

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84633; File No. SR-NASDAQ-2018-091)

November 20, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend The Nasdaq Options Market LLC (“NOM”) 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 November 9, 2018, 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 Nasdaq Options Market LLC (“NOM”) fees within Chapter XV, Section 3, titled “Nasdaq Options Market - Ports and Other Services.”

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 proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The purpose of the proposed rule change is to define “account number” and utilize that term within Chapter XV, Sections 3 and 9. Each change will be described in more detail below.

New Defined Term “Account”

The Exchange proposes to adopt a new definition within Chapter XV, Section 3 and apply this definition within Chapter XV, Sections 3 and 9. The purpose of this defined new term “account number” is to conform the Exchange’s use of certain terms within NOM Rules. This term would be utilized in Chapter XV to describe the manner in which pricing is calculated. Recently, the Nasdaq affiliated exchanges filed rule changes to conform the usage of various terms across its 6 affiliated options markets within the various rulebooks.³ The Exchange believes that utilizing the same defined terms, where possible, across its 6 affiliated options markets will avoid confusion for certain rules and pricing purposes. The term “account number” can be defined identically across Nasdaq’s 6 affiliated options markets for purposes of pricing

³ NOM has filed to define the terms “account number,” “badge” and “mnemonic” at Chapter I, Section 1(a)(69), (70) and (71) respectively. See SR-NASDAQ-2018-085 (not yet published) [published on November 16, 2018]. Nasdaq Phlx LLC has filed to define the terms “account number,” “badge” and “mnemonic” at Rule 1000(b)(51), (52) and (53) respectively. See SR-Phlx-2018-69 (not yet published). Nasdaq BX, Inc. has filed to define the terms “account number,” “badge” and “mnemonic” at Chapter I, Section 1(a)(70), (71) and (72) respectively. See Securities Exchange Act Release No. 84520 (November 1, 2018) (SR-BX-2018-050) (not yet published) [published on November 7, 2018]. See also ISE Rule 100(a)(1), (5) and (34) which defines the terms “account number,” “badge” and “mnemonic,” respectively. See also GEMX Rule 100(a)(1), (5) and (35) which defines the terms “account number,” “badge” and “mnemonic,” respectively. See also MRX Rule 100(a)(1), (5) and (36) which defines the terms “account number,” “badge” and “mnemonic,” respectively.

ports. The Exchange is not amending the manner in which pricing will be applied with respect to this particular change. The Exchange proposes to utilize the defined term “account number” in place of the term “mnemonic,” which was not defined in the pricing rules. The insertion of the new defined term is intended to add more specificity and clarity to the current pricing.

At this time, the Exchange proposes to define an “account number” within Chapter XV, Section 3 to mean a number assigned to a Participant. Participants may have more than one account number. The term “mnemonic” has been used frequently throughout Chapter XV without being defined. The Exchange proposes to remove the term “mnemonic” from Chapter XV, Section 3 and replace the term with the defined term “account number” for FIX and the OTTO protocols. The Exchange notes that the terms mnemonic and account number were being used interchangeably. The Exchange recently defined both terms in its rules.⁴ The term account number is appropriate to describe these fees. The Exchange is not amending the manner in which it assesses those port fees, rather the Exchange simply proposes to utilize the new term to better describe its current pricing.

Also, the Exchange proposes to remove the term “mnemonic” from the CTI Port Fee, FIX DROP Port Fee, OTTO DROP Fee, ITTO Port Fee and Bono Port Fee. Today, these ports are assessed only one fee per port, per month and therefore adding the term “per account number” would be redundant and unnecessary. These ports are associated with one account number. The Exchange is not proposing to amend the manner in which these ports are assessed, rather the Exchange proposes to eliminate the “per mnemonic” description. The Exchange believes that the billing is clearly defined as “per port, per month.”

⁴ A “mnemonic” is defined as an acronym comprised of letters and/or numbers assigned to Participants. A Participant account may be associated with multiple mnemonics. See SR-NASDAQ-2018-085 (not yet published) [published on November 16, 2018]. Mnemonics are issued to Participants to identify associated persons of Participants.

Account number is also being defined in Section 9, “Account Fee – Options.” The Exchange is not amending the manner in which this fee is billed, rather the Exchange is defining the term account number within Section 9. The defined term account number will be utilized consistently throughout the NOM pricing, where applicable.

2. Statutory Basis

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

New Defined Term “Account”

The Exchange’s proposal to define the term “account number” within Chapter XV, Sections 3 and 9 and apply that term within Chapter XV, Section 3, in place of the term “mnemonic” as to the manner in which FIX and OTTO Port Fees are priced is reasonable because the term is defined and will be utilized consistently throughout Chapter XV, where applicable. The usage of the defined term “account number” will bring uniformity to the term and its usage across the 6 affiliated options markets. The proposed change to utilize the defined term will not amend the manner in which the ports are billed, rather it will also bring greater clarity to pricing in Chapter XV, Sections 3 and 9.

The Exchange’s proposal to define the term “account number” within Chapter XV, Sections 3 and 9 and apply that term within Chapter XV, Section 3, in place of the term “mnemonic” for the FIX and OTTO Port Fees is equitable and not unfairly discriminatory

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

because the Exchange proposes to apply that term uniformly in billing Participants utilizing those ports and for purposes of the Account Fee.

The Exchange's proposal to remove the term "mnemonic" for the pricing of the CTI Port Fee, FIX DROP Port Fee, OTTO DROP Fee, ITTO Port Fee and Bono Port Fee is reasonable because, today, these ports are assessed only one fee per port, per month and this change will bring greater clarity to the manner in which these services are billed. The term "mnemonic" was undefined until the Exchange filed SR-NASDAQ-2018-085.⁷ The manner in which the term "mnemonic" was defined for purposes of NOM's Rules is not the manner that was intended for pricing these ports. To that end, the Exchange proposes to remove the term "mnemonic" and replace that term with "account number," where applicable, to convey the intended manner in which the Exchange prices ports. Today, these ports are assessed only one fee per port, per month and therefore adding the term "per account number" would be redundant and unnecessary. These ports are associated with one account number. This proposal will conform the defined term across NOM Rules.⁸ The Exchange is not proposing to amend the manner in which these ports are assessed, rather the Exchange proposes to eliminate the "per mnemonic" description and more clearly define the manner in which these services are billed as "per port, per month."

The Exchange's proposal to remove the term "mnemonic" for the pricing of the CTI Port Fee, FIX DROP Port Fee, OTTO DROP Fee, ITTO Port Fee and Bono Port Fee is equitable and not unfairly discriminatory because the Exchange will continue to uniformly assess all market participants these services in a uniform manner. The proposed change does not amend the manner in which these services are billed.

⁷ This rule change is not yet published [published on November 16, 2018].

⁸ See Chapter I, Section 1(a)(69).

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 this proposal does not amend actual fees, rather the Exchange proposes to define a new term to be used more accurately to describe the manner in which certain services within Chapter XV, Sections 3 and 9 are billed.

New Defined Term "Account"

The Exchange's proposal to define the term "account number" within Chapter XV, Sections 3 and 9 and apply that term within Chapter XV, Section 3, in place of the term "mnemonic" with respect to the manner in which FIX and OTTO protocols are priced does not impose an undue burden on intra-market competition because the Exchange proposes to apply that term uniformly in billing Participants utilizing those ports and for purposes of the Account Fee. No changes are being made to the manner in which the Exchange bills these ports.

The Exchange's proposal to remove the term "mnemonic" for the pricing of the CTI Port Fee, FIX DROP Port Fee, OTTO DROP Fee, ITTO Port Fee and Bono Port Fee does not impose an undue burden on intra-market competition because the Exchange will continue to uniformly assess all market participants these services in a uniform manner. The proposed change does not amend the manner in which these services are billed.

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.⁹

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-2018-091 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.

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-NASDAQ-2018-091. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NASDAQ-2018-091 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.¹⁰

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Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(12).