

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65138; File No. SR-NASDAQ-2011-112)

August 15, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Customer Rebates in Penny Pilot Options

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 August 5, 2011, 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 modify Exchange Rule 7050 governing pricing for NASDAQ members using the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options. Specifically, NOM proposes to modify pricing for the Penny Pilot³ Options (“Penny Options”) with respect to the Customer Rebate to Add Liquidity.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2010. 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

The text of the proposed rule change is set forth below. Proposed new text is underlined and deleted text is in brackets.

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7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

(1) Fees for Execution of Contracts on the NASDAQ Options Market

Fees and Rebates					
(per executed contract)					
	Customer Professional	Professional	Firm	Non-NOM Market Maker	NOM Market Maker
Penny Pilot Options:					
Rebate to Add Liquidity	[\$0.36]	\$0.29	\$0.10	\$0.25	\$0.30
Fee for Removing	\$0.45	\$0.45	\$0.45	\$0.45	\$0.45

immediate effectiveness adding seventy-five classes to Penny Pilot); and 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). See also Exchange Rule Chapter VI, Section 5.

Liquidity

NDX and MNX:

Rebate to Add Liquidity	\$0.10	\$0.10	\$0.10	\$0.10	\$0.20
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Fee for Removing	\$0.50	\$0.50	\$0.50	\$0.50	\$0.40
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Liquidity

All Other Options:

Fee for Adding Liquidity	\$0.00	\$0.20	\$0.45	\$0.45	\$0.30
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Fee for Removing	\$0.45	\$0.45	\$0.45	\$0.45	\$0.45
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Liquidity

Rebate to Add Liquidity	\$0.20	\$0.00	\$0.00	\$0.00	\$0.00
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◇ The Customer Rebate to Add Liquidity in Penny Pilot Options will be paid as follows:

	<u>Monthly Volume</u>	<u>Rebate to Add Liquidity</u>
<u>Tier 1</u>	<u>0 – 499,999</u>	<u>\$0.26</u>
<u>Tier 2</u>	<u>500,000 – 799,999</u>	<u>\$0.32</u>
<u>Tier 3</u>	<u>800,000 – 1,199,999</u>	<u>\$0.36</u>
<u>Tier 4</u>	<u>1,200,000 and up</u>	<u>\$0.38</u>

(2) – (4) No Change

* These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

** These fees are applicable to orders routed to PHLX that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See PHLX's Fee Schedule for the complete list of symbols that are subject to these fees.

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The text of the proposed rule change is available on the Exchange's website at <http://www.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

NASDAQ is proposing to modify Rule 7050 governing the rebates and fees assessed for option orders entered into NOM. Specifically, NASDAQ is proposing to modify pricing for the

Customer Rebate to Add Liquidity in Penny Options to create monthly volume tiers. The Exchange believes the monthly volume thresholds will incentivize firms that route Customer orders to the Exchange to increase Customer order flow to the Exchange.

The Exchange currently pays a Customer Rebate to Add Liquidity of \$0.36 per executed contract to members providing liquidity through NOM in Penny Options. The Exchange proposes to amend this rebate so that Customers will receive a Rebate to Add Liquidity based on their total number of Customer contracts that add liquidity in Penny Options in a given month. The Exchange proposes to pay a Customer Rebate to Add Liquidity in Penny Options based on four volume tiers as follows:

	Monthly Volume	Rebate to Add Liquidity
Tier 1	0 – 499,999	\$0.26
Tier 2	500,000 – 799,999	\$0.32
Tier 3	800,000 – 1,199,999	\$0.36
Tier 4	1,200,000 and up	\$0.38

By way of example, the Exchange would pay a Rebate to Add Liquidity of \$0.36 per contract to a NOM Participant that executed 900,000 Customer contracts that added liquidity in Penny Options in a given month. If the NOM Participant executed 1,500,000 Customer contracts that added liquidity in Penny Options in a given month, the Exchange would pay a Rebate to Add Liquidity of \$0.38 per contract.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of

Section 6 of the Act,⁴ in general, and with Section 6(b)(4) of the Act,⁵ 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.

The Exchange believes that the proposed monthly tier structure for Customer Rebates to Add Liquidity in Penny Options is equitable, reasonable and not unfairly discriminatory because by incentivizing broker-dealers acting as agent for Customer orders to select the Exchange as a venue to post Customer orders will attract Customer order flow and benefit all market participants. While the Exchange is lowering the current Rebate to Add Liquidity for Customers in tiers 1 and 2, the Exchange believes that broker-dealers acting as agent for Customer orders will in fact be incentivized to bring additional order flow to the Exchange and obtain higher rebates.

Furthermore, the Exchange believes that the proposed Customer monthly volume tier Rebates to Add Liquidity are equitable and not unfairly discriminatory because the Rebates to Add Liquidity are higher in tier levels 2, 3 and 4 for Customers as compared to all other market participants. With respect to tier level 1, the Exchange is proposing to pay a Customer a lower Rebate to Add Liquidity as compared to a Professional and NOM Market Maker. The Exchange believes that this proposal is equitable because the Customer has the opportunity to earn higher rebates with the tier structure as compared to a Professional, who will only receive a \$0.29 per contract Rebate to Add Liquidity, and a NOM Market Maker, who will only receive a \$0.30 per contract Rebate to Add Liquidity. Additionally, with respect to NOM Market Makers, the proposed fee structure is equitable because market makers have obligations to the market and

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4).

regulatory requirements,⁶ which normally do not apply to other market participants. Customers receive a higher Rebate to Add Liquidity for all tiers as compared to a Firm and Non-NOM Market Maker.⁷

The Exchange believes the proposed monthly tier structure for Customer Rebates to Add Liquidity in Penny Options is also reasonable because the amount of the rebate is similar to a tiered rebate offered by NYSE Arca, Inc. (“NYSE Arca”). NYSE Arca pays a per contract rate on all posted liquidity in Customer Penny Pilot Issues by aggregating total contracts executed that added liquidity in Penny Pilot Issues in a given month.⁸

The Exchange believes that the proposed monthly tier structure for Customer Rebates to Add Liquidity in Penny Options is equitable and not unfairly discriminatory because the Exchange would uniformly pay a Rebate to Add Liquidity to Customers executing Penny Options based on the monthly tiers proposed herein.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can readily send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed rebate structure and tiers are competitive and similar to other rebates and tiers in place on other exchanges. The Exchange believes that this competitive

⁶ Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity 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.

⁷ A Firm receives a \$0.10 per contract Rebate to Add Liquidity and a Non-NOM Market maker receives a \$0.25 per contract Rebate to Add Liquidity.

⁸ See NYSE Arca’s Fee Schedule.

marketplace impacts the rebates present on the Exchange today and substantially influences the proposals set forth above.

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.

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 Act⁹ and paragraph (f)(2) of Rule 19b-4¹⁰ thereunder. 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.

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

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2011-112 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2011-112. 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 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-NASDAQ-2011-112 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

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

Elizabeth M. Murphy
Secretary

¹¹ 17 CFR 200.30-3(a)(12).