

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64494; File No. SR-NASDAQ-2011-066)

May 13, 2011

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 3, 2011, 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 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 adopt certain Fees for Execution of Contracts for a “Professional” market participant. 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

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 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 adopt Professional pricing for Penny Pilot Options, options on the Nasdaq 100 Index traded under the symbol NDX ("NDX") and options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX") and All Other Options.³

There is currently NOM pricing for four separate categories of market participants: Customer, Firm, Non-NOM Market maker⁴ and NOM Market Maker⁵. The Professional category would be an addition to these existing categories. The term "Professional" 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).⁶ Today a Professional is assessed and paid Customer fees and rebates, respectively.⁷

³ All Other Options includes non-Penny Pilot options.

⁴ Non-NOM Market Makers are registered market makers on another options market that append the market maker designation to orders routed to NOM.

⁵ NOM Market Makers must be registered as such pursuant to Chapter VII, Section 2 of the Nasdaq Options Rules, and must also remain in good standing pursuant to Chapter VII, Section 4.

⁶ See Chapter I, Section I (Definitions). See also Securities Exchange Act Release Nos. 63028 (October 1, 2010), 75 FR 62443 (October 8, 2010) (SR-NASDAQ-2010-099); and 63151 (October 21, 2010), 75 FR 66811 (October 29, 2010) (SR-NASDAQ-2010-132). Participants are required to identify Professional orders submitted electronically by indentifying [sic] them in the customer type field. See Securities Exchange Act Release

The Exchange is proposing to adopt a \$0.29 per contract Rebate to Add Liquidity;⁸ and a \$0.45 per contract Fee for Removing Liquidity⁹ for Professionals transacting Penny Pilot Options.¹⁰ The Exchange is proposing to adopt a \$0.10 per contract Rebate to Add Liquidity and a \$0.50 per contract Fee for Removing Liquidity for Professionals transacting NDX and MNX.¹¹ The Exchange is proposing to adopt a \$0.20 per contract Fee for Adding Liquidity, and a \$0.45 per contract Fee for Removing Liquidity for Professionals transacting All Other Options. The Exchange proposes to offer no Rebate to Add Liquidity for Professionals transacting All Other Options.¹²

For purposes of the Opening Cross, a Professional would be assessed the Fee for Removing Liquidity during the Exchange's Opening Cross similar to Firms, Non-NOM Market Makers and NOM Market Makers.¹³ Professionals would not receive a Rebate to Add Liquidity during the Exchange's Opening Cross.¹⁴

No. 63028 (October 1, 2010) 75 FR 62443 (October 8, 2010) (SR-NASDAQ-2010-099).
See NOM Chapter I, Sec.1 (a)(48).

⁷ The priority of orders designated as Professional on NOM are not impacted in the same manner as on other options exchanges which have a Professional designation because NOM executes orders on a price/time priority basis, regardless of the designation of the market participant submitting the order.

⁸ An order that adds liquidity is one that is entered into NOM and rests on the NOM book.

⁹ An order that removes liquidity is one that is entered into NOM and that executes against an order resting on the NOM book.

¹⁰ The Exchange is not proposing to amend the Penny Pilot Option rates for other market participants.

¹¹ The Exchange is not proposing to amend NDX and MNX rates for other market participants.

¹² The Exchange is not proposing to amend the rates for other market participants in All Other Options.

¹³ NOM does not have any priority rules for the Opening Cross.

¹⁴ Today a Professional receives a Rebate to Add Liquidity during the Exchange's Opening Cross, unless the contra-side is also a Customer.

The Exchange is proposing to add Professional fees to: (i) raise revenue for the Exchange; and (ii) eliminate specialized pricing for Professionals. The Exchange is proposing separate pricing for Professionals to bring additional revenue to the Exchange. The Exchange believes that the increased revenue from the proposal would assist the Exchange to recoup fixed costs. Additionally, the Exchange seeks to address the perceived favorable pricing of Professionals, who today are assessed fees and paid rebates like a Customer. A Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.¹⁵

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,¹⁶ in general, and with Section 6(b)(4) of the Act,¹⁷ in particular, in that it provides for the equitable allocation of reasonable rebates, 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 it is equitable to assess Professionals fees and offer rebates that are less favorable than or equivalent to Customers but generally more favorable than or equivalent to market makers¹⁸ because it has been established that Professionals have access to more information than a Customer and Professionals do not bear the obligations of a market

¹⁵ A Professional, defined as a non broker-dealer who places more than 390 orders in listed options per day on average (or more than one order per minute on average per day), has access to continuously updated pricing models based on real-time streaming data, access to multiple markets simultaneously, and other risk management tools.

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(4).

¹⁸ The Exchange notes that the proposed Professional Rebate to Add Liquidity in Penny Pilot Options is greater than the rebate for a Non-NOM Market Maker but less than the rebate for a NOM Market Maker. This is explained in greater detail below.

maker. It can be argued that Professionals have the same technological and informational advantages as broker-dealers trading for their own account. First, a Professional by definition enters 390 orders per day on average over a calendar month which the Exchange believes exceeds the number of retail Customers [sic] in a single day. Second, the Exchange believes that retail Customers are a source of liquidity in the market, and exchanges have provided such Customer [sic] favorable pricing in order to attract such orders.¹⁹ The Exchange believes that it would be inequitable to assess higher fees on Customers and offer less rebates to Customers, as compared to other market participants, because they are unable to shoulder the burden of such costs as effectively as other market participants, including a Professional.

The Exchange believes that this concept of pricing Professionals differently than Customers exists today on other markets. The International Securities Exchange (“ISE”) assesses professionals different fees than customers. ISE assesses higher taker fees to professionals as compared to market makers and customers. ISE also provides professionals a lower priority on its market as compared to public customers.²⁰ The Approval Order states that ISE amended its priority rules to attract retail investor order flow to its exchange by leveling the playing field for retail investors over market professionals and provide competitive pricing.²¹ The Approval Order also noted that professionals are more sophisticated than retail investors.²² While NOM does not have such priority rules because it executes orders according to price-time

¹⁹ The Exchange provides Customers such favorable pricing notwithstanding the fact that NOM executes orders on a price/time priority basis, regardless of the designation of the market participant submitting the order.

²⁰ See Securities Exchange Act Release No. 59287 (January 23, 2009), 75 FR 62443 (October 1, 2010) (SR-ISE-2006-26) (“Approval Order”).

²¹ See Securities Exchange Act Release No. 59287 (January 23, 2009), 75 FR 62443 (October 1, 2010) (SR-ISE-2006-26).

²² See Securities Exchange Act Release No. 59287 (January 23, 2009), 75 FR 62443 (October 1, 2010) (SR-ISE-2006-26).

priority, with no distinctions made with regard to account designation, NOM currently offers Professionals the pricing advantages of a Customer. NOM believes that for the same reasons the Commission permitted ISE to amend its rules so that professional orders would not be granted special priority and would be assessed the same fees as broker-dealer transactions, the Exchange should likewise be permitted to assess different fees for Professionals and Customers.²³ While priority is a reason to distinguish Customers and Professionals, the Exchange believes that pricing alone could produce the same unintended advantage to Professionals as noted in the Approval Order.²⁴ The Commission also noted in the Approval Order that the customers who enter more than 390 orders per day on average during a calendar month are using the exchange's facilities to place approximately 8000 orders, on average one order for every minute of every trading day, over the course of the month and nearly 100,000 orders per year. The Commission found that it was consistent with the Act for ISE to allocate to customers who participate in the market at this level of activity – which enables them to compete with non-Customers who are registered broker-dealers – the same transaction fees that it charges to such non-Customers.²⁵

The Exchange is proposing to amend its pricing to attract Customer orders and create a competitive market. The Exchange believes that establishing separate pricing for a Professional,

²³ See Securities Exchange Act Release No. 59287 (January 23, 2009), 75 FR 62443 (October 1, 2010) (SR-ISE-2006-26). Since the Approval Order, ISE has filed additional pricing changes.

²⁴ The Approval Order notes that professionals have access to information and advantages similar to broker-dealers and by both amending the execution rules and fee schedule, professional account holders participate on equal terms with broker-dealer orders and marker maker quotes. See Securities Exchange Act Release No. 59287 (January 23, 2009), 75 FR 62443 (October 1, 2010) (SR-ISE-2006-26).

²⁵ See Securities Exchange Act Release No. 59287 (January 23, 2009), 75 FR 62443 (October 1, 2010) (SR-ISE-2006-26) at page 37.

which ranges between that of a Customer and market maker,²⁶ accomplishes this objective. The Exchange believes the role of the retail Customer in the marketplace is distinct from that of the Professional and the Exchange believes that its fee proposal accounts for this distinction and prices each market participant according to their roles and assumes their obligations. A market maker has the obligation to make continuous markets, engage in 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 course of dealings.²⁷

The Exchange believes that Professionals, who are considered sophisticated algorithmic traders, utilize the advantaged Customer pricing they receive to effectively compete with market makers and broker-dealers²⁸ without the obligations of either. The Exchange believes Professionals should not be entitled to the same favorable fee treatment as a Customer, which such Professionals rely on as a means to effectively compete with other market participants. This was not the intent of the Exchange in providing Customer favorable pricing. Market makers and broker-dealers provide valuable liquidity to the marketplace without the advantage of Customer pricing.

For the reasons described above and the basis provided hereafter, the Exchange believes that the proposed pricing is not unfairly discriminatory because the Exchange is seeking to continue to encourage the participation of Customers, other than those Customers who exceed the threshold requirement of the Professional definition. The Exchange believes that those who

²⁶ The Exchange notes that the proposed Professional Rebate to Add Liquidity in Penny Pilot Options is greater than the rebate for a Non-NOM Market Maker but less than the rebate for a NOM Market Maker. This is explained in greater detail below.

²⁷ See NOM Chapter VII, Sections 5, 6, 9 and 10.

²⁸ Broker-dealers pay registration and membership fees in self-regulatory organizations (“SRO”) and incur costs to comply and assure that their associated persons comply with the Act and SRO rules. A broker-dealer on NOM is classified as a Firm.

meet the Professional definition have certain technological and informational advantages over retail Customers which combined with favorable pricing allows them to compete with market makers and broker-dealers and for this reason the proposed pricing is not unfairly discriminatory.

The Exchange believes that the proposed NOM Professional fees and rebates are equitable in that the Exchange currently differentiates between options classes and categories of market participants for purposes of pricing. The existing differentiation recognizes the differing contributions made to the liquidity and trading environment on the Exchange, as well as the differing mix of orders entered. For example the Exchange assesses different fees for Penny Pilot transactions and non-Penny Pilot transactions. In addition, some market participants, such as market makers, have obligations pursuant to Exchange rules which the Exchange recognizes in its pricing.

The Exchange believes that the proposed Professional rebates and fees are both equitable and reasonable for the reasons outlined below. With respect to Penny Pilot options, the Exchange is assessing the same Fee for Removing Liquidity as other market participants. The Exchange believes that the proposed fee is reasonable and equitable because all market participants are equally assessed a Fee for Removing Liquidity in Penny Pilot options. There is no change to the Professional Fee for Removing Liquidity; the fee is the same as that assessed today.

With respect to the Rebate to Add Liquidity in Penny Pilot options, the Exchange believes the proposed rate is reasonable because the proposed rate is less than that paid to Customers and NOM Market Makers, which is similar in concept to the rebates offered at NASDAQ OMX PHLX LLC (“Phlx”).²⁹ In addition, Chicago Board Options Exchange

²⁹ See Phlx’s Fee Schedule. The professional executing a single contra-side order on Phlx receives a lower rebate to add liquidity as compared a Phlx market maker (defined as a

Incorporated (“CBOE”) assesses Professionals more than Customers, who incur no fee.³⁰

Further, the Exchange believes the proposed rebate is equitable because providing Customers and NOM Market Makers with higher rebates will continue to bolster liquidity, and attract more order flow to the Exchange, which benefits all market participants, including Professionals.

The Exchange stated above that it proposes to assess Professionals fees and offer rebates that are less favorable than or equivalent to Customers but generally more favorable than or equivalent to market makers. The one exception in this proposal is with respect to the Professional Rebate to Add Liquidity in Penny Pilot Options. The Exchange has explained above why it believes that providing a Professional a greater rebate as compared to the Non-NOM Market maker is equitable. With respect to the NOM Market Maker, the Exchange proposes a lower rebate, by \$0.01 per contract, as compared to a Professional because the Exchange seeks to continue to incentivize the NOM Market Maker. The Exchange believes that this rebate is equitable because the NOM Market Maker has obligations that the Professional does not bear.

With respect to the NDX and MNX the Exchange is proposing to assess Professionals the same fees that are assessed Customers and pay Professionals the same rebate that are paid to Customers today. The Exchange believes that this is both reasonable and equitable because, other than NOM Market Makers, all market participants are assessed the same fees and paid the same rebates in NDX and MNX. With respect to NDX and MNX there is no fee change to the Professional as compared to the rebates received and fees paid today.

directed participant, specialist, ROT, SQT or RSQT). Also, the professional executing a complex order receives no rebate to add liquidity, while a customer receives a rebate of \$0.24/\$0.25 respectively.

³⁰ See CBOE’s Fees Schedule.

The Exchange believes that the Fee for Removing Liquidity for a Professional in All Other Options is both equitable because it is the same rate for all market participants.³¹ There is no change to the Professional Fee for Removing Liquidity; the fee is the same as that assessed today.

The Exchange believes that the proposed Fee for Adding Liquidity is equitable because Professionals engage in trading activity similar to that conducted by market makers. For example, Professionals continue to join bids and offers on the Exchange and thus compete for incoming order flow. Professionals do so in direct competition with the Exchange's market makers, but with the distinct advantage of generally receiving fees and rebates akin to Customers. Currently, on NOM Professionals enjoy a higher rebate than NOM Market Makers, who have quoting obligations to the market. The Exchange believes it is not only equitable but reasonable to provide Fees and Rebates for Adding Liquidity to Professionals that are within the range of non NOM Market Makers and NOM Market Makers.

This concept is similar in approach to NYSE Amex, Inc. ("NYSE Amex") CBOE, Phlx and ISE. On each of these venues, the fees paid by professionals and rebates received by professionals are generally in between Customers, Market Makers and other broker-dealers.³² The Exchange believes that assessing a Professional a higher Fee for Adding Liquidity than a Customer, but lower than all other broker-dealers would put the Professional on a more equal footing with market makers and other broker-dealers regarding fees paid for transacting on the Exchange.

³¹ All market participants are assessed \$0.45 per contract as a Fee for Removing Liquidity in All Other Options.

³² See NYSE Amex's Fee Schedule, CBOE's Fees Schedule, Phlx's Fee Schedule and ISE's Fee Schedule, respectively.

The Exchange assesses all market participants the same Fee for Removing Liquidity, only differentiated by Penny Pilot, Non-Penny Pilot, NDX and MNX. The Exchange believes that the proposed Fee for Adding Liquidity is reasonable because it is similar to the transaction fee assessed by NYSE Amex for an electronic Professional transaction.³³

With respect to the Rebate to Add Liquidity in All Other Options, the Exchange believes that the rebate is equitable because only Customers receive a rebate. The Professional, similar to all other market participants, would receive no rebate. The Exchange believes that offering a rebate to Customers only would attract more order flow to the Exchange for the benefit [sic] all market participants. For this same reason, the Exchange believes that it is reasonable to not pay a Professional a Rebate to Add Liquidity during the Exchange's Opening Cross and to assess a Professional a Fee for Removing Liquidity during the Exchange's Opening Cross. The Exchange believes that a Professional would benefit, similar to other market participants, from the Customer order flow. In addition, this proposal would allow a Customer to receive a Rebate to Add Liquidity during the Exchange's Opening Cross if a Professional was on the contra-side of the transaction.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants, including Professionals, can readily, and do, send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive or rebates paid to be inadequate. The Exchange believes that the proposed rebates and fees are competitive, fair and similar with rebates and fees in place on other exchanges for Professionals. The Exchange believes that this competitive

³³ See NYSE Amex's Fee Schedule.

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 that is 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 Act³⁴ and paragraph (f)(2) of Rule 19b-4³⁵ 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.

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-2011-066 on the subject line.

³⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁵ 17 CFR 240.19b-4(f)(2).

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-2011-066. 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,³⁶ 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

³⁶ The text of the proposed rule change is available on Exchange's website at <http://www.nasdaq.cchwallstreet.com>, on the Commission's website at <http://www.sec.gov>, at NASDAQ, and at the Commission's Public Reference Room.

to File Number SR-NASDAQ-2011-066 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Cathy H. Ahn
Deputy Secretary

³⁷ 17 CFR 200.30-3(a)(12).