

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73732; File No. SR-NASDAQ-2014-114)

December 3, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Common Ownership

Pursuant to Section 19(b)(1) of the Securities Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 20, 2014, 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 NASDAQ. 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

NASDAQ proposes to modify the definition of Common Ownership³ in Chapter XV, entitled “Options Pricing,” at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options. Specifically, the Exchange proposes to extend the application of Common Ownership to all Chapter XV, Section 2 pricing which requires a certain volume threshold or percentage of volume to obtain certain options pricing.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “Common Ownership” shall mean Participants under 75% common ownership or control. See NOM Rules at Chapter XV.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on December 1, 2014.

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. 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

NASDAQ proposes to modify Chapter XV, entitled "Options Pricing," at Section 2 governing the rebates and fees assessed for option orders entered into NOM. The Exchange proposes to extend the application of Common Ownership to all Chapter XV, Section 2 pricing which requires a certain volume threshold or percentage of volume to obtain certain options pricing. Today, NOM Participants are permitted to aggregate affiliate activity to obtain certain pricing as specified in Chapter XV, Section 2, provided the NOM Participants are affiliated because they are under 75% common ownership or control with each other ("Common Ownership"). Today, the Exchange offers NOM Participants under Common Ownership the

ability to obtain certain Customer⁴ and Professional⁵ Penny Pilot Options⁶ Rebates to Add Liquidity in Tiers 5, 6, 7 and 8.⁷

⁴ The term “Customer” 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)).

⁵ 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) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

⁶ The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2014. 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); 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); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR-NASDAQ-2011-169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot); 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR-NASDAQ-2012-075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012); 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR-NASDAQ-2012-143) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2013); 69787 (June 18, 2013), 78 FR 37858 (June 24, 2013) (SR-NASDAQ-2013-082) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2013); 71105 (December 17, 2013), 78 FR 77530 (December 23, 2013) (SR-NASDAQ-2013-154) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2014); and 79 FR 31151 (May 23, 2014), 79 FR 31151 (May 30, 2014) (SR-NASDAQ-2014-056) ((notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2014). See also NOM Rules, Chapter VI, Section 5.

⁷ For purposes of Tiers 5, 6, 7 and 8, the Exchange will allow NOM Participants under Common Ownership to aggregate their volume to qualify for the rebate.

The Exchange proposes to extend Common Ownership to apply to all pricing in Chapter XV, Section 2, which would include all Customer and Professional Penny Pilot Options Rebate to Add Liquidity Tiers (1 through 8) as well as NOM Market Maker⁸ Penny Pilot Options Rebate to Add Liquidity Tiers (1 through 6). It would also include any other future pricing in Chapter XV, Section 2 that specifies a certain volume threshold or volume percentage to obtain certain pricing (fees or rebates). The Exchange believes that permitting NOM Participants to aggregate pricing with affiliated NOM Participants for all pricing that requires a certain volume threshold or volume percentage will enable NOM Participants to obtain higher rebates.

The Exchange proposes to amend the rule text of Chapter XV by adding the following sentence to the defined term, Common Ownership: “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.” The Exchange proposes to remove all other references to Common Ownership currently within the rule text of Chapter XV, Section 2(1).

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,⁹ in general, and with Section 6(b)(4) of the Act,¹⁰ in particular, in that they provide 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

⁸ The term “NOM Market Maker” means 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.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

as described in detail below.

The Exchange believes the rule change avoids disparate treatment of members that have divided their various business activities between separate corporate entities as compared to members that operate those business activities within a single corporate entity. By way of example, subject to appropriate information barriers, many firms that are members of the Exchange operate both a market making desk and a public customer business within the same corporate entity. In contrast, other members may be part of a corporate structure that separates those business lines into different corporate affiliates, either for business, compliance or historical reasons, and those affiliates are not also considered wholly owned affiliates. Those corporate affiliates, in turn, are required to maintain separate memberships with the Exchange. Absent the proposed change, such corporate affiliates that cannot be considered wholly owned but are under common control would not receive the same treatment as members who are considered wholly owned affiliates. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory in permitting both wholly owned and common control. In addition to ensuring fair and equal treatment of its members, the Exchange does not want to create incentives for its members to restructure their business operations or compliance functions simply due to the Exchange's pricing structure.

Today the Exchange offers rebates to NOM Participants under Common Ownership by permitting these members to aggregate volume as between affiliated NOM Participants. The Exchange would continue to permit NOM Participants to aggregate volume as they do today for the Customer and Professional Penny Pilot Options Rebate to Add Liquidity Tiers 5, through 8, but would also permit members to aggregate volume with respect to Customer and Professional Penny Pilot Options Rebate to Add Liquidity Tiers 1 through 4 and all NOM Market Maker

Penny Pilot Options Rebate to Add Liquidity Tiers. The Exchange believes it is reasonable to permit aggregation for all volume threshold and volume percentage pricing in Chapter XV, Section 2 and not limit such aggregation to certain Tiers as it will provide NOM Participants a greater opportunity to earn rebates. The Exchange also believes that it is equitable and not unfairly discriminatory to permit aggregation for all volume threshold and volume percentage pricing in Chapter XV, Section 2 because it is offering all NOM Participants the opportunity to aggregate volume.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange offers NOM Participants the opportunity to aggregate affiliated volume today and this proposal would provide additional opportunities to aggregate volume to obtain rebates. The Exchange does not believe this proposal creates an undue burden on competition as all NOM Participants have the ability to aggregate in this manner today.

The Exchange believes the differing outcomes, rebates and fees created by the Exchange's proposed pricing incentives contribute to the overall health of the market place to the benefit of all Participants that willingly choose to transact options on NOM. For the reasons specified herein, the Exchange does not believe this proposal creates an undue burden on competition. The Exchange operates in a highly competitive market comprised of twelve U.S. options exchanges in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. These market forces support the Exchange's belief that the proposed rebate structure and Tiers proposed herein are

competitive with rebates and Tiers in place on other exchanges. The Exchange believes that this competitive marketplace continues to impact the rebates present on the Exchange today and substantially influences the proposals set forth above.

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.¹¹ 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. 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-2014-114 on the subject line.

¹¹ 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-2014-114. 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-2014-114, 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.¹²

Kevin M. O'Neill
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).