

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76386; File No. SR-NASDAQ-2015-128)

November 6, 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 October 27, 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 amend the Exchange’s transaction fees at Chapter XV, Section 2 entitled “NASDAQ Options Market – Fees and Rebates,” which governs pricing for NASDAQ members using the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on November 2, 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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<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

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 the following change 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<sup>3</sup> options program.

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<sup>3</sup> The Penny Pilot was established in March 2008 and has since been expanded and extended through June 30, 2016. 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 [sic] 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)

The proposed change is as follows:

***Fees for Removing Liquidity in Penny Pilot Options:*** the Exchange proposes to:

1. Increase the Customer<sup>4</sup> Fee for Removing Liquidity in Penny Pilot Options from \$0.48 to \$0.50 per contract.

This rule change is described in greater detail below.

### **Customer Fee for Removing Liquidity in Penny Pilot Options**

The Exchange proposes, beginning November 2, 2015, to increase the Customer Fee for Removing Liquidity in Penny Pilot Options from \$0.48 per contract to \$0.50 per contract. The Exchange notes that the Fees for Removing Liquidity for other Participants in Penny Pilot Options will remain the same.<sup>5</sup>

The purpose of the proposed fee change is to increase the transaction fee for Customers to the same fee level that is assessed today to Professionals,<sup>6</sup> Firms,<sup>7</sup> NOM Market Makers,<sup>8</sup>

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(notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2014); 79 FR 31151 [sic] (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 “Customer” applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of [sic] broker or dealer or for the account of a “Professional” (as that term is defined in Chapter I, Section 1(a)(48)).

<sup>5</sup> Non-Customers will continue to be assessed a \$0.50 per contract Fee for Removing Liquidity in Penny Pilot Options.

<sup>6</sup> 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

Non-NOM Market Makers<sup>9</sup> and Broker-Dealers.<sup>10</sup> With this proposal all market participants will be assessed the same Fee for Removing Liquidity in Penny Pilot Options of \$0.50 per contract. Despite the increase, the Exchange believes that Customers will continue to send order flow to NOM.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>11</sup> in general, and with Section 6(b)(4) and 6(b)(5) of the Act,<sup>12</sup> 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

### **Customer Fee for Removing Liquidity in Penny Pilot Options**

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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.

<sup>7</sup> The term “Firm” or (“F”) applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

<sup>8</sup> The term “NOM Market Maker” or (“M”) 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.

<sup>9</sup> The term “Non-NOM Market Maker” or (“O”) 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.

<sup>10</sup> 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.

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

The Exchange's proposal to increase the Customer Fee for Removing Liquidity in Penny Pilot Options from \$0.48 per contract to \$0.50 is reasonable because all other market participants are currently assessed a fee of \$0.50 per contract today. The Exchange's increase would result in all market participants being assessed the same Fee for Removing Liquidity in Penny Pilot Options.

The Exchange's proposal to increase the Customer Fee for Removing Liquidity in Penny Pilot Options from \$0.48 per contract to \$0.50 is equitable and not unfairly discriminatory because all market participants would be uniformly assessed the same rate of \$0.50 per contract.

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. The Exchange's proposal to increase the Customer Fee for Removing Liquidity in Penny Pilot Options from \$0.48 per contract to \$0.50 will result in all market participants being uniformly assessed the same fee for transactions in Penny Pilot Options.

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. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposal reflects this competitive environment.

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.<sup>13</sup>

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: (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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2015-128 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-2015-128. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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, D.C. 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-2015-128 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>14</sup>

Robert W. Errett  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).