SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79288; File No. SR-NASDAQ-2016-152)

November 10, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Transaction Fees at Chapter XV, Section 2 Entitled "NASDAQ Options Market – Fees and Rebates"

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 November 1, 2016, 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 amend the transaction fees at Chapter XV, Section 2 entitled "NASDAQ Options Market – Fees and Rebates," which governs pricing for Nasdaq Participants using the NASDAQ Options Market ("NOM"), Nasdaq's facility for executing and routing standardized equity and index options. The Exchange proposes to expand certain existing rebates related to the Market Access and Routing Subsidy or "MARS," for NOM Participants that are eligible for MARS.

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 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

NOM recently filed a proposal to its MARS subsidy program[3], which pays a subsidy to NOM Participants that provide certain order routing functionalities to other NOM Participants and/or use such functionalities themselves.[4] Generally, under MARS, the Exchange pays participating NOM Participants to subsidize their costs of providing routing services to route orders to NOM. At this time, the Exchange proposes to amend two rebates at Chapter XV, Section 2(1) which pay NOM Participants an additional rebate provided the NOM Participant

---

3 MARS is described in Chapter XV, Section 2(6). A NOM Participant must have System Eligibility to qualify for MARS. In order to be eligible the NOM Participant's routing system must qualify under the conditions specified in Chapter XV, Section 2(6), which were amended by SR-NASDAQ-2016-149. MARS Payments are made to NOM Participants that have System Eligibility and have routed the requisite number of Eligible Contracts daily in a month ("Average Daily Volume"), which were executed on NOM. For the purpose of qualifying for the MARS Payment, Eligible Contracts may include Firm, Non-NOM Market Maker, Broker-Dealer, or Joint Back Office or "JBO" equity option orders that add liquidity and are electronically delivered and executed. Eligible Contracts do not include Mini Option orders. The specified MARS Payment will be paid on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System and meet the requisite Eligible Contracts ADV. No payment will be made with respect to orders that are routed to NOM, but not executed.

4 See SR-NASDAQ-2016-149 (not yet published).

adds or removes liquidity on NOM as specified in more detail below. The Exchange believes that these incentives would continue to attract greater liquidity to NOM, to the benefit of all market participants.

Amendment to note "d"

Today, note "d" in Chapter XV, Section 2(1) provides that NOM Participants that qualify for MARS Payment Tiers 1, 2 or 3 will receive an additional $0.03 per contract Penny Pilot[5] Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month, in addition to qualifying Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tiers 1-8. NOM Participants that qualify for a note "c" incentive[6] will receive the greater of the note "c" or note "d" incentive. The

---

5 The Penny Pilot was established in March 2008 and was last extended in 2016. 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); and 78037 (June 10, 2016), 81 FR 39299 (June 16, 2016) (SR-NASDAQ-2016-052) (notice of filing and immediate effectiveness extending the Penny Pilot through December 31, 2016). All Penny Pilot Options listed on the Exchange can be found at http://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2016-15.

6 The note "c" incentive currently provides, "Participants that: (1) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 1.15% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.02 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (2) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.30% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (3) (a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer 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, (b) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options above 0.15% of total industry customer equity and ETF option ADV contracts per day in a month, and (c) execute greater than 0.04% of Consolidated Volume ("CV") via Market-on-Close/Limit-

Exchange pays Customers[7] and Professionals[8] a Penny Pilot Options Rebate to Add Liquidity on an 8 tiered rebate schedule as described below:

*** The Customer and Professional Rebate to Add Liquidity in Penny Pilot Options will be paid as noted below. To determine the applicable percentage of total industry customer equity and ETF option average daily volume, unless otherwise stated, the Participant's Penny Pilot and Non-Penny Pilot Customer and/or Professional volume that adds liquidity will be included.

Monthly Volume		**Rebate to Add Liquidity**
Tier 1	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer 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	$0.20

on-Close ("MOC/LOC") volume within the NASDAQ Stock Market Closing Cross within a month will receive an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in a month. Consolidated Volume shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of an equity member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity."

7 The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation which is not for the account of broker or dealer or for the account of a "Professional." See Chapter XV.

8 The term "Professional" or ("P") 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.

	volume ("ADV") contracts per day in a month	
Tier 2	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month	$0.25
Tier 3	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month	$0.42
Tier 4	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month	$0.43
Tier 5	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.40% to 0.75% of total industry customer equity and ETF option ADV contracts per day in a month	$0.45
Tier 6	Participant has Total Volume of 100,000 or more contracts per	$0.45

	day in a month, of which 25,000 or more contracts per day in a month must be Customer and/or Professional liquidity in Penny Pilot Options	
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 in Penny Pilot Options	$0.47
Tier 8	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds: (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.25% or more of total industry customer equity and ETF option ADV contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS (defined below)	$0.48

The Exchange proposes to amend note “d,” to provide that NOM Participants that qualify for MARS Payment Tiers 1, 2, 3 or 4 will receive an additional $0.03 per contract in addition to any Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tiers they may qualify for in that month, unless the Participant qualifies for a higher note “c” rebate, in which case the Participants would receive the appropriate note "c" rebate they qualified for in that month. The Exchange recently amended its MARS Payment Tiers to add a new tier 4 rebate.[9] The MARS Payment tiers, which are effective, are as follows:

MARS Payment

NOM Participants that have System Eligibility and have executed the requisite number of Eligible Contracts in a month will be paid the following rebates:

Tiers	**Average Daily Volume ("ADV")**	**MARS Payment (Penny)**	**MARS Payment (Non-Penny)**
1	2,500	$0.07 *	$0.15*
2	5,000	$0.09 *	$0.20*
3	10,000	$0.11 *	$0.30*
4	20,000	$0.15*	$0.50*

The Exchange proposes to amend note "d" in Chapter XV, Section 2(1) to allow all tiers in the MARS Payment to qualify a NOM Participant for the additional $0.03 per contract incentive provided the NOM Participant qualifies for one of the Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity tiers. The Exchange believes that this proposal will continue to attract Penny Pilot and Non-Penny Pilot Options liquidity to NOM. All market participants benefit from the increased order interaction when more order flow is available on NOM.

9 SR-NASDAQ-2016-149 also bifurcated the MARS Payments to pay different rebates, per tier, for Penny and Non-Penny Pilot Options.

Amendment to note"4"

Today, note "4" in Chapter XV, Section 2(1) provides that NOM Participants that qualify for MARS Payment Tiers 1, 2 or 3 will be assessed a Customer or Professional Penny Pilot Options Fee for Removing Liquidity of $0.48 per contract, excluding SPY.[10] Today, Customers and Professionals are assessed a $0.50 per contract Fee for Removing Liquidity in Penny Pilot Options. This incentive permits NOM Participants removing Customer and Professional Penny Pilot Options to lower their fee.

The Exchange proposes to amend note "4," to provide that NOM Participants that qualify for MARS Payment Tiers 1, 2, 3 or 4 will be assessed a Customer or Professional Penny Pilot Options Fee for Removing Liquidity of $0.48 per contract, excluding SPY. As described above, the Exchange recently amended its MARS Payment Tiers to add a new tier 4 rebate.[11] The Exchange proposes to amend note "4" to permit all MARS Payment tiers to qualify a NOM Participant for this incentive. The Exchange believes this amendment will incentive NOM Participants to remove more liquidity in Penny Pilot Options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Participants and issuers and other persons using any facility or system which the Exchange

---

10 A Customer or Professional that removes liquidity in SPY Options will be assessed a fee of $0.48 per contract.

11 See note 4 above.

12 15 U.S.C. 78f(b).

13 15 U.S.C. 78f(b)(4) and (5).

operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[14]

Likewise, in NetCoalition v. Securities and Exchange Commission[15] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[16] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."[17]

Further, "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution

14 Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

15 NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

16 See NetCoalition, at 534 - 535.

17 Id. at 537.

of order flow from broker dealers'…."[18] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Amendment to note "d"

The Exchange's proposal to amend note "d" in Chapter XV, Section 2(1) to permit any MARS Payment tier to qualify a NOM Participant for an additional $0.03 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month, in addition to qualifying for Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tiers 1-8[19] is reasonable for the reasons which follow. The amendment will encourage NOM Participants to qualify for both a MARS Payment tier and a Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity, thereby executing a greater amount of order flow on NOM to the benefit of all market participants who may interact with the order flow.

The Exchange's proposal to amend note "d" in Chapter XV, Section 2(1) to permit any MARS Payment tier to qualify a NOM Participant for an additional $0.03 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month, in addition to qualifying for Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tiers 1-8[20] is equitable and not unfairly discriminatory for the reasons which follow. All NOM Participants are eligible to qualify for a MARS Payment, provided they have System Eligibility and all NOM Participants

18 Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

19 If the Participant qualified for a higher note "c" rebate, the Participant would receive the appropriate note "c" rebate they qualified for in that month.

20 Id.

may be eligible for a Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity provided they execute qualifying volume. All NOM Participants would therefore be eligible to qualify for the note "d" incentive if they meet the requirements.

Amendment to note"4"

The Exchange's proposal to amend note "4" in Chapter XV, Section 2(1) to permit NOM Participants to qualify for any MARS Payment tier and be assessed a Customer or Professional Penny Pilot Options, Fee for Removing Liquidity of $0.48 per contract, excluding SPY,[21] is reasonable because it will encourage NOM Participants to continue to remove Customer and Professional Penny Pilot Options liquidity to lower their fee.

The Exchange's proposal to amend note "4" in Chapter XV, Section 2(1) to permit NOM Participants to qualify for any MARS Payment tier and be assessed a Customer or Professional Penny Pilot Options, Fee for Removing Liquidity of $0.48 per contract, excluding SPY, is equitable and not unfairly discriminatory because all NOM Participants are eligible to qualify for a MARS Payment, provided they have System Eligibility. All NOM Participants would therefore be eligible to qualify for the note "4" incentive if they meet the requirements.

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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain

[21] A Customer or Professional that removes liquidity in SPY Options will be assessed a fee of $0.48 per contract.

competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, 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.

Amendment to note "d"

The Exchange's proposal to amend note "d" in Chapter XV, Section 2(1) to permit any MARS Payment tier to qualify a NOM Participant for an additional $0.03 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month, in addition to qualifying for Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tiers 1-8[22] does not impose an undue burden on intra-market competition. All NOM Participants are eligible to qualify for a MARS Payment, provided they have System Eligibility and all NOM Participants may receive a Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity provided they execute qualifying volume. All NOM Participants would therefore be eligible to qualify for the note "d" incentive if they meet the requirements.

Amendment to note"4"

---

[22] Id.

The Exchange's proposal to amend note "4" in Chapter XV, Section 2(1) to permit NOM Participants to qualify for any MARS Payment tier and be assessed a Customer or Professional Penny Pilot Options, Fee for Removing Liquidity of $0.48 per contract, excluding SPY, does not impose an undue burden on intra-market competition because all NOM Participants are eligible to qualify for a MARS Payment, provided they have System Eligibility. All NOM Participants would therefore be eligible to qualify for the note "4" incentive if they meet the requirements.

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.[23]

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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:

[23] 15 U.S.C. 78s(b)(3)(A)(ii).

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-2016-152 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2016-152. 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-2016-152 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.[24]

Brent J. Fields
Secretary

---

[24] 17 CFR 200.30-3(a)(12).