SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65317; File No. SR-NASDAQ-2011-127)

September 12, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Fees for Members Using the NASDAQ Options Market

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 September 1, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. 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 the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on September 1, 2011. The text of the proposed rule change is available at http://nasdaq.cchwallstreet.com/, at NASDAQ's principal office, 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, NASDAQ 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. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of

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

[2] 17 CFR 240.19b-4.

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 revising [sic] existing monthly volume tiers. The Exchange currently pays 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 currently pays 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 currently would pay a Rebate to Add Liquidity of $0.38 per contract. The Exchange believes the existing monthly volume thresholds have incentivized firms that route Customer orders to the Exchange to increase Customer order flow to the Exchange.

To further encourage firms that route Customer orders to increase Customer order flow to the Exchange, the Exchange is proposing to modify the Customer Rebates to Add Liquidity in Penny Pilot Options in several ways. First, the Exchange is converting all tier measurements to average daily volumes from aggregate monthly volumes. This change is not, in and of itself, a material change.

Second, based on its experience with the existing volume tiers, the Exchange is modifying the volume required to qualify for each of the four existing tiers and the rebates earned by firms that qualify for each tier.

- Currently, Tier 1 firms add up to 499,999 contracts of liquidity per month (an average of up to 24,999 per day based on a month containing 20 trading days), and for that volume they receive a rebate of $0.26 per contract. The Exchange is changing Tier 1 to cover up to 24,999 contracts per day, and to pay the same $0.26 rebate. Based on past experience the Exchange anticipates that all firms currently receiving the $0.26 rebate will maintain their current level of rebate.
- Currently, Tier 2 firms add between 500,000 and 799,999 contracts per month (between 25,000 and 39,999 per day), and for that volume they receive a rebate of $0.32 per contract. The Exchange is changing Tier 2 to cover between 25,000 and 59,999 contracts per day, and to pay a rebate of $0.34 per contract.[3] As a result, firms that contribute between 25,000 and 39,999 contracts per day of Customer order liquidity will receive a higher rebate (up from $0.32 to $0.34 per contract). However, firms that contribute between 40,000 and 59,999 contracts per day of Customer order liquidity will receive a lower rebate (down from $0.36 to $0.34 per contract). Based upon current volume levels and past trading patterns, the Exchange anticipates that firms will contribute sufficient liquidity to avoid receiving reduced rebates.

[3] Firms that contribute between 40,000 and 59,999 contracts per day are currently in Tier 3, and receive a rebate of $0.36 per contract.

- Currently, Tier 3 firms add between 800,000 and 1,199,999 contracts per month (between 40,000 and 59,999 per day), and for that volume they receive a rebate of $0.36 per contract. The Exchange is changing Tier 3 to cover between 60,000 and 124,999 contracts per day, and to pay a rebate of $0.38 per contract. As a result, firms that contribute between 40,000 and 59,999 contracts per day of Customer order liquidity will receive lower rebates (down from $0.36 to $0.34 per contract) as a result of being in new Tier 2. Based upon current volume levels and past trading patterns, the Exchange anticipates that firms will contribute sufficient liquidity to avoid receiving reduced rebates. Firms that contribute between 60,000 and 124,999 contracts per day are currently in Tier 4, and receive a rebate of $0.38 per contract. The rebate they receive will not change as a result of now being in Tier 3.
- Currently, Tier 4 firms add over 1,200,000 contracts per month (over 60,000 per day), and for that volume they receive a rebate of $0.38 per contract. The Exchange is changing Tier 4 to cover over 125,000 contracts per day, and to pay a rebate of $0.40 per contract. As a result, firms that contribute between 60,000 and 124,999 contracts per day of Customer order liquidity will receive the same rebate of $0.38 per contract as previously received under old Tier 4, and firms that provide over 125,000 contracts per day of Customer order liquidity will receive higher rebates ($0.40 per contract under new Tier 4 up from $0.38 per contract received under old Tier 4).

Finally, the Exchange is adding two new tiers to further encourage the provision of Customer liquidity by participants that also add liquidity to the Exchange in other ways. The first new tier (Tier 5) will provide a higher rebate for Participants that meet two separate criteria: (1) provide 60,000 or more contracts per day of Customer order liquidity in Penny options, and

(2) provide 60,000 or more contracts per day of NOM Market Maker liquidity. By meeting the two criteria, Participants will receive a $0.02 rebate increase ($0.40 for meeting both criteria, as opposed to $0.38 for meeting only the first). For the purposes of determining qualification for this tier, the Exchange will aggregate the trading activity of separate NOM Participants in calculating the average daily volume if there is at least 75% common ownership between the NOM Participants.[4]

In other words, Participants that add significant liquidity as market makers can receive the same Customer rebate as Participants that provide substantially more Customer order liquidity (over 125,000 contracts per day). The Exchange believes this will encourage more participants that also route Customer order flow to register to make markets on the Exchange.

The Exchange is adding new Tier 6 to encourage participants in the Exchange's equity markets to also participate in the Exchange's options market. Specifically, firms that qualify for a credit under the Investor Support Program set forth in NASDAQ Rule 7014[5] by providing retail investor liquidity to NASDAQ's equity market can qualify for a higher rebate on NASDAQ's options market if they contribute 25,000 or more contracts per day of Customer order liquidity in Penny options on NOM. This amounts to a rebate of $0.01 per contract higher for any contracts between 25,000 and 59,999 per day for qualifying participants in both markets ($0.35 per contract) versus those that participate and qualify only on NOM ($0.34 per contract).

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4 Aggregation is necessary and appropriate because certain NOM participants conduct Customer and NOM Market Maker trading activity through separate but related broker-dealers.

5 For a detailed description of the Investor Support Program, 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).

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] 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. All similarly situated members are subject to the same fee structure, and access to NASDAQ is offered on fair and non-discriminatory terms.

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 modifying the required liquidity provision to qualify for Tiers 2, 3 and 4, it is also increasing the rebate available to firms that do qualify. As a result, 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 that they will 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 Tiers 2, 3 and 4 for Customers as compared to all other market participants. With respect to Tier 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 participant submitting Customer order

6 15 U.S.C. 78f.

7 15 U.S.C. 78f(b)(4).

liquidity 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. The Exchange believes it not unreasonable to preserve the existing differential between different types of Participants because the presence of Customer liquidity enhances the quality of trading on the Exchange for all Participants to such a great degree. Additionally, with respect to NOM Market Makers, the proposed fee structure is equitable because market makers have obligations to the market and regulatory requirements,[8] 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.[9]

The Exchange believes that new Tier 5 is not unfairly discriminatory because market makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants. The Exchange has set a reasonable goal of 60,000 or more contracts per day for market makers on NOM, an achievable goal that should encourage increased market maker registration and market making activity. The Exchange believes that the $0.02 rebate premium is equitable because that increased market making will, in turn, improve the amount of liquidity available on the Exchange and improve the quality of order interaction and executions on the Exchange.

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8 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.

9 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.

The Exchange believes that new Tier 6 is equitable and not unfairly discriminatory because it encourages increased activity in both the NASDAQ Options Market and in the Investor Support Program ("ISP") of the NASDAQ equity market. The goal of the ISP is to incentivize members to provide liquidity from individual equity investors to the NASDAQ Market Center.[10] Alternatively, new Tier 6 will encourage firms that already qualify for a credit under the ISP to increase the amount of Customer order liquidity provided to the NASDAQ Options Market. The addition of such liquidity, either through the ISP or through increased Customer order flow, will benefit all Exchange members that participate in those markets.[11]

The Exchange believes the proposed 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 adopted 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.[12]

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[10] The Commission has expressed its concern that a significant percentage of the orders of individual investors are executed at over the counter ("OTC") markets, that is, at off-exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, "Concept Release"). In the Concept Release, the Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. The Commission published the Concept Release to invite public comment on a wide range of market structure issues, including high frequency trading and un-displayed, or "dark," liquidity. See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) ("Schapiro Speech," available on the Commission website)(comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

[11] NASDAQ Rule 7018(a) already provides incentives for firms to participate in both NASDAQ's equity market and its options market.

[12] See NYSE Arca's Fee Schedule.

The Exchange believes that the proposed tier structure for Customer Rebates to Add Liquidity in Penny Options is equitable and not unfairly discriminatory because the Exchange will 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 and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive or rebate opportunities to be inadequate. 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 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

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor 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.[13] 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 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-2011-127 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-2011-127. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

13 15 U.S.C. 78s(b)(3)(a)(ii).

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-2011-127 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.[14]

Elizabeth M. Murphy
Secretary

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[14] 17 CFR 200.30-3(a)(12).