

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76739; File No. SR-NASDAQ-2015-153)

December 22, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NASDAQ Options Market – Fees and Rebates

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 December 15, 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 Chapter XV, entitled “Options Pricing,” at Section 2, which governs pricing for Exchange members using the NASDAQ Options Market (“NOM”), the Exchange’s facility for executing and routing standardized equity and index options.

The Exchange purposes [sic] to remove specific rule text added in SR-NASDAQ-2015-149,³ which was applicable only to the mid-month pricing change.⁴ This proposal removes the specific December 2015 dates from the rule text so the rebates will apply in January 2016.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ This proposed rule change is not yet published. This proposed rule change was filed on December 2, 2015.

⁴ The Commission notes that after the Exchange filed this proposal, the notice for SR-NASDAQ-2015-149 was published for public comment. See Securities Exchange Act Release No. 76651 (December 15, 2015), 80 FR 79387 (December 21, 2015).

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments [sic] become operative on January 4, 2016.

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

The Exchange proposes to amend Chapter XV, Section 2, entitled "NASDAQ Options Market – Fees and Rebates" to amend Tier 8 of the Customer and Professional Penny Pilot Options⁵ Rebates to Add Liquidity. The proposed rule change is detailed below.

⁵ 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,

Customer and Professional Penny Pilot Options Rebates to Add Liquidity

Today, the Exchange offers Participants tiered Customer and Professional rebates based on various criteria, with rebates ranging from \$0.20 to \$0.48 per contract.⁶ The Exchange filed SR-NASDAQ-2015-149,⁷ on December 2, 2015, to amend Tier 8 of the Customer and Professional Penny Pilot Options Rebates to Add Liquidity tiers. Participants may qualify for Customer and Professional Penny Pilot Options Rebates to Add Liquidity by adding a certain amount of liquidity as specified by each tier.⁸

2011) (SR-NASDAQ-2011-169) (notice of filing and immediate effectiveness [sic] 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 [sic] (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) [sic], 79 FR 71477 (November 25, 2014) [sic] (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 and extension and replacement of Penny Pilot) See also NOM Rules, Chapter VI, Section 5.

⁶ See NOM's Rules at Chapter XV, Section 2(1).

⁷ See note 3 above.

⁸ Tiers 6 and 7 are calculated based on Total Volume. Total Volume is defined as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker, and NOM Market Maker volume in Penny Pilot Options and/or Non-Penny Pilot Options which either adds or removes liquidity on NOM. See note "b" in Section 2(1) of Chapter XV. The Exchange utilizes data from The Options Clearing Corporation ("OCC") to determine the total industry customer equity and ETF options ADV figure. OCC classifies equity and ETF options volume under the equity options category. Also, both customer and professional orders that are transacted on options exchanges clear in the

The Exchange proposes to amend Tier 8 of the Customer and Professional Penny Pilot Options Rebate to Add Liquidity, which states “Participant adds Customer, Professional, Firm, Non-NOM Market Maker, and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month or Participant adds (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 30,000 or more contracts per day in a month and (2) the Participant has certified for the Investor Support Program⁹ set forth in Rule 7014 from December 2, 2015 through December 31, 2015” to remove the reference to the December dates. The date range, from December 2, 2015 to December 31, 2015, was added to accommodate a mid-month pricing change that impacted that specific timeframe. The Exchange intends to continue to offer Participants the opportunity to earn the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity and therefore proposes to remove the specific date range. Tier 8 will be offered to Participants as of January 4, 2016 and forward.

The Exchange believes the Tier 8 Customer and Professional Penny Pilot Option Rebate to Add Liquidity will continue to incentivize market participants to send order flow to NOM, the resulting liquidity will benefit all market participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the

customer range at OCC and therefore both customer and professional volume would be included in the total industry figure to calculate rebate tiers.

⁹ For a detailed description of the Investor Support Program (“ISP”), see Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ-2010-141) (notice of filing and immediate effectiveness) (the “ISP Filing”). See also Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (NASDAQ-2010-153) (notice of filing and immediate effectiveness); and 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ-2010-154) (notice of filing and immediate effectiveness).

Act,¹⁰ in general, and with Section 6(b)(4) and 6(b)(5) of the Act,¹¹ 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 the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Customer volume is important because it continues to attract liquidity to the Exchange, which benefits all market participants. Further, with respect to Professional liquidity, the Exchange initially established Professional pricing in order to “...bring additional revenue to the Exchange.”¹² The Exchange noted in the Professional Filing that it believes “...that the increased revenue from the proposal would assist the Exchange to recoup fixed costs.”¹³ In addition, the Exchange noted in that filing that it believes that establishing separate pricing for a Professional, which ranges between that of a Customer and market maker, accomplishes this objective.¹⁴

Customer and Professional Penny Pilot Options Rebates to Add Liquidity

The Exchange’s proposal to amend Tier 8 of the Customer and Professional Penny Pilot Options Rebate to Add Liquidity to remove the December 2, 2015 to December 31, 2015 date

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4) and (5).

¹² See Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR-NASDAQ-2011-066) (“Professional Filing”). In this filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.

¹³ See Professional Filing.

¹⁴ See Professional Filing. The Exchange also [sic] in the Professional Filing that it believes the role of the retail Customer in the marketplace is distinct from that of the Professional and the Exchange’s fee proposal at that time accounted for this distinction by pricing each market participant according to their roles and obligations.

range is reasonable because the Exchange seeks to continue to incentivize Participants to send order flow to NOM. The Exchange believes that the heightened volume requirement to qualify for Tier 8, as compared with other tier volume requirements, combined with the requirement to continue to certify for the Investor Support Program will continue to incentivize Participants to transact an even greater number of qualifying Customer and/or Professional volume, which liquidity will benefit other market participants by providing them the opportunity to interact with that liquidity. The Exchange notes that incentivizing Participants to add options liquidity through the payment of an additional rebate is not novel as, today, Tier 8 permits the additional [sic] of equity volume to qualify for this rebate. The concept of participating in the equities market as a means to qualify for an options rebate exists today. This participation benefits the Nasdaq Market Center as well as the NOM market by incentivizing order flow to these markets. This rebate recognizes the prevalence of trading in which members simultaneously trade different asset classes within the same strategy. Participants will continue to be required to add liquidity to both the options and equities requirement if they qualify for the Tier 8 rebate utilizing the second method.¹⁵ Because cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other, the Exchange believes that pricing incentives that encourage market participant activity in NOM also support price discovery and liquidity provision in the Nasdaq Market Center.

¹⁵ There are two ways to qualify for the Tier 8 rebate, as amended by this proposal, either: (1) Participant adds Customer, Professional, Firm, Non-NOM Market Maker, and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month; or (2) Participant adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 30,000 or more contracts per day in a month and the Participant has certified for the Investor Support Program set forth in Rule 7014.

The Exchange's proposal to amend Tier 8 of the Customer and Professional Penny Pilot Options Rebate to Add Liquidity to remove the December 2, 2015 to December 31, 2015 date range is equitable and not unfairly discriminatory because all Participants may continue to qualify for Tier 8. Qualifying Participants will continue to be uniformly paid a \$0.48 per contract rebate.

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.

Customer and Professional Penny Pilot Options Rebates to Add Liquidity

The Exchange's proposal to amend Tier 8 of the Customer and Professional Penny Pilot Options Rebate to Add Liquidity to remove the December 2, 2015 to December 31, 2015 date range does not impose an undue burden on intra-market competition because all Participants are eligible to qualify for the Tier 8 Customer or Professional Rebate to Add Liquidity, provided they meet the qualifications. Also, the Tier 8 rebate will be uniformly paid to those Participants that are eligible for the rebate.

As noted above, continuing to incentivize Participants to add not only options but equities volume does not impose an undue burden on intra-market competition because cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other; the Exchange believes that pricing incentives that encourage market participant activity in NOM also support price discovery and liquidity provision in the Nasdaq Market Center. Further, the pricing incentives require significant levels of liquidity provision, which benefits all market participants on NOM and the Nasdaq Market Center.

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.¹⁶

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2015-153 on the subject line.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2015-153. 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; 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-2015-153, 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.¹⁷

Brent J. Fields
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).