

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64210; File No. SR-NASDAQ-2011-046)

April 6, 2011

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

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 March 31, 2011, 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 modify Rule 7050 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 to: (i) modify pricing for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the Penny Pilot³ Options with respect to the Customer Rebate to Add Liquidity;⁴ and (ii) modify pricing for both Penny Pilot Options and All Other Options with respect to the Fees for Removing Liquidity.⁵

While changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions on April 1, 2011.

The text of the proposed rule change is set forth below. Proposed new text is in italics and deleted text is in brackets.

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7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

(1) Fees for Execution of Contracts on the NASDAQ Options Market

³ The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2010. 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); and 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). See also Exchange Rule Chapter VI, Section 5.

⁴ An order that adds liquidity is one that is entered into NOM and rests on the NOM book.

⁵ An order that removes liquidity is one that is entered into NOM and that executes against an order resting on the NOM book.

Fees and Rebates
(per executed contract)

	Customer Firm	Non-NOM Market	NOM Market
		Maker	Maker
Penny Pilot Options:			
Rebate to Add	\$0.3[2]6	\$0.10	\$0.25
			\$0.30
Liquidity			
Fee for Removing	\$0.4[3]5	\$0.45	\$0.45
			\$0.45
Liquidity			
NDX and MNX:			
Rebate to Add	\$0.10	\$0.10	\$0.10
			\$0.20
Liquidity			
Fee for Removing	\$0.50	\$0.50	\$0.50
			\$0.40
Liquidity			
All Other Options:			
Fee for Adding	\$0.00	\$0.45	\$0.45
			\$0.30
Liquidity			
Fee for Removing	\$0.4[3]5	\$0.45	\$0.45
			\$0.45

Liquidity

Rebate to Add	\$0.20	\$0.00	\$0.00	\$0.00
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Liquidity

(2) No Change

(3) No Change

(4) No Change

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The text of the proposed rule change is available on the Exchange's website at <http://www.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

NASDAQ is proposing to modify Rule 7050 governing the rebates and fees assessed for options orders entered into NOM. Specifically, NASDAQ is proposing to modify pricing for the

Penny Pilot Options with respect to the Customer Rebate to Add Liquidity and also modify both Penny Pilot Options and All Other Options with respect to the Customer Fees for Removing Liquidity.

Customer Rebate to Add Liquidity

The Exchange currently pays a Rebate to Add Liquidity of \$0.32 per executed contract to members providing liquidity through NOM in options included in the Penny Pilot and in the clearing capacity of “Customer.” The Exchange proposes to amend this rebate so that a Customer would receive a Rebate to Add Liquidity of \$0.36 per contract.⁶ The Exchange believes that this increase in the Rebate to Add Liquidity would serve to incentivize Customers to add greater liquidity to the options listed for trading on NOM.

Customer Fees for Removing Liquidity

The Exchange assesses a Fee for Removing Liquidity of \$0.43 per executed contract to members removing liquidity through NOM in options included both the Penny Pilot and All Other Options and in the clearing capacity of “Customer.” The Exchange proposes to amend these fees so that a Customer would pay a Fee to Remove Liquidity of \$0.45 per contract.⁷ The Exchange is proposing to uniformly assess all market participants the same fee to remove liquidity.

While changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions on April 1, 2011.

2. Statutory Basis

⁶ A Firm would continue to receive \$0.10 per contract, a Non-NOM Market Maker would continue to receive \$0.25 per contract and a NOM Market Makers would continue to receive \$0.30 per contract to add liquidity.

⁷ A Firm, Non-NOM Market Makers and NOM Market Makers would continue to be assessed \$0.45 per contract for removing liquidity.

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,⁸ in general, and with Section 6(b)(4) of the Act,⁹ 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.

The Exchange believes that the proposed increase in the Customer Rebate to Add Liquidity in the Penny Pilot Options is both equitable and reasonable because the Exchange is seeking to provide the appropriate incentives to broker-dealers acting as agent for Customer orders to select the Exchange as a venue to post Customer orders. The Exchange believes that the proposed increase in the rebate is also reasonable because the rebate is consistent with other rebates being paid at the BATS Exchange, Inc. (“BATS”) for orders that add liquidity to the BATS Options book.¹⁰

The Exchange believes that the proposed increase in the Fee to Remove Liquidity for Customers in both the Penny Pilot Options and All Other Options is both reasonable and equitable because the Exchange would uniformly assess a \$0.45 per contract Fee to Remove Liquidity on all market participants.

The Exchange believes its proposal to increase the Fee for Adding Liquidity for Customers in both the Penny Pilot Options and All Other Options is also reasonable because the fees are within the range of fees assessed by other exchanges employing similar pricing schemes. Specifically, NYSE Arca, Inc. (“NYSE Arca”) assesses a customer fee for taking liquidity of \$0.45 for electronic executions in penny pilot issues and foreign currency options and assesses a

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ See BATS’ BZX Exchange Fee Schedule.

firm and broker dealer standard execution fee of \$0.50 for electronic executions in options not included in the penny pilot.¹¹

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can readily send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed rebate and fees are competitive and similar with rebates and fees in place on other exchanges. The Exchange believes that this competitive marketplace impacts the rebates and fees present on the Exchange today and substantially influences the proposals set forth above.

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.

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 Act¹² and paragraph (f)(2) of Rule 19b-4¹³ thereunder. 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.

¹¹ See NYSE Arca's Fee Schedule.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

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-2011-046 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2011-046. 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 No. SR-NASDAQ-2011-046 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Cathy H. Ahn
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).