

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72378; File No. SR-NASDAQ-2014-062)

June 12, 2014

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 2, 2014, 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 proposes to modify Chapter XV, entitled “Options Pricing,” at Section 2 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 amending the NOM Market Maker<sup>3</sup> Rebates to Add Liquidity in Penny Pilot<sup>4</sup> Options.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The term “NOM Market Maker” means 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. See Chapter XV. “Participant” means a firm, or organization that is registered with the Exchange pursuant to

While the Exchange has designated the proposal as effective upon filing, the Exchange has designated that the change is operative on June 2, 2014.

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. The text of these statements may

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Chapter II of these Rules for purposes of participating in options trading on NOM as a "Nasdaq Options Order Entry Firm" or "Nasdaq Options Market Maker". See Chapter I, Section (a)(40).

<sup>4</sup> The Penny Pilot was established in March 2008 and was extended through December 31, 2014. 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, 2011) (SR-NASDAQ-2011-169) (notice of filing and immediate effectiveness 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); and 72244 (May 23, 2014), 79 FR 31151 (May 30, 2014) (SR-NASDAQ-2014-056) (notice of filing and immediate effectiveness). See also NOM Rules, Chapter VI, Section 5.

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 amend Chapter XV, Section 2 regarding the Tier 6 NOM Market Maker Rebates to Add Liquidity in Penny Pilot Options, to add another methodology by which a Participant can earn the rebate. NASDAQ proposes the amendment in order to continue to incentivize Participants to select NOM as a venue when directing order flow.

Rebates for Adding NOM Market Maker Liquidity

The Exchange currently pays NOM Market Maker Rebates to Add Liquidity based on a six tier rebate structure, which is found in Chapter XV, Section 2(1), as follows:

<b>Monthly Volume</b>		<b>Rebate to Add Liquidity</b>
<b>Tier 1</b>	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.10% of total industry customer equity and ETF option average daily volume ("ADV") contracts per day in a month	\$0.20
<b>Tier 2</b>	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.10% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month	\$0.25

<b>Monthly Volume</b>		<b>Rebate to Add Liquidity</b>
<b>Tier 3</b>	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.30% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month	\$0.30
<b>Tier 4</b>	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month	\$0.32 or \$0.38 in the following symbols BAC, GLD, IWM, QQQ and VXX or \$0.40 in SPY
<b>Tier 5</b>	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of above 0.30% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options.	\$0.40
<b>Tier 6</b>	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options	\$0.42

For purposes of qualifying for a NOM Market Maker Penny Pilot Options Rebate to Add Liquidity tier, the Exchange today uses a metric that is a percentage of total industry customer equity and exchange traded fund (“ETF”) option average daily volume (“ADV”) contracts per day in a month.<sup>5</sup> This percentage metric is graduated from Tier 1 (lowest percentage) through Tier 6 (highest percentage). For example, currently a

<sup>5</sup> See Securities Exchange Act Release No. 71703 (March 12, 2014), 79 FR 15172 (March 18, 2014) (SR-NASDAQ-2014-023) (order approving proposal to establish, among other things, the percentage metric).

Participant can earn the \$0.20 Tier 1 rebate if he adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.10% of total industry customer equity and ETF option ADV contracts per day in a month; and can earn the \$0.42 Tier 6 rebate if he adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for the Tier 7 or Tier 8 Customer,<sup>6</sup> and/or Professional<sup>7</sup> Rebate to Add Liquidity in Penny Pilot Options.

The Exchange proposes to amend the Tier 6 rebate to add an alternative to the current metric. Specifically, in addition to the current metric of above 0.80% of total industry customer equity and ETF option ADV where the NOM Market Maker also qualifies for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options,<sup>8</sup> the Exchange proposes to add the alternate metric that a Participant may earn a Tier 6 rebate if he adds NOM Market Maker liquidity in Penny Pilot Options

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<sup>6</sup> The term “Customer” means any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) 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)). See Chapter XV.

<sup>7</sup> 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. See Chapter XV.

<sup>8</sup> The Tier 7 rebate requires that a 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 in Penny Pilot Options. The Tier 8 rebate requires that the Participant adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.75% or more of national customer volume in multiply-listed equity and ETF options classes in a month. See Chapter XV, Section 2(1).

and/or Non-Penny Pilot Options above 0.90% of total industry customer equity and ETF option ADV contracts per day in a month.

With the proposed amendment, the Exchange would pay a Tier 6 \$0.42 per contract rebate where a Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options, or Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.90% of total industry customer equity and ETF option ADV contracts per day in a month. The Exchange is not amending the current qualification for the Tier 6 NOM Market Maker rebate, but is simply adding an alternate method to qualify to earn a rebate.

In addition, the Exchange is proposing to delete an extraneous period in Tier 5, and thereby conform the punctuation in Tiers 1 through 6 of the NOM Market Maker Rebates to Add Liquidity in Penny Pilot Options.

The Exchange would continue to incentivize Participants, with NOM Market Maker rebate Tiers 1 through 6 as amended, to provide liquidity by paying specified rebates to those Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options according to percentage metrics keyed to industry customer equity and ETF option average ADV contracts per day in a month.<sup>9</sup>

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<sup>9</sup> The dynamic rebate structure, consisting of a percentage of total industry customer equity and ETF option ADV, is similar for Customer and/or Professional Penny Pilot Options as well as for NOM Market Makers for similar products (e.g., Penny Pilot Options and Non-Penny Pilot Options). The Exchange notes that if a Participant qualifies for two tiers, the higher rebate will be paid in a

## 2. Statutory Basis

NASDAQ believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act<sup>11</sup> 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's goal is to modify percentage eligibility thresholds where a Participant adds NOM Market Maker liquidity in order to continue to encourage market participants to direct a greater amount of NOM Market Maker liquidity to the Exchange. The Exchange's proposal does not eliminate rebates or the ability for market participants to earn rebates, but rather incorporates an additional way to earn rebates as noted herein.

The Exchange's proposal to amend Tier 6 of the NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options is reasonable, equitable and not unfairly discriminatory for the reasons noted below.

The Exchange's proposal to adopt a new Tier 6 metric for Participants that add the highest level of NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.90% of total industry customer equity and ETF option ADV contracts per day in a month is equitable and not unfairly discriminatory because all

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given month.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4), (5).

eligible Participants that qualify for the additional Tier 6 NOM Market Maker Rebate to Add Liquidity metric will be uniformly paid the rebate.<sup>12</sup>

The Exchange would continue to incentivize Participants, with Tiers 1 through 6 NOM Market Maker Penny Pilot Options Rebates to Add Liquidity, as amended, to provide liquidity by paying specified rebates to those Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options according to percentage metrics keyed to industry customer equity and ETF option average ADV contracts per day in a month. The proposed percentage metrics are dynamic in nature in that they reference total industry options contracts per day (rather than a static number of contracts per day)<sup>13</sup>, and thereby make the Rebate structure similar for Customers and/or Professionals as well as for NOM Market Makers for similar products (e.g., Penny Pilot Options and Non-Penny Pilot Options).<sup>14</sup>

In addition, the Exchange believes it is reasonable to continue to use percentage metrics keyed to industry customer equity and ETF option average ADV contracts per day in a month because that is a benchmark that Participants are comfortable with in

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<sup>12</sup> The NOM Market Maker obligations and regulatory requirements remain unchanged. 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.

<sup>13</sup> See supra note 5.

<sup>14</sup> The Exchange notes that if a Participant qualifies for two tiers, the higher rebate will be paid.



respect to Customer and Professional liquidity. Moreover, the Exchange believes that industry customer volume is a fair metric because it does not have the periodic spikes that may occur due to floor trading. Because NOM is an electronic market place with no trading floor, the Exchange believes that an industry volume metric is fair and reasonable.

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

NASDAQ 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.

The Exchange believes that adding an additional percentage eligibility metric in Tier 6 for Participants that bring the largest amount of liquidity should encourage Participants to direct additional NOM Market Maker order flow to the Exchange, and will dovetail with the existing metric in Tier 6.

Added liquidity benefits all market participants by providing more trading opportunities, which attracts market participants to the Exchange. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that encouraging Participants to add NOM Market Maker liquidity creates competition among options exchanges because the Exchange believes that the rebates may cause market participants to select NOM as a venue to send order flow. The Exchange is continuing to offer rebates at specified percentage metrics for NOM Market Maker order flow being executed at the Exchange, which additional order flow should benefit other market participants.

The Exchange operates in a highly competitive market comprised of twelve U.S. options exchanges in which many sophisticated and knowledgeable market participants can readily and do send order flow 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 belief that the rebate structure and tiers as amended are competitive with rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace continues to 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)(ii) of the Act.<sup>15</sup> 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.

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<sup>15</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2014-062 on the subject line.

##### 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-2014-062. 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-2014-062, 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.<sup>16</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).