

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76131; File No. SR-NASDAQ-2015-113)

October 13, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Chapter XV, Entitled “Options Pricing,” at Section 2 Governing Pricing for NASDAQ Members

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 29, 2015, 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 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, NOM proposes to amend certain Penny Pilot Options<sup>3</sup> rebates

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 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)

currently applicable to NOM Market Makers.<sup>4</sup>

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on October 1, 2015.

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.

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(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); 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); 73686 (December 2, 2014), 79 FR 71477 (November 25, 2014) (SR-NASDAQ-2014-115) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2015) and 75283 (June 24, 2015), 80 FR 37347 (June 30, 2015) (SR-NASDAQ-2015-063) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement of Penny Pilot Issues That Have Been Delisted.) See also NOM Rules, Chapter VI, Section 5.

<sup>4</sup> 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.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to modify Chapter XV, entitled "Options Pricing," at Section 2(1) governing the rebates and fees assessed for option orders entered into NOM. The Exchange proposes to amend the NOM Market Maker Penny Pilot Options Rebates to Add Liquidity to add the iShares Russell 2000 ETF "IWM" to Tiers 3 and 4 of the NOM Market Maker Penny Pilot Options Rebates to Add Liquidity. The Exchange believes that additional rebate opportunities offered by the addition of IWM to Tiers 3 and 4 of the NOM Market Maker Penny Pilot Options Rebates to Add Liquidity will attract additional order flow to NOM to the benefit of all market participants.

NOM Market Maker Rebates to Add Liquidity

Today, the Exchange pays NOM Market Maker Penny Pilot Options Rebates to Add Liquidity based on various criteria in six tiers with rebates which range from \$0.20 to \$0.42 per contract as noted below.

<b>Monthly Volume</b>		<b>Rebate to Add Liquidity</b>
<b>Tier 1</b>	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.10% of total industry customer equity and ETF option average daily volume ("ADV") contracts per day in a month	\$0.20
<b>Tier 2</b>	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.10% to 0.25% of total industry customer equity and ETF option ADV contracts per day in a month	\$0.25
<b>Tier 3</b>	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.25% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month	\$0.30 or \$0.40 in the following symbols AAPL, QQQ, SPY and VXX
<b>Tier 4</b>	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of above 0.60% to 0.90% of total industry customer equity and ETF option ADV contracts per day in a month	\$0.32 or \$0.40 in the following symbols AAPL, QQQ, VXX and SPY
<b>Tier 5</b>	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of above 0.30% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options	\$0.40
<b>Tier 6</b>	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options or Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above	\$0.42

0.90% of total industry customer equity and ETF option ADV contracts per day in a month or Participants that add Customer, Professional, Firm, Non-NOM Market Maker, and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.40% or more of total industry customer equity and ETF option ADV contracts per day in a month

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Today, the Tier 3 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity pays a \$0.30 per contract rebate, except in options overlying Apple, Inc. (“AAPL”), PowerShares QQQ (“QQQ”), VIX ST Futures ETN (“VXX”) and SPDR S&P 500 (“SPY”), which pay a \$0.40 per contract rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.25% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month. The Exchange proposes to add IWM to the list of symbols that are eligible for the Tier 3 rebate of \$0.40 per contract. Today, the Exchange pays a Tier 3 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity of \$0.30 per contract in IWM.

Today, the Tier 4 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity pays a \$0.32 per contract rebate, except in AAPL, QQQ, VXX and SPY, which pay a \$0.40 per contract rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of above 0.60% to 0.90% of total industry customer equity and ETF option ADV contracts per day in a month. The Exchange proposes to add IWM to the list of symbols that are eligible for the Tier 4 rebate of \$0.40 per contract. Today, the Exchange pays a Tier 4 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity of \$0.32 per contract in IWM.

The Exchange believes that paying a higher rebate for IWM transactions will encourage a greater number of transactions in IWM.

## 2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Section 6(b)(4) of the Act,<sup>6</sup> 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 as described in detail below.

### NOM Market Maker Penny Pilot Options Rebates to Add Liquidity

The Exchange's proposal to amend the NOM Market Maker Penny Pilot Options Rebate to Add Liquidity Tiers 3 and 4 to increase the IWM rebate from \$0.30 to \$0.40 per contract in Tier 3 and from \$0.32 to \$0.40 per contract in Tier 4 is reasonable because the proposal seeks to encourage Participants to transact a greater amount of IWM liquidity in order to receive the higher rebate of \$0.40 per contract, provided Participants qualify for the Tier 3 or 4 rebate. The Exchange believes that offering NOM Market Makers the ability to obtain higher rebates is reasonable because it will encourage additional order interaction.

The Exchange's proposal to amend the NOM Market Maker Penny Pilot Options Rebate to Add Liquidity Tiers 3 and 4 to increase the IWM rebate from \$0.30 to \$0.40 per contract in Tier 3 and from \$0.32 to \$0.40 per contract in Tier 4 is equitable and not unfairly discriminatory because all NOM Market Makers may qualify for the Tier 3 and Tier 4 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity.

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<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to adopt different pricing for IWM, as compared to other options, because pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in the most actively traded options classes, in this case actively traded Penny Pilot Options.<sup>7</sup> The Exchange notes that IWM is one of the most actively traded options in the U.S. The Exchange believes that this pricing will incentivize members to transact options on IWM on NOM in order to obtain the higher \$0.40 per contract rebate.

**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's proposal to amend the Tier 3 and 4 NOM Market Maker Penny Pilot Options Rebates to Add Liquidity to pay a higher rebate for IWM of \$0.40 per contract, similar to AAPL, QQQ, SPY and VXX, does not create an undue burden on intra-market competition because all NOM Market Makers may qualify for the Tier 3 or 4 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity.

The Exchange's proposal addressed herein does not impose an inter-market burden on competition because the Exchange operates in a highly competitive market 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

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<sup>7</sup> See NASDAQ OMX PHLX LLC's Pricing Schedule. See also the International Securities Exchange LLC's Fee Schedule. Both of these markets segment pricing by symbol.

particular exchange to be excessive or inadequate. These market forces support the Exchange 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. Other options markets offer similar rebates to incentivize market participants to direct order flow to their markets. The Exchange believes that continuing to offer rebates and increasing those rebates and providing opportunities to earn higher rebates will benefit the marketplace by continuing to reward liquidity providers and thereby offering other market participants an opportunity to interact with this order flow.

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) of the Act<sup>8</sup> and paragraph (f) of Rule 19b-4<sup>9</sup> 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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).



#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2015-113 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.

All submissions should refer to File Number SR-NASDAQ-2015-113. 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,

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<sup>9</sup> 17 CFR 240.19b-4(f).

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-2015-113, 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.<sup>10</sup>

Robert W. Errett  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).