

Amendment No. 1 on an accelerated basis.

## VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,<sup>32</sup> that the proposed rule change (SR-NYSEMKT-2016-42), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-16723 Filed 7-14-16; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78285; File No. SR-NASDAQ-2016-087]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Automated Removal of Orders and Quotes

July 11, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 30, 2016, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the rules of the NASDAQ Options Market LLC (“NOM”) at Chapter VII, Section 6(f), entitled “Automated Removal of Orders and Quotes.”

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The Exchange proposes to amend a NOM Rule at Chapter VII, Section 6(f), entitled “Automated Removal of Orders and Quotes” to modify the minimum Specified Percentage (as described below). A NOM Market Maker<sup>3</sup> sets the Specified Percentage to enhance its risk management for an underlying security as market conditions warrant, based on its own risk tolerance level and quoting behavior. The Exchange proposes to permit the NOM Market Maker to set the Specified Percentage more broadly, no less than 1% with this rule change. The Exchange also proposes to replace the term “disseminated size”<sup>4</sup> with a quantitative description to add transparency with respect to the calculation of Series Percentage.

###### Background

Today, Chapter VII, Section 6(f) permits NOM Market Makers to monitor risk arising from multiple executions across multiple options series of a single underlying security. A NOM Market Maker may provide a specified time period and a specified percentage by which the Exchange’s System will automatically remove a NOM Market Maker’s quotes and orders in all series of an underlying security submitted through designated NOM protocols, as specified by the Exchange, during a

<sup>3</sup> The term “Nasdaq Options Market Maker” or “Options Market Maker” (herein “NOM Market Maker”) means an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VII of these Rules. See NOM Rules at Chapter I, Section 1(a)(26).

<sup>4</sup> See Securities Exchange Act Release No 76316 (October 30, 2015), 80 FR 68595 at 68597 (November 5, 2015) (SR-NASDAQ-2015-122). The Exchange defined disseminated size in this rule change in footnote 13, as the original size quoted by the Participant.

specified time period not to exceed 15 seconds (“Percentage-Based Specified Time Period.”)<sup>5</sup>

For each series in an option, the System determines: (i) The percentage that the number of contracts executed in that series represents relative to the NOM Market Maker’s disseminated size of each side in that series (“Series Percentage”); and (ii) the sum of the Series Percentage in the option issue (“Issue Percentage”). The Exchange proposes herein to replace the term “disseminated size” with the more precise phrase “number of contracts available at the time of execution plus the number of contracts executed in unexpired prior executions.”

The System tracks and calculates the net impact of positions in the same option issue during the Percentage-Based Specified Time Period.

Specifically, 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. The System 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. If the Issue Percentage, rounded to the nearest integer, equals or exceeds a percentage established by the NOM Market Maker, not less than 100% (“Specified Percentage”), the System automatically removes a NOM Market Maker’s quotes and orders in all series of an underlying security submitted through designated NOM protocols, as specified by the Exchange, during the Percentage-Based Specified Time.

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 and orders as described in Chapter VII, Section 6(f)(iv) or (v) or the Percentage-Based Specified Time Period expires. 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.

###### Proposal

The Exchange proposes to lower the minimum Specified Percentage, which is set by the NOM Market Maker, from 100% to 1%. The proposal would

<sup>5</sup> A specified time period commences for an option when a transaction occurs in any series in such option.

<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

amend the rule text to state, if the Issue Percentage, rounded to the nearest integer, equals or exceeds a percentage established by the NOM Market Maker, not less than 1% (“Specified Percentage”), the System automatically removes a NOM Market Maker’s quotes and orders in all series of an underlying security submitted through designated NOM protocols, as specified by the Exchange, during the Percentage-Based Specified Time. This proposal would allow a NOM Market Maker to establish a Specified Percentage at any percentage level greater than or equal to 1% for an option in which the NOM Market Maker is appointed. Today, the Specified Percentage would be set by the NOM Market Maker at greater than or equal to 100%. This amendment will allow NOM Market Makers to better manage their risk and assist them to avoid trading a number of contracts that exceeds the NOM Market Maker’s risk tolerance level across multiple series of a single underlying when such series are executed in rapid succession.

NOM Market Makers will be able to more precisely customize their risk settings within the System. NOM Market Makers will be able to consider factors such as present and anticipated market conditions, news in an option, and a sudden change in volatility of an option. NOM Market Makers are required to utilize either the Percentage Based Threshold or the Volume Based Threshold. NOM Market Makers that select to utilize the Percentage-Based Threshold will be able to adopt more precise controls with this proposal based on the NOM Market Maker’s risk tolerance level.

NOM Market Makers must utilize either the Percentage-Based<sup>6</sup> or Volume-Based risk controls. NOM Market Makers may contact Market Operations to set their percentage, which is 1% or greater with this proposal, and specified time period.

By way of example, if a NOM Market Maker has set the percentage setting to 50% and a Specified Time Period of 15 seconds and the Order Book reflects:

MM1 has a displayed quote of 1.10 (100) × 1.20 (100) for IBM May 20, 2016 70 puts and MM1 is the only displayed size on NOM and an order is submitted

to buy 75 IBM May 20, 2016 70 Puts for 1.20.

Chapter VII, Section 6(f) would cause the following:

(1) Provide MM1 with an execution—Sold 75 @ 1.20; and

(2) Trigger the Percentage-Based Threshold and remove MM1’s quotes in IBM.

Another example is with multiple executions. Presume the following:

MM1 has set the percentage to 80% by 5 seconds and MM1 has a displayed quote of 2.00 (100) × 2.25 (100) for IBM May 20, 2016 70 puts and he is the only displayed size on the NOM. Also, presume an order comes in to buy 50 IBM May 20, 2016 70 puts for 2.25.

Chapter VII, Section 6(f) would cause the following:

(1) Provide MM1 with an execution—Sold 50 @ 2.25;

(2) Update MMI [sic] quote to 2.00 (100) × 2.25 (50);

(3) Within 1 second an order comes in to buy 45 IBM May 20, 2016 70 puts for 2.25;

(4) Provide MM1 with an execution—Sold 45 @ 2.25; and

(5) Trigger the Percentage-Based Threshold and remove MM1’s quotes in IBM.

The Exchange also proposes to replace the term “disseminated size” with a quantitative description to add transparency with respect to the calculation of Series Percentage. The language proposed amends the original definition of disseminated size. With respect to the disseminated size, the Exchange previously defined disseminated size as “. . . the original size quoted by the Participant.”<sup>7</sup>

The Exchange proposes to amend the definition as follows: “For each series in an option, the System will determine: (i) The percentage that the number of contracts executed in that series represents relative to the number of contracts available at the time of execution plus the number of contracts executed in unexpired prior executions of each side in that series (“Series Percentage”); and (ii) the sum of the Series Percentage in the option issue (“Issue Percentage”).” The Exchange counts Specialized Quote Feed (“SQF”)<sup>8</sup> quotes and OUCH To Trade Options (“OTTO”)<sup>9</sup> orders only in

determining the number of contracts traded and removed by the System. OTTO orders are single sided and may be submitted at multiple price levels for each series, whereas SQF permits a two-sided quote for each NOM Market Maker. The calculation considers the different price levels.

By way of example, with the proposed definition, if a NOM Market Maker with a Percentage-Based Specified Time Period of 10 seconds and a Specified Percentage of 100% submits a quote over SQF of 1.00(100) × 1.10(100) and a buy order executes 75, the remaining size would be 1.00(100) × 1.10(25). Thereafter a new Percentage-Based Specified Time Period begins and current Series Percentage executed is 75 and three seconds pass and the NOM Market Maker re-quotes 1.00(100) × 1.10(100), an incoming buy order of 43 would cause the Issue Percentage to meet the Percentage-Based Threshold. This is due to a counted size of 175 (the executed 75 plus the newly quoted 100) and rounding (0.75 + 43/175 = 0.9957 rounds up to 100%). If the former definition applied, the size would have been 100 and an execution of only 25 contracts on the same side would have caused the Issue Percentage to meet the Percentage-Based Threshold, which is not the case. In other words, the current SQF quote and all OTTO orders on that side for that series (for that NOM Market Maker) in addition to all the executions that have occurred on that side for that series (for that NOM Market Maker) within the Percentage-Based Specified Time Period would comprise the size.

This new definition accurately represents the manner in which the Issue Percentage is calculated. Also, the more precise language within the rule text will provide NOM Market Makers with a more accurate description of the operation of this risk mechanism. The Exchange has always calculated the NOM Market Maker’s size in this fashion. The definition, as described in the prior rule change, was not accurate and the Exchange seeks to amend the definition with this proposal and memorialize the definition within the rule.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>11</sup> in particular, in that it is designed to promote just and equitable principles of

to utilize OTTO. OTTO immediate or cancel orders will not be included.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> NOM Market Makers selecting the Percentage-Based risk control in Chapter VII, Section 6(f)(i) are required to provide a specified time period, up to 15 seconds, and a specified percentage with a number of 1% or greater, as proposed herein, to the NOM Market Operations staff to select this risk control. If a NOM Market Maker does not desire to utilize the Percentage-Based risk control the NOM Market Maker must utilize the Volume-Based risk control which is similarly set-up by contacting Market Operations and providing certain settings.

<sup>7</sup> See note 4 above.

<sup>8</sup> SQF permits the receipt of quotes. SQF Auction Responses and market sweeps are also not included.

<sup>9</sup> OTTO provides a method for subscribers to send orders and receive status updates on those orders. OTTO accepts limit orders from System subscribers, and if there is a matching order, the orders will execute. Non-matching orders are added to the limit order book. All NOM Participants have the ability

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 offering NOM Market Makers the ability to better manage their own risk with this risk feature.

NOM Market Makers are obligated to submit continuous two-sided quotations in a certain number of series in their appointed option classes for a certain percentage of each trading session.<sup>12</sup> This obligation renders them vulnerable to risk from unusual market condition, volatility in specific options, and other market events that may cause them to receive multiple, extremely rapid automatic executions before they can adjust their quotations and overall risk exposure in the market. Without adequate risk management tools in place on the Exchange, the incentive for NOM Market Makers to quote aggressively, respecting both price and size could be diminished. Such a result may undermine the quality of the markets, which are enhanced by the depth and liquidity such NOM Market Makers provide in the marketplace.

By allowing the Specified Percentage provided by the NOM Market Maker to be reduced from 100% to 1%, the Exchange provides its NOM Market Makers the desired flexibility to take into account such factors as present and anticipated market conditions, news in an option or sudden change in volatility of an option without any limitation regarding the Specified Percentage. This should encourage NOM Market Makers to provide additional depth and liquidity to the Exchange's markets, thereby removing impediments to and perfecting the mechanisms of a free and open market and a national market system and, in general, protecting investors and the public interest.

The proposal is consistent with the Act because the reduction of the Specified Percentage to not less than 1% provides more alternatives to NOM Market Makers in setting their percentage without impacting their firm quote obligations. The System operates consistently with the firm quote obligations of a broker-dealer pursuant

to Rule 602 of Regulation NMS. Specifically, with respect to NOM Market Makers, their obligation to provide continuous two-sided quotes on a daily basis is not diminished by the removal of such quotes and orders by the Percentage-Based Threshold. NOM Market Makers are required to provide continuous two-sided quotes on a daily basis.<sup>13</sup> NOM 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 the change prohibit the Exchange from taking disciplinary action against a NOM Market Maker for failing to meet the continuous quoting obligation each trading day. All quotes entered into the System are considered firm. Quotes will only be removed from the System once the Percentage-Based Threshold has been met if the quote was not otherwise executed by an incoming order.

This risk feature will continue to remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors and the public interest by allowing NOM Market Makers to remove their quotes and orders in the event that market conditions warrant, based on their own risk tolerance level. NOM Market Makers provide liquidity to the market place and have obligations unlike other market participants.<sup>14</sup> This risk feature is important because it will enable NOM Market Makers to manage their exposure at the Exchange. Further, permitting NOM Market Makers to enter a broader setting would continue to allow NOM Market Makers to have flexibility in setting their risk exposure to prevent unintended triggers of the Percentage-Based Threshold. This proposal continues to allow NOM Market Makers to select a Percentage-Based Specified Time Period. Each NOM Market Maker has different levels of sensitivity and its own system safeguards as well. The proposed setting would permit each NOM Market Maker to select a setting that is appropriate to capture the needs of that NOM Market Maker.

Further, it is important to note that any interest that is executable against a NOM Market Maker's quotes and orders that are received<sup>15</sup> by the Exchange prior to the trigger of the Percentage-Based Threshold, which is processed by the System, automatically executes at a price up to the NOM Market Maker's

size. The system-generated 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. Incoming orders received prior to the Purge Notification Message would not be cancelled, rather they be [sic] executed at a price up to the NOM Market Maker's size.

The Exchange notes that Miami International Securities Exchange, LLC ("MIAX") implemented a rule that changed its Allowable Engagement Percentage from a minimum of 100% to any percentage established by the Market Maker.<sup>16</sup> The NOM rule is similar to MIAX's in that a member is required to have a setting, although MIAX has a default setting in place in the instance that no percentage is provided. NOM Market Makers that select the Percentage-Based risk tool must provide the Exchange with a Percentage-Based Specified Time Period greater than or equal to 1%. [sic] Amending the definition of disseminated size will provide market participants with greater information on the manner in which the Exchange computes the Issue Percentage. The Exchange believes that the manner in which the Exchange calculates the number of contracts, which are counted for the Issue Percentage, is consistent with the Act. The counting method permits the Exchange to update the reference number to include the executed contracts. While this method differs from the method previously described, the Exchange believes that there is no industry standard for counting and its method permits market participants to achieve the desire [sic] risk protection. With the proposed definition, each execution uses the Percentage-Based Specified Time Period that existed at the time of the execution. NOM Market Makers can change the Percentage-Based Specified Time Period at any time. If a NOM Market Maker is using a Percentage-Based Specified Time Period of 15 seconds when an execution happens, then changes the Percentage-Based Specified Time Period to half a second, that first execution will not expire until 15 seconds have passed. The selected Percentage-Based Specified Time Period will persist for 15 seconds and the number of executed contracts will be included in the denominator of subsequent executions for a full 15 seconds.

<sup>12</sup> Pursuant to NOM 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 NOM 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 NOM for all purposes under the Act or rules thereunder. See Chapter VII, Section 5.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> The time of receipt for an order or quote is the time such message is processed by the Exchange book.

<sup>16</sup> See Securities Exchange Act Release No. 77817 (May 12, 2016), 81 FR 31286 (May 18, 2016) (SR-MIAX-2016-10).

### *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 intended to protect NOM Market Makers from exposure to excessive risk. The Exchange believes this proposal will foster competition by providing NOM Market Makers with the ability to enhance and customize their percentage in order to compete for executions and order flow. Specifically, the proposal does not impose a burden on intra-market or inter-market competition; rather, it provides NOM Market Makers with the opportunity to avail themselves of similar risk tools, which are currently available on other exchanges.<sup>17</sup> NOM Market Makers quote across many series in an option creating the possibility of "rapid fire" executions that can create large, unintended principal positions that expose NOM Market Makers. The Percentage-Based Threshold permits NOM 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 NOM Market Makers to reduce their risk in the event the NOM Market Maker is suffering from a system issue or due to the occurrence of unusual or unexpected market activity. Reducing such risk will enable NOM 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. Reducing risk by utilizing the proposed risk protections enables NOM 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.

The Exchange believes that amending the definition of disseminated size does not create an undue burden on competition because the Exchange will uniformly calculate the Percentage-Based Threshold in a uniform manner for all NOM Market Makers. The Exchange is memorializing the definition within the Rule.

### *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) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup> The Exchange has requested that the Commission waive the thirty-day operative delay so that the proposal may become operative immediately. The Commission believes that waiving the thirty-day operative delay is consistent with the protection of investors and the public interest. The Exchange proposes to change a setting in an existing risk protection feature to enhance market makers' ability to protect against excessive risk arising from multiple executions across multiple options series of a single underlying security. The Commission notes that another options exchange currently has a similar setting for a like risk protection feature for market makers. Moreover, the Commission notes that the proposal to replace the term "disseminated size" with an accurate and more precise description would add transparency with respect to the operation of the risk protection feature. Therefore, the Commission hereby waives the thirty-day operative delay and designates the proposal operative upon filing.<sup>20</sup>

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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2016-087 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-2016-087. 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-NASDAQ-2016-087 and should be submitted on or before August 5, 2016.

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 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, along with a brief description and the text of 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.

<sup>20</sup> For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>17</sup> See Section 8 of the 19b4.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-16724 Filed 7-14-16; 8:45 am]

**BILLING CODE 8011-01-P**

## **SURFACE TRANSPORTATION BOARD**

[Docket No. **AB 290 (Sub-No. 383X)**]

### **Norfolk Southern Railway Company—Discontinuance of Service Exemption—In Shenandoah County, VA**

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR part 1152, subpart F—*Exempt Abandonments and Discontinuance of Service* to discontinue service over an approximately 16.9-mile rail line extending from milepost B 62.0 (at Strasburg, VA) to milepost B 78.9 (near Edinburg, VA) in Shenandoah County, VA (the Line). The Line traverses United States Postal Service Zip Codes 22657, 22660, 22644, 22664, and 22824.

NSR has certified that: (1) No local traffic has moved over the Line for at least two years; (2) because the Line is not a through route, no overhead traffic has operated, and, therefore, none needs to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line is pending either with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will be effective on August

16, 2016, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2)<sup>1</sup> must be filed by July 25, 2016.<sup>2</sup> Petitions to reopen must be filed by August 4, 2016, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to NSR's representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available on our Web site at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Decided: July 12, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Raina S. Contee,**

*Clearance Clerk.*

[FR Doc. 2016-16773 Filed 7-14-16; 8:45 am]

**BILLING CODE 4915-01-P**

## **SURFACE TRANSPORTATION BOARD**

[Docket No. **FD 36029**]

### **Watco Holdings, Inc.—Continuance in Control Exemption—Kanawha River Railroad, LLC**

Watco Holdings, Inc. (Watco), a noncarrier, has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of Kanawha River Railroad, LLC (KNWA), upon KNWA's becoming a Class III rail carrier. Watco owns, indirectly, 100% of the issued and outstanding stock of KNWA, a limited liability company.<sup>1</sup>

This transaction is related to a concurrently filed verified notice of exemption in *Kanawha River Railroad, L.L.C.—Lease Exemption Containing Interchange Commitment—Norfolk Southern Railway Company*, Docket No. FD 36028, wherein KNWA seeks Board approval to lease and operate

<sup>1</sup> Each OFA must be accompanied by the filing fee, which is currently set at \$1,600. See 49 CFR 1002.2(f)(25).

<sup>2</sup> Because this is a discontinuance proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be an environmental review during abandonment, this discontinuance does not require an environmental review.

<sup>1</sup> The notice of exemption was initially filed on June 28, 2016. After representative consultation with the Board, the filing was resubmitted on July 1, 2016, and therefore that is the official filing date and the basis for all dates in this notice.

approximately nine rail segments, totaling 308.85 miles of rail line from the Norfolk Southern Railway Company. The line segments run (1) between mileposts V 382.0 at Maben, W. Va., and V 435.0 at DB (Deepwater Bridge), W. Va.; (2) between milepost RR 7.0 at Refugee, Ohio, and milepost RR 116.5 at Hobson Yard, Ohio; (3) between milepost WV 125.6 at Conco, Ohio and milepost WV 253.4 at Cornelia, W. Va.; (4) between milepost VC 0.0 at Vaco Junction, W. Va., and milepost VC 0.84 at Deepwater, W. Va. (5) between Hitop RT at milepost TP 0.0 at Charleston, W. Va., and the end of the track at milepost TP 1.0; (6) between Jones IT at milepost JT 0.0 at Jones, W. Va., and the end of the track at milepost JT 1.3; (7) between milepost VG 0.0 at Virwest, W. Va., and milepost VG 12.1 at Bolt, W. Va., (8) between milepost MY 0.0 at Milam, W. Va., and the end of the track at MY 1.0; and (9) between milepost PE 0.0 at Putt, W. Va., and milepost PE 2.3 at Putt End Branch, W. Va.

The transaction may be consummated on or after July 31, 2016, the effective date of the exemption, 30 days after the supplemental notice of exemption was filed.

Watco currently controls, indirectly, 33 Class III rail carriers and one Class II rail carrier, collectively operating in 23 states. For a complete list of these rail carriers, and the states in which they operate, see Watco's notice of exemption filed on July 1, 2016. The notice is available on the Board's Web site at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Watco represents that: (1) The rail lines to be operated by KNWA do not connect with any other railroads operated by the carrier in the Watco's corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines to be operated by KNWA with any other railroad in applicant's corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption

<sup>21</sup> 17 CFR 200.30-3(a)(12).