SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76967; File No. SR-NASDAQ-2016-004)

January 22, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NOM Rules at Chapter XV, Section 2

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 January 11, 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 Chapter XV, entitled "Options Pricing," at Section 2, which governs pricing for Exchange members using the NASDAQ Options Market ("NOM"), the Exchange's facility for executing and routing standardized equity and index options.

The Exchange purposes [sic] to amend its NOM Market Maker[3] and Non-NOM Market

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

2 17 CFR 240.19b-4.

3 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.

Maker[4] Fees for Removing Liquidity in Penny Pilot Options to offer Participants an incentive to direct a greater amount of order flow to NOM from January 11, 2016 through January 29, 2016.

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 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 Exchange proposes certain amendments to the NOM transaction fees set forth at Chapter XV, Section 2 for executing and routing standardized equity and index options under the Penny Pilot Options program. The Exchange desires to incentivize NOM Participants to add an even greater amount of liquidity to NOM from January 11, 2016 through January 29, 2016. Specifically, the Exchange proposes to incentivize Participants by offering the opportunity to reduce the NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fees for Removing Liquidity from $0.50 to $0.48 per contract, for the time period from January 11, 2016

[4] A "Non-NOM Market Maker" 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.

through January 29, 2016, provided the Participant adds 1.30% of Customer,[5] Professional,[6] Firm,[7] Broker-Dealer[8] or Non-NOM Market Maker liquidity and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.[9]

This incentive offer will not apply to volume transacted prior to January 11, 2016 or after January 29, 2016.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[10] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[11] 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 the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers,

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5 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" (as that term is defined in Chapter I, Section 1(a)(48)).

6 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.

7 The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at The Options Clearing Corporation.

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 The term "Common Ownership" shall mean Participants under 75% common ownership or control. Common Ownership shall apply to all pricing in Chapter XV, Section 2 for which a volume threshold or volume percentage is required to obtain the pricing.

10 15 U.S.C. 78f.

11 15 U.S.C. 78f(b)(4) and (5).

or dealers. Attracting order flow to the Exchange benefits all Participants who have the opportunity to interact with this order flow.

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. 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 of order flow from broker dealers'…."[12] 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 and this proposal is consistent with those views in that it is a price cut driven by competition.

The Exchange's proposal to incentivize Participants by offering the opportunity to reduce the NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fees for Removing Liquidity from $0.50 to $0.48 per contract, for the time period from January 11, 2016 through January 29, 2016, provided the Participant adds 1.30% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership is reasonable because the Exchange believes NOM will attract a greater amount of order flow by offering this discounted rate. The Exchange believes that this additional fee reduction for Non-NOM Market Makers and NOM Market Makers should further incentivize Participants to add

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12 Id. [sic] at 539 (quoting Securities Exchange Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008)(SR-NYSEArca-2006-21) at 73 FR at 74782-74783).

liquidity in Penny Pilot Options on NOM to obtain the discounted rate from January 11, 2016 through January 29, 2016.

The Exchange's proposal to incentivize Participants by offering the opportunity to reduce the NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fees for Removing Liquidity from $0.50 to $0.48 per contract, for the time period from January 11, 2016 through January 29, 2016, provided the Participant adds 1.30% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership is equitable and not unfairly discriminatory for the reasons which follow. NOM Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[13] A NOM Market Maker has the obligation, for example, to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a [sic] course of dealings. The proposed differentiation as between NOM Market Makers and other market participants recognizes the differing contributions made to the trading environment on the Exchange by NOM Market Makers. For the above reasons, the Exchange believes that NOM Market Makers are entitled to discounted fees, provided they qualify for the discount. The Exchange believes it is equitable and not unfairly discriminatory to offer the fee discount to Non-NOM Market Makers because the Exchange is offering

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[13] 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.

Participants flexibility in the manner in which they are submitting their orders. Non-NOM Market Makers have obligations on other exchanges to qualify as a market maker. Also, the Exchange believes that market makers not registered on NOM will be encouraged to send orders to NOM as an away market maker (Non-NOM Market Maker) with this incentive. Because the incentive is being offered to both market makers registered on NOM and those not registered on NOM, the Exchange believes that the proposal is equitable and not unfairly discriminatory because it encourages market makers to direct liquidity to NOM to the benefit of all Participants. This proposal recognizes the overall contributions made by market makers to a listed options market.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to only offer the fee reduction to NOM Market Makers and Non-NOM Market Makers because the Exchange is offering this $0.02 per contract fee discount to the Penny Pilot Options Fees for Removing Liquidity to incentivize NOM Participants to select NOM as a venue to send Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker order flow from January 11, 2016 through January 29, 2016.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to permit NOM Participants with 75 percent common ownership to aggregate their volume for purposes of obtaining the fee discount because certain NOM Participants chose to segregate their businesses into different legal entities for purposes of conducting business. The Exchange believes that these NOM Participants should be treated as one entity for purposes of qualifying for the discounted Fee for Removing Liquidity in Penny Pilot Options, from January 11, 2016 through January 29, 2016, as long as there is at least 75% common ownership or control among the NOM Participants. The Exchange also believes that it is reasonable, equitable and not

unfairly discriminatory to offer a $0.02 per contract reduced Penny Pilot Option Fee for Removing Liquidity to Non-NOM Market Makers and NOM Market Makers for transactions in which the same NOM Participant or a NOM Participant under Common Ownership is the buyer and the seller from January 11. 2016 through January 29, 2016. NOM Participants that chose to segregate their businesses into different legal entities should still be afforded the opportunity to receive the discount as if they were the same NOM Participant on both sides of the transaction.

It is important to note that NOM Participants are unaware at the time the order is entered of the identity of the contra-party. Because contra-parties are anonymous, the Exchange believes that NOM Participants would aggressively pursue order flow in order to receive the benefit of the reduction. Offering the additional fee reduction is reasonable, equitable and not unfairly discriminatory because Participants would be entitled to receive the fee reduction when the Participant is both the buyer and seller. By way of example, if a NOM Participant that is assigned the firm code[14] "ABC" by the Exchange posted an order utilizing its Customer order router, and the order was removed by an ABC NOM Market Maker order, the NOM Participant would receive the $0.02 per contract fee reduction for that trade ($0.50 to $0.48 per contract). The fee reduction would only be applicable from January 11, 2016 through January 29, 2016. The Exchange proposes to utilize the Exchange assigned firm code to determine which NOM Participant executed an order and to apply the fee reduction to the Non-NOM Market Maker or NOM Market Maker Penny Pilot Option Fee for Removing Liquidity if the same NOM Participant was the buyer and the seller to a transaction.[15] This concept is not novel. Today NASDAQ OMX PHLX LLC ("Phlx") assesses a Firm Floor Options Transaction Charge based

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14 Each NOM Participant is assigned a firm code by the Exchange.

15 In this example, the same Participant that added and removed the order would be entitled to the fee reduction because the NOM Participant was the buyer and seller on the transaction.

on which side of the transaction the member represents as well whether the same member or its affiliates under Common Ownership was represented.[16]

Finally, the Exchange's proposal to count all order flow toward the 1.30% requisite volume, except for NOM Market Maker order flow is reasonable, equitable and not unfairly discriminatory because NOM Market Makers are entitled to rebates today similar to Customers and Professionals. Customer volume is important because it continues to attract liquidity to the Exchange, which benefits all market participants. Further, with respect to Professional liquidity, the Exchange initially established Professional pricing in order to "…bring additional revenue to the Exchange."[17] 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."[18] Further, the Exchange noted in that filing that it believes that establishing separate pricing for a Professional, which ranges between that of a Customer and market maker, accomplishes this

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16 The Firm Floor Options Transaction Charges will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges will be waived for the buy side of a transaction if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account. In addition, the Broker-Dealer Floor Options Transaction Charge (including Cabinet Options Transaction Charges) will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer ("BD-Customer Facilitation"), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month. See Phlx's Pricing Schedule.

17 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.

18 See Professional Filing.

objective.[19] The Exchange offers NOM Market Makers rebates in acknowledgment of the obligations[20] these Participants bear in the market. The Exchange believes that it is not necessary to count NOM Market Maker volume toward the volume to qualify for the fee reduction because that volume is counted toward the qualifiers for the NOM Market Maker rebates.

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 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 this instance, the proposed amendments to NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fees for Removing Liquidity do not impose an undue burden

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19 See Professional Filing. The Exchange also in [sic] the Professional 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.

20 See note 13.

on inter-market competition because the Exchange's execution services are completely voluntary and subject to extensive competition.

The Exchange's proposal to incentivize Participants by offering the opportunity to reduce the NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fees for Removing Liquidity from $0.50 to $0.48 per contract, for the time period from January 11, 2016 through January 29, 2016, provided the Participant adds 1.30% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership does not create an undue burden on intra-market competition because NOM Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[21] Offering the fee discount to Non-NOM Market Makers provides Participants with flexibility in the manner in which they are submitting their orders. Non-NOM Market Makers have obligations on other exchanges to qualify as a market maker. Also, the Exchange believes that market makers not registered on NOM will be encouraged to send orders to NOM as an away market maker (Non-NOM Market Maker) with this incentive. Because the incentive is being offered to both market makers registered on NOM and those not registered on NOM, the Exchange believes that the proposal does not impose an undue burden on intra-market competition because it encourages market makers to direct liquidity to NOM to the benefit of all Participants.

The Exchange believes that permitting NOM Participants with 75 percent common ownership to aggregate their volume for purposes of obtaining the fee discount does not create an undue burden on intra-market competition because certain NOM Participants chose to

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[21] See note 13.

segregate their businesses into different legal entities for purposes of conducting business. NOM Participants that chose to segregate their businesses into different legal entities should still be afforded the opportunity to receive the discount as if they were the same NOM Participant on both sides of the transaction.

Participants would be entitled to receive the fee reduction when the Participant is both the buyer and seller and therefore this qualifier does not create an undue burden on intra-market competition. NOM Participants are unaware at the time the order is entered of the identity of the contra-party, therefore, since contra-parties are anonymous, the Exchange believes that NOM Participants would aggressively pursue order flow in order to receive the benefit of the reduction, to the benefit of all Participants.

The Exchange's proposal to count all order flow toward the 1.30% requisite volume, except for NOM Market Maker order flow does not impose an undue burden on intra-market competition because the Exchange believes it is not necessary to count NOM Market Maker volume in qualifying for the fee discount as that volume is counted toward qualifying for NOM Market Maker rebates.

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.[22]

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

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

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-2016-004 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-2016-004. 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 such 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-2016-004, 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.[23]

Brent J. Fields
Secretary

[23] 17 CFR 200.30-3(a)(12).