

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68761; File No SR-NASDAQ-2013-013)

January 29, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify Chapter XV, Section 2 of the Rules Governing the NASDAQ Options Market, NASDAQ's Facility for Executing and Routing Standardized Equity and Index Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on January 22, 2013. 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 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 Substance of the Proposed Rule Change

The NASDAQ Stock Market LLC proposes to modify Chapter XV, Section 2 of the rules governing the NASDAQ Options Market.

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. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

NASDAQ proposes to modify Chapter XV, entitled “Options Pricing,” at Section 2(1) governing the rebates and fees assessed for option orders entered into NOM, by limiting the transactions to which “Customer” fees and rebates apply and by adding a new “Broker-Dealer” category. The Exchange will apply the new Broker-Dealer fees and rebates rather than Customer fees and rebates to transactions for the account of a broker or dealer that are currently assessed at Customer rates. Transactions that are subject to the new Broker-Dealer fee category will no longer be considered “Customer” transactions for any purpose in Chapter XV, including rebates.

There is currently NOM pricing for five separate categories of market participants: Customer, Professional, Firm, Non-NOM Market Maker and NOM Market Maker. “Customer” pricing currently applies to any transaction that is identified for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of a Professional.³ NOM now proposes to further limit the “Customer” fee category so that it does not apply to transactions identified for clearing in the Customer range at OCC that are for the account of a broker or dealer. Going forward, these transactions for the account of a broker or dealer that are currently charged “Customer” fees will be charged under the new “Broker-Dealer” fee category.

³ 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.

The new Broker-Dealer category would be an addition to the existing fee categories. Broker-Dealer transactions will be any transactions that do not fall within any of the other categories.⁴ As discussed above, transactions currently identified for clearing in the Customer range at OCC for the account of a broker or dealer will fall within the new Broker-Dealer category. The Exchange proposes to charge transactions in the Broker-Dealer category the same fees charged for transactions currently in the Firm category, and to provide the same rebates offered with respect to transactions in the Firm category.

Additionally, the Exchange currently pays NOM Participants a tiered Rebate to Add Liquidity in Penny Pilot Options based on the volume of Customer and Professional orders they execute on the Exchange. Orders for brokers and dealers that currently fall within the Customer pricing category and that will now fall within the Broker-Dealer pricing category will no longer be eligible for this rebate. However, Broker-Dealer orders, just like Firm orders, will count toward Total Volume for purposes of calculating the Tier 5 Rebate to Add Liquidity in Penny Pilot Options.

Section 2(2) is being amended to reflect that, like transactions in the Firm fee category, Broker-Dealer transactions will be assessed the Fee for Removing Liquidity during the Exchange's Opening Cross.

Finally, the Exchange is eliminating Section 2(3), Closing Cross, as unnecessary. The Exchange no longer conducts a closing cross and the fees are no longer applicable to any transactions.

2. Statutory Basis

⁴ The other categories are Customer, Professional Firm, Non-NOM Market Maker and NOM Market Maker.

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,⁵ in general, and with Section 6(b)(4) of the Act,⁶ 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 assessing for Broker-Dealer transactions executed on the Exchange the same pricing assessed today for Firm transactions executed on the Exchange is reasonable because other options exchanges similarly assess the same transaction fees for Broker-Dealers and Firms. NASDAQ OMX BX, Inc., (“BX”), International Securities Exchange, LLC (“ISE”) and NYSE Arca, Inc. (“NYSE Arca”) also charge Broker-Dealer transactions at the same rates as Firm transactions.

The Exchange believes that the proposed Broker-Dealer fees are reasonable, equitable and not unfairly discriminatory because it is the same pricing uniformly charged by the Exchange with respect to transactions in the Professional, Firm and Non-NOM Market Maker categories. Only Customer and NOM Market Maker transactions receive more favorable fees due to the special benefits they bring to the market. The Exchange believes that Customer order flow brings unique benefits to the market which benefits all market participants through increased liquidity. NOM Market Makers have obligations to the market and regulatory requirements⁷ which normally do not apply to

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

⁷ 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

other market participants. A NOM Market Maker has the obligation to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The proposed differentiation as between Customers and NOM Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by Customers and NOM Market Makers, as well as the differing mix of orders entered.

The Exchange believes that the proposed Broker-Dealer Rebate to Add Liquidity in Penny Pilot Options is equitable and not unfairly discriminatory because it is the same rebate that is currently applied to Firms, which rebate is lower than that applicable to Customers, Professionals, Non-NOM Market Makers and NOM Market Makers because Customers, Professionals, Non-NOM Market Makers and NOM Market Makers provide benefits to the market which Firms and Broker-Dealers do not. Customers and Professionals provide liquidity which benefits the market. Non-NOM Market Makers and NOM Market Makers have obligations to the market place and regulatory burdens placed on them that other broker-dealers trading for their own account do not currently bear.

The Exchange believes that the lack of a Broker-Dealer Rebate to Add Liquidity in Non-Penny Pilot Options is equitable and not unfairly discriminatory because Professionals, Firms, Non-NOM Market Makers and NOM Market Makers also do not

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.

receive any rebate. Only Customers will receive a rebate because Customer order flow brings liquidity to the market which in turn benefits all market participants. The provision of Customer flow is encouraged by the rebate for this reason.

A Customer and Professional Rebate to Add Liquidity in Penny Pilot Options is currently paid to a Participant having Total Volume of 130,000 or more contracts per day in a month (“Tier 5 Total Volume”). The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to count Broker-Dealer orders that previously fell within the “Customer” category toward Tier 5 Total Volume because Firm orders as well as orders in all other fee categories uniformly count toward Tier 5 “Total Volume”.

Finally, the Exchange believes it is reasonable, equitable, and not unfairly discriminatory to remove outdated references to fees assessed on closing cross transactions because doing so will make the fee schedule more up to date and accurate.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

While the Exchange’s proposal would result in higher fees for Broker-Dealers than Customers, the Exchange does not believe the proposed fees would result in any intramarket burden on competition as between market participants. The Exchange believes that the proposed Broker-Dealer pricing does not misalign fees and rebates as between market participants. The Exchange proposes to assess certain fees and pay certain rebates to Broker-Dealers which pricing is consistent with fees and rebates currently assessed on other options exchanges today.

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,⁸ NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of such 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.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2013-013 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-2013-013. 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, D.C. 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 NASDAQ's principal office. 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-2013-013, 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.⁹

Kevin M. O'Neill
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).