exchange book.

[21] *See* note 3.

[22] *See* BX Rules at Chapter VII, Section 5 regarding Market Maker allocations.

[23] *See* BX Chapter VI, Section 6(f)(vi).

dealer pursuant to Rule 602 of Regulation NMS. Specifically, with respect to BX Market Makers, their obligation to provide continuous two-sided quotes on a daily basis is not diminished by the removal of such quotes by the Percentage-Based Threshold. BX Market Makers are required to provide continuous two-sided quotes on a daily basis.[24] BX Market Makers that utilize the Percentage-Based Threshold will not be relieved of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet the continuous quoting obligation each trading day.

Finally, the Exchange believes that its proposal to provide BX Market Makers the optionality to either select the Percentage-Based Threshold or Volume-Based Threshold as one of their risk tools will also protect investors and is consistent with the Act. Today, BX Market Makers are required to utilize the Percentage-Based Threshold. With this proposal, BX Market Makers will have the ability to select their mandatory risk as between the Percentage-Based Threshold or Volume-Based Threshold.

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 Percentage-Based Threshold is meant to protect BX Market Makers from inadvertent exposure to excessive risk. Accordingly, this proposal will have no impact on competition. Specifically, the proposal does not impose a burden on intra-market or inter-market competition, rather, it provides BX Market Makers with the opportunity to avail themselves of similar risk tools which are currently available on other exchanges.[25] BX Market Makers quote across many series in an option creates the possibility of ''rapid fire'' executions that can create large, unintended principal positions that expose BX Market Makers. The Percentage-Based Threshold permits BX Market Makers to monitor risk arising from multiple executions across multiple options series of a single underlying security.

The Exchange is proposing this rule change to continue to permit BX Market Makers to reduce their risk in the event the Market Maker is suffering from a system issue or due to the occurrence of unusual or unexpected market activity. Reducing such risk will enable BX Market Makers to enter quotations without any fear of inadvertent exposure to excessive risk, which in turn will benefit investors through increased liquidity for the execution of their orders. Such increased liquidity benefits investors because they receive better prices and because it lowers volatility in the options market. Reducing risk by utilizing the proposed risk protections enables BX Market Makers, specifically, to enter quotations with larger size, which in turn will benefit investors through increased liquidity for the execution of their orders. Such increased liquidity benefits investors because they receive better prices and because it lowers volatility in the options market.

Offering the Risk Tool to Market Makers

The Exchange believes that offering the risk tool to BX Market Makers as compared to all Participants does not create an undue burden on competition because other BX Participants do not bear the burden of the risk and do not have the obligations that BX Market Makers are obligated by rule to comply with on a continuous basis.[26] Also, BX Market Makers are the only participants that utilize the risk tool today and therefore no other market participant is being denied access to a tool as they never had the ability to utilize the risk tool because only SQF quotes are impacted.

Counting Program

The Exchange's amendment to the operation of the counting program to describe that it operates on rolling basis, with a time window after each transaction, not singular and sequential time segments does not create an undue burden on competition, rather, it provides the Market Maker with clarity as to the manner in which the System counts quotes and thereby provides BX Market Makers with an increased ability to monitor transactions.

Rounding

The Exchange's amendment to add that if the Issue Percentage, rounded to the nearest integer, equals or exceeds the Specified Percentage, the System automatically removes a Market Maker's quotes in all series of an underlying security does not create an undue burden on competition because this amendment also provides the Market Maker with clarity as to the manner in which the System will remove quotes and thereby provides BX Market Makers with an increased ability to monitor transactions and set risk limits.

Reset

The amendment to the rule text concerning resetting does not create an undue burden on competition. The Exchange proposes to amend the manner in which a Market Maker may re-enter the System after a removal of quotes. This amendment provides information to BX Market Makers as to the procedure to re-enter the System after a trigger. This information is intended to provide BX Market Makers with access to the market.

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 Act[27] and subparagraph (f)(6) of Rule 19b–4 thereunder.[28]

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.

[24] *See* note 3.

[25] *See* Section 8 of the 19b–4.

[26] *See* note 3.

[27] 15 U.S.C. 78s(b)(3)(a)(iii).

[28] 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.

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–BX–2015–060 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–BX–2015–060.* 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 should refer to File Number SR–BX–2015–060 and should be submitted on or before November 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Jill M. Peterson,

Assistant Secretary.

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BILLING CODE 8011–01–P

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76322]

Order Exempting Certain Large Traders From the Self-Identification Requirements of Rule 13h–1 Under the Securities Exchange Act of 1934, and Exempting Certain Broker-Dealers From the Recordkeeping, Reporting, and Monitoring Responsibilities Under the Rule

October 30, 2015.

On July 27, 2011, the Securities and Exchange Commission (''Commission'') adopted Rule 13h–1 (the ''Rule'') under the Securities Exchange Act of 1934 (''Exchange Act'') to assist the Commission in both identifying and obtaining information on market participants that conduct a substantial amount of trading activity, as measured by volume or market value, in U.S. securities (such persons are referred to as ''large traders'').[1] The Rule requires certain large traders to identify themselves to the Commission by filing Form 13H and separately requires certain broker-dealers to maintain records of large trader transaction information and report such information to the Commission upon request as well as monitor customer trading to help promote compliance with the Rule by traders. Since December 1, 2011, persons whose trading activity reached or exceeded the identifying activity level specified in the Rule have been required to identify themselves to the Commission by filing Form 13H through the Commission's EDGAR system. The Commission implemented the broker-dealer recordkeeping, reporting, and monitoring requirements of the Rule in phases through a series of exemptive orders establishing certain delayed compliance dates,[2] and currently certain broker-dealers are required to keep records of and report to the Commission upon request transaction data for certain of their customers that are either a large trader or an Unidentified Large Trader.[3] Most recently, the Commission established a compliance date of November 1, 2013 for Phase Two of the Rule, which, among other things, implemented the recordkeeping and reporting responsibilities for an additional category of traders and also implemented the monitoring requirements under the Rule to require certain broker-dealers to monitor their customers' trading activity in order to promote awareness of and foster compliance with the self-identification requirements of the Rule.[4] At that time, the Commission stated that the compliance date for Phase Three of the Rule would be November 1, 2015.[5]

The Commission has received a request from the Financial Information Forum (''FIF'') to exempt options traders from the requirements of the Rule conditioned upon such traders not exceeding the ''identifying activity level'' (*i.e.,* the threshold at which a person triggers the self-identification requirements of the Rule) as calculated based on the gross *premium* of the options trades.[6] FIF asserts that such relief would appropriately limit the identification requirements of the Rule by exempting from the Rule a class of persons whose options trading is unlikely to have a market impact.[7] In addition, FIF requested that the Commission permanently exempt broker-dealers from the recordkeeping and reporting requirements of Phase Three of the Rule, or alternatively postpone the compliance date of the Phase Three requirements until November 1, 2020.[8] The Securities Industry and Financial Markets Association (''SIFMA'') also has requested that the Commission permanently exempt broker-dealers from the recordkeeping and reporting

[1] *See* Securities Exchange Act Release No. 64976 (July 27, 2011), 76 FR 46960 (Aug. 3, 2011) (''Adopting Release''). The effective date of Rule 13h–1 was October 3, 2011.

[2] *See* Securities Exchange Act Release Nos. 70150 (August 8, 2013), 78 FR 49556 (August 14, 2013) (establishing Phase Two and providing for Phase Three); 69281 (April 3, 2013), 78 FR 20960 (April 8, 2013) (extension of the compliance date); and 66839 (April 20, 2012), 77 FR 25007 (April 26, 2012) (establishing Phase One).

[3] Rule 13h–1(a)(9) defines ''Unidentified Large Trader'' as ''each person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of this rule that a registered broker-dealer knows or has reason to know is a large trader.'' The Rule provides that, for purposes of determining whether a registered broker-dealer has reason to know that a person is a large trader, ''a registered broker-dealer need take into account only transactions in NMS securities effected by or through such broker-dealer.'' Rule 13h–1(a)(9).

[4] *See* Securities Exchange Act Release No. 70150, *supra* note 2 (establishing the November 1, 2013 compliance date for customer monitoring responsibilities). *See also* note 27, *infra,* and accompanying text.

[5] Phase Three includes all of the remaining requirements of Rule 13h–1 that were not implemented in either Phase One or Phase Two. In particular, Phase Three would require reporting of execution time on trades for additional categories of persons beyond those covered in Phases One and Two.

[6] *See* Letter from Mary Lou VonKaenel, Managing Director, FIF, to Stephen Luparello, Director of the Division of Trading and Markets, Commission, dated March 27, 2015 (''FIF Letter''), *available at: http://www.sec.gov/comments/s7-10-10/s71010.shtml.* Currently, the fair market value of equity options is calculated based on the value of the underlying securities. *See* Rule 13h–1(c)(1)(i).

[7] *See* FIF Letter, *supra* note 6, at 2–3.

[8] *See* FIF Letter, *supra* note 6, at 3.