

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81361; File No. SR-NASDAQ-2017-080)

August 9, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Transaction Fees

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 August 1, 2017, The NASDAQ Stock Market LLC ("Nasdaq" or "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 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 Exchange's 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 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 and discussed any comments it received on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange proposes two NOM pricing amendments at Chapter XV, Section 2(1), as described below in greater detail.

Customer and Professional Rebate to Add Liquidity

The Exchange proposes to amend an existing method for earning a rebate for adding liquidity for both Customers³ and Professionals⁴ in Penny Pilot⁵ and Non-Penny Pilot Options. For Customers and Professionals transacting in Penny Pilot Options, the Exchange currently pays a volume-based tiered Rebate to Add Liquidity, as set forth in Chapter XV, Section 2(1) of NOM Rules. That rebate consists of 8 tiers, ranging from \$0.20 per contract to \$0.48 per contract, with the volume requirements increasing with each tier. Thus, a NOM Participant would qualify for a rebate of \$0.20 per contract in Tier 1 for Customers and Professionals if it

³ 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 (“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)).

⁴ 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.

⁵ The Penny Pilot was established in March 2008. See Securities Exchange Act Release No. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR-NASDAQ-2008-026) (notice of filing and immediate effectiveness establishing Penny Pilot). Since that date, the Penny Pilot has been expanded and is currently extended through December 31, 2016 or the date of permanent approval, if earlier. See Securities Exchange Act Release No. 78037 (June 10, 2016), 81 FR 39299 (June 16, 2016) (SR-NASDAQ-2016-052).

added Customer, Professional, Firm,⁶ Non-NOM Market Maker⁷ and/or Broker-Dealer⁸ 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. In comparison, a Participant would qualify for a rebate of \$0.48 in Tier 8 for Customers and Professionals if it added 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 if the Participant adds: (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.20% 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.⁹

Currently, Customers and Professionals transacting in Non-Penny Pilot Options on NOM receive a \$0.80 per contract Rebate to Add Liquidity, as set forth in Chapter XV, Section 2(1) of NOM Rules. In addition, footnote “1” in Chapter XV, Section 2(1) provides that a Participant that qualifies for a Customer or Professional Penny Pilot Options Rebate to Add Liquidity in

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.

⁹ MARS refers to the Market Access and Routing Subsidy, which is set forth in Chapter XV, Section 6. The MARS payment currently comprises of four volume-based tiers, and is paid to NOM Participants that route eligible contracts to NOM through a participating NOM Participant’s routing system. The MARS payment is paid on all executed eligible contracts that add liquidity. See NOM Rules at Chapter XV, Section 6.

Tiers 2, 3, 4, 5 or 6 in a month will receive an additional \$0.10 per contract Non-Penny Pilot Options Rebate to Add Liquidity for each transaction which adds liquidity in Non-Penny Options in that month. A Participant that qualifies for Customer or Professional Penny Pilot Options Rebate to Add Liquidity in Tiers 7 or 8 in a month will receive an additional \$0.20 per contract Non-Penny Pilot Options Rebate to Add Liquidity for each transaction which adds liquidity in Non-Penny Pilot Options in that month.

In addition, note “e” in Chapter XV, Section 2(1) provides that a Participant may receive a \$0.53 per contract Rebate to Add Liquidity in Penny Pilot Options as Customer or Professional, and a \$1.00 per contract Rebate to Add Liquidity in Non-Penny Pilot Options as a Customer or Profession, if that NOM Participant transacts on the NASDAQ Stock Market through one or more of its Nasdaq Market Center MPIDs in the same month, and such transactions in all securities on the NASDAQ Stock Market that month through all of its Nasdaq Market Center MPIDs represent 3.00% or more of Consolidated Volume.¹⁰ Participants that qualify for this rebate would not be eligible for any other rebates in Tiers 1 through 8 or other rebate incentives on NOM for Customer and Professional order flow in Chapter XV, Section 2(1) of NOM Rules.¹¹

Lastly, note “f” in Chapter XV, Section 2(1) provides that a Participant may receive a \$0.55 per contract Rebate to Add Liquidity in Penny Pilot Options as Customer or Professional, and a \$1.05 per contract Rebate to Add Liquidity in Non-Penny Pilot Options as Customer or Professional, if that NOM Participant (a) adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options

¹⁰ Consolidated Volume would be determined as set forth in Nasdaq Rule 7018(a).

¹¹ In calculating total volume, the Exchange would add the NOM Participant’s total volume transacted on the NASDAQ Stock Market in a given month across its Nasdaq Market Center MPIDs, and will divide this number by the total industry Consolidated Volume.

above 1.45% of total industry customer equity and ETF option ADV contracts per day in a month (“NOM Volume Threshold”), (b) executes greater than 0.04% of Consolidated Volume (“CV”) via Market-on-Close/Limit-on-Close (“MOC/LOC”)¹² volume within the NASDAQ Stock Market Closing Cross within a month, and (c) adds greater than 1.5 million shares per day of non-displayed volume within the NASDAQ Stock Market within a month. Participants that qualify for this rebate would not be eligible for any other rebates in Tiers 1 through 8 or other rebate incentives on NOM for Customer and Professional order flow in Chapter XV, Section 2(1).

The Exchange now proposes to amend the current qualifications for earning the Rebate to Add Liquidity in note “F” by lowering the NOM Volume Threshold. Specifically, the Exchange is proposing to continue to pay a \$0.55 per contract Rebate to Add Liquidity in Penny Pilot Options as Customer or Professional, and a \$1.05 per contract Rebate to Add Liquidity in Non-Penny Pilot Options as Customer or Professional, if that NOM Participant (a) adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above **1.20%** of total industry customer equity and ETF option ADV contracts per day in a month, (b) executes greater than 0.04% of CV via MOC/LOC volume within the NASDAQ Stock Market Closing Cross within a month, and (c) adds greater

¹² MOC/LOC, as set forth in NASDAQ Rule 4754, represents the volume in the NASDAQ Stock Market Closing Cross that allows market participants to contribute order flow that will result in executions at the official closing price for the day in the NASDAQ listed security. A “MOC Order” is an order type entered without a price that may be executed only during the NASDAQ Closing Cross, which refers to the equity closing cross. A “LOC Order” is an order type entered with a price that may be executed only in the NASDAQ Closing Cross.

than 1.5 million shares per day of non-displayed volume within the NASDAQ Stock Market within a month.¹³

The Exchange's proposal to lower the NOM Volume Threshold from above 1.45% of total industry customer equity and ETF option ADV contracts per day in a month to above 1.20% should provide Participants the ability to qualify for this incentive by executing less contracts which represent industry volume in a given month. The Exchange believes that this amendment should incentivize Participants to transact more volume to qualify for the rebate in footnote "f" since one of the qualifiers requires a lower percentage of total industry customer equity and ETF option ADV contracts per day in a month as compared to the current percentage.

NOM Market Maker Non-Penny Pilot Options Fee for Adding Liquidity

The Exchange proposes to offer Participants that send NOM Market Maker¹⁴ order flow an opportunity to lower their Fee for Adding Liquidity in Non-Penny Pilot Options, as set forth in Chapter XV, Section 2(1). In particular, the Exchange proposes to offer Participants the opportunity to reduce the NOM Market Maker Non-Penny Pilot Options Fee for Adding Liquidity from \$0.35 to \$0.00 per contract, provided the Participant adds NOM Market Maker liquidity in Non-Penny Pilot Options of 7,500 or more ADV contracts per day in a month.

¹³ Participants that meet the new qualifications for the note "f" incentive would continue to be ineligible for any other rebates in Tiers 1 through 8 or other rebate incentives on NOM for Customer and Professional order flow in Chapter XV, Section 2(1).

¹⁴ The term "NOM Market Maker" or ("M") 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.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁶ 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Customer and Professional Rebate to Add Liquidity

The Exchange's proposal to lower the NOM Volume Threshold is reasonable because the rebates in footnote "f" should continue to attract Customer and Professional order flow to NOM. The additional Customer and Professional order flow to NOM benefits other market participants by providing additional liquidity with which to interact. Customer liquidity offers unique benefits to the market by providing more trading opportunities, which attracts market makers. An increase in the activity of market makers in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Furthermore, the Exchange believes that encouraging Participants to add Professional liquidity creates competition among options exchanges because the amended note "f" rebates may cause market participants to select NOM as a venue to send Professional order flow. Amending the existing NOM Volume Threshold affords more Participants the ability to qualify for the note "f" rebates because it requires less volume as a result of the proposed lower percentage of industry volume. With this proposal, Participants that consistently send order flow to the Exchange may continue to qualify for the rebates in note "f" and other Participants may send additional order flow to qualify for the note "f" rebates with the lower requirement.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4) and (5).

The Exchange's proposal to lower the NOM Volume Threshold is equitable and not unfairly discriminatory because all Participants are eligible to earn rebates. These rebates would be paid uniformly to all qualifying Participants.

NOM Market Maker Non-Penny Pilot Options Fee for Adding Liquidity

The proposed change to offer Participants that send NOM Market Maker order flow the opportunity to reduce the NOM Market Maker Non-Penny Pilot Options Fee for Adding Liquidity from \$0.35 to \$0.00 per contract, provided the Participant adds NOM Market Maker liquidity in Non-Penny Pilot Options of 7,500 or more ADV contracts per day in a month is reasonable because the Exchange seeks to encourage Participants to add NOM Market Maker liquidity in Non-Penny Options to obtain the discount. The Exchange believes that its proposal will incentivize Participants to select NOM as a venue and in turn benefit other market participants with the opportunity to interact with such liquidity.

Furthermore, the Exchange believes that its proposal to reduce the NOM Market Maker fee as described above is equitable and not unfairly discriminatory because NOM Market Makers, unlike other market participants, add value through continuous quoting¹⁷ and the commitment of capital. In addition, encouraging NOM Market Makers to add greater liquidity benefits all Participants in the quality of order interaction. The Exchange believes it is equitable and not unfairly discriminatory to offer only NOM Market Makers the opportunity to earn the

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.

discounted fee described above because of the obligations borne by these market participants, as noted herein.

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. The Exchange believes that the proposed pricing changes are competitive and does not impose a burden on inter-market competition. 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.

As it relates to the proposed fee change to lower the NOM Volume Threshold, the Exchange does not believe that its proposal imposes an undue burden on intra-market competition because all Participants are eligible to earn rebates and these rebates would be uniformly paid to all qualifying Participants. The Exchange also does not believe that its proposal to offer Participants an opportunity to reduce the NOM Market Maker Non-Penny Pilot Options Fee for Adding Liquidity from \$0.35 to \$0.00 if they meet the volume-based standard described above imposes an undue burden on intra-market competition because NOM Market

Makers, unlike other market participants, add value through continuous quoting¹⁸ and the commitment of capital.

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.¹⁹

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:

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-2017-080 on the subject line.

¹⁸ See note 17 above.

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2017-080. 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-2017-080, 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.²⁰

Eduardo A. Aleman
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).