

*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 No. SR-NYSE-2015-54. 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 such 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 No. SR-NYSE-2015-54, and should be submitted on or before December 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76365; File No. SR-NASDAQ-2015-130]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Chapter XV, Entitled "Options Pricing," at Section 2 Governing Pricing for NASDAQ Members

November 5, 2015.

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 October 29, 2015, 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, 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 Exchange's transaction fees at Chapter XV, Section 2 entitled "NASDAQ Options Market—Fees and Rebates," which governs pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on November 2, 2015.

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 the following change to the NOM transaction fees set forth at Chapter XV, Section 2 for executing and routing standardized equity and index options under the Penny Pilot<sup>3</sup> Options program.

The proposed change is as follows:  
*Fees for Removing Liquidity in Penny Pilot Options:* the Exchange proposes to:

1. Increase the Non-NOM Market Maker<sup>4</sup> fee from \$0.50 to \$0.55 per

<sup>3</sup> The Penny Pilot was established in March 2008 and has since been expanded and extended through June 30, 2016. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR-NASDAQ-2008-026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR-NASDAQ-2009-091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR-NASDAQ-2009-097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR-NASDAQ-2010-013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR-NASDAQ-2010-053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR-NASDAQ-2011-169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot); 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR-NASDAQ-2012-075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012); 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR-NASDAQ-2012-143) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2013); 69787 (June 18, 2013), 78 FR 37858 (June 24, 2013) (SR-NASDAQ-2013-082) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2013); 71105 (December 17, 2013), 78 FR 77530 (December 23, 2013) (SR-NASDAQ-2013-154) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2014); 79 FR 31151 (May 23, 2014), 79 FR 31151 (May 30, 2014) (SR-NASDAQ-2014-056) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2014); 73686 (December 2, 2014), 79 FR 71477 (November 25, 2014) (SR-NASDAQ-2014-115) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2015) and 75283 (June 24, 2015), 80 FR 37347 (June 30, 2015) (SR-NASDAQ-2015-063) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement of Penny Pilot Issues That Have Been Delisted.) See also NOM Rules, Chapter VI, Section 5.

<sup>4</sup> The term "NOM Market Maker" or ("M") is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must

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

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

<sup>20</sup> 17 CFR 200.30-3(a)(12).

contract for options overlying iShares MSCI Emerging Markets (“EEM”), SPDR Gold Shares (“GLD”), iShares Russell 2000 ETF (“IWM”), PowerShares QQQ (“QQQ”), and SPDR S&P 500 (“SPY”).

2. This rule change is based on a rule change by Miami International Securities Exchange LLC (“MIAX”) and is a competitive response to increase fees in similar manner as MIAX only with respect to Non-NOM Market Maker pricing in certain symbols, as described above.

This rule change is described in greater detail below.

#### Non-NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options

The Exchange proposes, beginning November 2, 2015, to increase the Non-NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options from \$0.50 to \$0.55 per contract for options overlying EEM, GLD, IWM, QQQ, and SPY. The Exchange notes that the Fees for Removing Liquidity for other Participants in Penny Pilot Options will remain the same.<sup>5</sup> Also, Non-NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options in all other Penny Pilot Option symbols, except EEM, GLD, IWM, QQQ, and SPY, will remain the same.

The Exchange believes that this incentive will encourage Non-NOM Market Makers to transact a greater number of orders on the Exchange.

The purpose of the proposed rule change is to increase the Non-NOM Market Maker Fee For Removing Liquidity in Penny Pilot Options for options overlying EEM, GLD, IWM, QQQ, and SPY, so that the transaction fees for NOM Market Makers in options overlying EEM, GLD, IWM, QQQ, and SPY remain lower as compared to Non-NOM Market Makers. The Exchange proposes to add a new note “2” to Chapter XV, Section (2)(1) which states, “The Exchange will assess Non-NOM Market Makers a \$0.55 per contract Fee for Removing Liquidity in Penny Pilot Options in the following symbols: EEM, GLD, IWM, QQQ, and SPY.” The Exchange notes that maintaining this fee differential encourages market participants to become members and register as NOM Market Makers versus otherwise sending orders to the Exchange as a an away market maker.

also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

<sup>5</sup> Customers, Professionals, Firms, NOM Market Makers and Broker-Dealers will continue to be assessed a \$0.50 per contract Fee for Removing Liquidity in Penny Pilot Options.

#### 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(4) and 6(b)(5) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

#### Non-NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options

The Exchange’s proposal to increase the Non-NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options for options overlying EEM, GLD, IWM, QQQ, and SPY from \$0.50 to \$0.55 per contract is reasonable to provide lower fees to NOM Market Makers as compared to Non-NOM Market Makers to encourage market participants to become members and register as NOM Market Makers. This rule change is also similar to current MIAX pricing.<sup>8</sup>

The Exchange’s proposal to increase the Non-NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options for options overlying EEM, GLD, IWM, QQQ, and SPY from \$0.50 to \$0.55 per contract is equitable and not unfairly discriminatory because the increase applies equally to all Non-NOM Market Makers. In addition, maintaining a higher transaction fee for Non-NOM Market Makers versus NOM Market Makers is equitable and not unfairly discriminatory because NOM Market Makers on the Exchange have enhanced quoting obligations that are not applicable to Non-NOM Market Makers.<sup>9</sup>

In addition, charging non-members higher transaction fees is a common practice amongst exchanges because members are subject to other fees and dues associated with their membership to the Exchange that do not apply to non-members. The proposed differentiation as between Non-NOM Market Makers, NOM Market Makers, and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. Maintaining a

lower transaction fee for NOM Market Makers as compared to Non-NOM Market Makers should incent market participants and market makers on other exchanges to register as NOM Market Makers, which will enhance the quality of quoting and increase the volume of contracts traded in options listed on NOM. To the extent that this purpose is achieved, all the Exchange’s market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the increase in NOM Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

The Exchange believes that establishing different pricing for options overlying EEM, GLD, IWM, QQQ, and SPY options as compared to other Penny Pilot Options is reasonable, equitable, and not unfairly discriminatory because EEM, GLD, IWM, and SPY options are more liquid options as compared to other Penny Pilot Options and the Exchange wants to incentivize market participants to become members and register as NOM Market Makers versus otherwise sending orders to the Exchange as a Non-NOM Market Maker.

#### 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 proposal is designed to maintain lower NOM Market Maker transaction fees for options overlying EEM, GLD, IWM, QQQ, and SPY as compared to Non-NOM Market Makers. To the extent that there is additional competitive burden on Non-NOM Market Makers, the Exchange believes that this is appropriate because charging non-members higher transaction fees is a common practice amongst exchanges and members are subject to other fees and dues associated with their membership to the Exchange that do not apply to non-members. The proposed differentiation as between Non-NOM Market Makers, NOM Market Makers, and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants.

Maintaining a lower transaction fee for NOM Market Makers should incent market participants and market makers on other exchanges to register as NOM Market Makers on the Exchange, which will enhance the quality of quoting and

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>8</sup> See MIAX Options Fee Schedule.

<sup>9</sup> See NOM Rules at Chapter VII, Section 6. On a daily basis, a NOM Market Maker must make markets consistent with the applicable quoting requirements on a continuous basis.

increase the volume of contracts traded in options listed on NOM. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposal reflects this competitive environment.

*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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>10</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: (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
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2015-130 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.

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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-76363; File No. SR-NASDAQ-2015-127]

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</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.