SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70489; File No. SR-NASDAQ-2013-120)

September 24, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify Chapter XV, at Section 2 Governing Pricing for NASDAQ members using the NASDAQ Options Market ("NOM")

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b-4[2] thereunder, notice is hereby given that on September 12, 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

NASDAQ is proposing changes to modify Chapter XV, entitled "Options Pricing," at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM").

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.

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

2 17 CFR 240.19b-4.

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.

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. The Exchange proposes to (1) lower the Tier 6 volume threshold from 130,000 or more contracts per day in a month to 115,000 or more contracts per day in a month; (2) lower the Tier 7 volume threshold from 175,000 or more contracts per day in a month to 150,000 or more contracts per day in a month; and (3) include Non-Penny Pilot Options Customer and/or Professional volume that adds liquidity to compute the numerator in the calculation of percentage of total industry customer equity and ETF option average daily volume to qualify for certain tiers of the Customer or Professional Penny Pilot Options rebate program.

Today, the Exchange offers tiered Penny Pilot Options Rebates to Add Liquidity to Customers,[3] Professionals[4] and NOM Market Makers[5] and a $0.10 per contract rebate

---

[3] The term "Customer" applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC")

in Penny Pilot Options to liquidity added by Firms,[6] Non-NOM Market Makers[7] and Broker-Dealers.[8] With respect to Customers and Professionals, the Exchange pays Penny Pilot Options Rebates to Add Liquidity based on various criteria with rebates currently ranging from $0.25 to $0.48 per contract as follows:

	Monthly Volume	Rebate to Add Liquidity
Tier 1	Participant adds Customer and/or Professional liquidity of up to 0.20% of total industry customer equity and ETF option average daily volume ("ADV") contracts per day in a month	$0.25
Tier 2	Participant adds Customer and/or Professional liquidity of 0.21% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month	$0.40
Tier 3	Participant adds Customer and/or Professional liquidity of 0.31% to 0.49% of total industry customer equity and ETF option ADV contracts per day in a month	$0.43
Tier	Participant adds Customer and/or Professional liquidity of 0.5% or	$0.45

which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Chapter I, Section 1(a)(48).

4 The term “Professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48)). All Professional orders shall be appropriately marked by Participants.

5 The term “NOM Market Maker” is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must 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. NOM Market Maker Rebates range from $0.25 to $0.38 per contract depending on various criteria.

6 The term “Firm” or (“F”) applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

7 The term “Non-NOM Market Maker” or (“O”) is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

8 The term “Broker-Dealer” or ("B") applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

4	more of total industry customer equity and ETF option ADV contracts per day in a month	
Tier 5	Participant adds (1) Customer and/or Professional liquidity of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014, and (3) the Participant executed at least one order on NASDAQ's equity market	$0.42
Tier 6	Participant has Total Volume of 130,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer and/or Professional liquidity	$0.45
Tier 7	Participant has Total Volume of 175,000 or more contracts per day in a month, of which 50,000 or more contracts per day in a month must be Customer and/or Professional liquidity	$0.47
Tier 8	Participant (1) has Total Volume of 325,000 or more contracts per day in a month, or (2) Participant has Total Volume of 200,000 or more contracts per day in a month, of which 70,000 or more contracts per day in a month must be Customer and/or Professional liquidity or (3) adds Customer and/or Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month.	$0.48

With respect to Customers and Professionals, the Exchange proposes to modify the criteria for achieving Tiers 6 and 7, while continuing to offer rebates ranging from $0.25 to $0.48 per contract. Specifically, NASDAQ will change Tiers 6 and 7 as follows:

Monthly Volume		**Rebate to Add Liquidity**
Tier 6	Participant has Total Volume of 115,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer and/or Professional liquidity	$0.45
Tier 7	Participant has Total Volume of 150,000 or more contracts per day in a month, of which 50,000 or more contracts per day in a month must be Customer and/or Professional liquidity	$0.47

In addition, the Exchange proposes to include the volume denominated as “Customer” and/or “Professional” that adds liquidity in Non-Penny Pilot Options in the calculation of the above of total industry customer equity and ETF option average daily volume ("ADV") contracts per day in a month. For example, a NOM Participants adds Customer and/or Professional liquidity of 25,000 contracts per day on Penny Pilot Options and 10,000 contracts per day in Non-Penny Pilot Options. Total industry customer equity and ETF option average daily volume is 10,000,000. Under the current program, the industry customer equity and ETF option average daily volume would be .25% (25,000/10,000,000). When the Non-Penny Pilot Options volume referenced above is included, the percentage increases to .35% (35,000/10,000,000). The Exchange believes the above proposal will incentivize NOM Participants to increase the liquidity on the NOM market place.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[9] in general, and with Section 6(b)(4) of the Act,[10] in particular, in that they provide 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 as described in detail below.

The Exchange believes that it is reasonable, fair and equitable, and not unreasonably discriminatory to offer the opportunity to earn an additional Penny Pilot Options Customer Rebate to Add Liquidity by lowering the qualifications of Tiers 6 and 7, and by including Non-Penny Pilot Options volume that adds liquidity in the calculation of the total industry customer equity and ETF option "ADV" contracts per day in a month (the “Proposal”). The proposal is reasonable because the added incentive encourages

---

9 15 U.S.C. 78f.

10 15 U.S.C. 78f(b)(4).

Participants to qualify for higher Customer or Professional Penny Pilot Options rebate tiers. Participants would be encouraged to add liquidity in both Penny Pilot and Non-Penny Options liquidity because the Proposal provides for lower tiers and additional volume to be counted toward earning rebates in Penny Pilot Options. Further, by amending the calculation of the total industry customer equity and ETF option "ADV" contracts per day in a month improves the incentives to add Customer and/or Professional liquidity on the Exchange for NOM Participants who would not otherwise benefit from the Total Volume qualification metric employed as part of Tiers 6 and 7. Total Volume is defined at Chapter XV, Section 2(1) at note b 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.

The Exchange believes that offering Customers and Professionals the continued opportunity to earn higher rebates by modifying its tiers is reasonable because incentivizing Participants to select the Exchange as a venue to post Customer and Professional liquidity will attract additional order flow to the benefit of all market participants. Today the Exchange also incentivizes NOM Market Makers to post liquidity by offering NOM Market Makers rebates, which also benefit market participants through increased order interaction. Firms, Non-NOM Market Makers and Broker-Dealers are also offered rebates under the current pricing structure.

The Exchange believes that continuing to pay Customers and Professionals tiered Rebates to Add Liquidity in Penny Pilot Options, as compared to other market participants, is equitable and not unfairly discriminatory because Customer order flow brings unique benefits to the market through increased liquidity which benefits all market participants. The Exchange believes that continuing to offer Professionals the same Penny Pilot Options Rebates to Add Liquidity as Customers is equitable and not unfairly discriminatory because the Exchange believes that offering Professionals the opportunity to earn the same rebates as Customers, as is the case today, and higher rebates as compared to Firms, Broker-Dealers and Non-NOM Market Makers, and in some cases NOM Market Makers, is equitable and not unfairly discriminatory because the Exchange does not believe that the amount of the rebate offered by the Exchange has a material impact on a Participant's ability to execute orders in Penny Pilot Options. By offering Professionals, as well as Customers, higher rebates, the Exchange hopes to simply remain competitive with other venues so that it remains a choice for market participants when posting orders and the result may be additional Professional order flow for the Exchange, in addition to increased Customer order flow.

In addition, Participants may be unable to gauge the exact rebate tier it would qualify for until the end of the month because Professional volume would be commingled with Customer volume in calculating tier volume.[11] A Professional could only otherwise presume the Tier 1 rebate would be achieved in a month when determining price.[12] Further, the Exchange initially established Professional pricing in order to "...bring

11 Customer and Professional volume is aggregated for purposes of determining which rebate tier a Participant qualifies for with respect to the Professional Rebate to Add Liquidity in Penny Pilot Options.

12 A Professional would be unable to determine the exact rebate that would be paid on a transaction by transaction basis with certainty until the end of a given month when all Customer and Professional volume is aggregated for purposes of determining which tier the Participant qualified for in a given month.

additional revenue to the Exchange."[13] 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."[14] The Exchange also noted there that establishing separate pricing for a Professional, which ranges between that of a Customer and market maker, accomplishes this objective.[15] The Exchange does not believe that providing Professionals with the opportunity to obtain higher rebates equivalent to that of a Customer creates a competitive environment where Professionals would be necessarily advantaged on NOM as compared to NOM Market Makers, Firms, Broker-Dealers or Non-NOM Market Makers. Also, a Professional is assessed the same fees as other market participants, except Customers and NOM Market Makers, as discussed herein.[16] For these reasons, the Exchange believes that continuing to offer Professionals the same rebates as Customers is equitable and not unfairly discriminatory. The Exchange believes that continuing to offer NOM Market Makers the opportunity to earn higher

---

[13] 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.

[14] See Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR-NASDAQ-2011-066).

[15] See Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR-NASDAQ-2011-066). The Exchange noted in this 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.

[16] The Fee for Removing Liquidity in Penny Pilot Options is $0.48 per contract for all market participants, except Customers and NOM Market Makers. Customers are assessed $0.45 per contract and NOM Market Makers would continue to be assessed $0.47 per contract.

rebates as compared to Non-NOM Market Makers, Firms and Broker Dealers is equitable and not unfairly discriminatory because NOM Market Makers add value through continuous quoting[17] and a commitment of capital. Firms, Non-NOM Market Makers and Broker-Dealers would continue to be offered a $0.10 per contract Rebate to Add Liquidity in Penny Pilot Options, as is the case today.[18]

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.

Customers have traditionally been paid the highest rebates offered by options exchanges. The Exchange does not believe that continuing to provide Professionals with the opportunity to obtain higher rebates equivalent to that of a Customer creates an undue

---

[17] 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.

[18] Similar to other market participants, Firms, Non-NOM Market Makers and Broker-Dealers have the opportunity to earn a higher Penny Pilot Options Rebate to Add Liquidity if they transact 15,000 contracts per day or more of Penny Pilot Options or Non-Penny Pilot Options liquidity in a given month. The volume requirement for Firms, Non-NOM Market Makers and Broker-Dealers to qualify for the higher Penny Pilot Options Rebate to Add Liquidity is less than is required to earn a Tier 1 Customer or Professional Rebate to Add Liquidity in Penny Pilot Options or a Tier 1 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Option. The 15,000 contract threshold for Firms, Non-NOM Market Makers and Broker-Dealers to earn the Penny Pilot Options Rebate to Add Liquidity equates to approximately 0.12% of the industry customer equity and ETF volume.

burden on competition where Professionals would be necessarily advantaged on NOM as compared to NOM Market Makers, Firms, Broker-Dealers or Non-NOM Market Makers because the Exchange does not believe that the amount of the rebate offered by the Exchange has a material impact on a Participant's ability to execute orders in Penny Pilot Options.

The Exchange believes the proposed pricing incentives contribute to the overall health of the market and benefit all Participants willing to choose to transact options on NOM. For the reasons specified herein, the Exchange does not believe this proposal creates an undue burden on competition.

The Exchange operates in a hyper competitive market comprised of twelve U.S. options exchanges in which many sophisticated and knowledgeable market participants can readily and do send options order flow of all types to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. These market forces support the Exchange's belief that the proposed rebate structure and tiers proposed herein are competitive with rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace continues to materially impact the rebates present on the Exchange today and substantially influences the proposals set forth above.

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) of the Act[19] and paragraph (f) of Rule 19b-4 thereunder.[20] 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2013-120 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.

19 15 U.S.C. 78s(b)(3)(A).

20 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-NASDAQ-2013-120. 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-2013-120, 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.[21]

Kevin M. O'Neill
Deputy Secretary

[21] 17 CFR 200.30-3(a)(12).