

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76768; File No. SR-NASDAQ-2015-155)

December 24, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NOM Rules at Chapter XV, Section 2

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 December 17, 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 Chapter XV, entitled “Options Pricing,” at Section 2, which governs pricing for Exchange members using the NASDAQ Options Market (“NOM”), the Exchange’s facility for executing and routing standardized equity and index options.

The Exchange purposes to lower the Non-NOM Market Maker³ Penny Pilot Options⁴ Fee for Removing Liquidity for options overlying iShares MSCI Emerging Markets (“EEM”), SPDR

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A “Non-NOM Market Maker” 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.

⁴ 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,

Gold Shares (“GLD”), iShares Russell 2000 ETF (“IWM”), PowerShares QQQ (“QQQ”), and SPDR S&P 500 (“SPY”) from \$0.55 to \$0.50 per contract. While the changes proposed herein are effective upon filing, the Exchange has designated the amendments [sic] become operative on January 4, 2016.

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.

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

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) (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) [sic], 79 FR 71477 (November 25, 2014) [sic] (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 and extension and replacement of Penny Pilot) See also NOM Rules, Chapter VI, Section 5.

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 to lower the Non-NOM Market Maker Penny Pilot Options Fee for Removing Liquidity for options overlying EEM, GLD, IWM, QQQ, and SPY from \$0.55 to \$0.50 per contract. The details of this proposal are below.

Non-NOM Market Maker Penny Pilot Options Fee for Removing Liquidity

The Exchange proposes, beginning January 4, 2016, to decrease the Non-NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options from \$0.55 to \$0.50 per contract for options overlying EEM, GLD, IWM, QQQ, and SPY. The Exchange notes that the Fees for Removing Liquidity for other Participants in Penny Pilot Options will remain the same, at \$0.050 [sic] per contract. The Exchange believes that lowering this fee may encourage additional order flow to be directed to NOM for options overlying EEM, GLD, IWM, QQQ, and SPY.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,⁵ in general, and with Section 6(b)(4) and 6(b)(5) of the Act,⁶ 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 the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4) and (5).

dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine the price of non-core market data because national market system regulation “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁷ Likewise, in NetCoalition v. NYSE Arca, Inc.⁸ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.⁹ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹⁰

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹¹ Although the court and the SEC were discussing the

⁷ Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (“Regulation NMS Adopting Release”).

⁸ NetCoalition v. NYSE Arca, Inc., 615 F.3d 525 (D.C. Cir. 2010).

⁹ See NetCoalition, at 534.

¹⁰ Id. at 537.

¹¹ Id. at 539 (quoting ArcaBook Order, 73 FR at 74782-74783).

cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Non-NOM Market Maker Penny Pilot Options Fee for Removing Liquidity

The Exchange's proposal to decrease the Non-NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options from \$0.55 to \$0.50 per contract for options overlying EEM, GLD, IWM, QQQ, and SPY is reasonable because the Exchange seeks to assess all Participants the same rate of \$0.50 per contract to remove Penny Pilot Options on NOM. Also, the Exchange believes that lowering this fee may encourage additional order flow to be directed to NOM for options overlying EEM, GLD, IWM, QQQ, and SPY.

The Exchange's proposal to decrease the Non-NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options from \$0.55 to \$0.50 per contract for options overlying EEM, GLD, IWM, QQQ, and SPY is equitable and not unfairly discriminatory because all Participants will be assessed a \$0.50 per contract Fee for Removing Liquidity in Penny Pilot Options for all options transacted on NOM.

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. In terms of inter-market competition, 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, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response and because market participants may readily adjust

their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed change to fees assessed to Participants for execution of securities does not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues.

Non-NOM Market Maker Penny Pilot Options Fee for Removing Liquidity

The Exchange's proposal to decrease the Non-NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options from \$0.55 to \$0.50 per contract for options overlying EEM, GLD, IWM, QQQ, and SPY does not impose an undue burden on intra-market competition because the Exchange will assess all Participants the same Fee for Removing Liquidity in Penny Pilot Options.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Participants or competing order execution venues to maintain their competitive standing in the financial markets.

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.¹²

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

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. Please include File Number SR-NASDAQ-2015-155 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-2015-155. 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, D.C. 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-2015-155 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.¹³

Brent J. Fields
Secretary

¹³ 17 CFR 200.30-3(a)(12).