

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82239; File No. SR-NASDAQ-2017-127)

December 8, 2017

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Transaction Fees at Chapter XV, Section 2(1)

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 1, 2017, 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 amend the Exchange's transaction fees at Chapter XV, Section 2(1), which governs the pricing for Nasdaq Participants using the Nasdaq Options Market ("NOM"), Nasdaq's facility for executing and routing standardized equity and index options.

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

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

The Exchange proposes to amend the Exchange's transaction fees at Chapter XV, Section 2(1) to introduce a new NOM Market Maker³ Rebate to Add Liquidity in Non-Penny Pilot Options. Today, the Exchange charges Participants a \$0.35 per contract NOM Market Maker Fee for Adding Liquidity in Non-Penny Pilot Options.⁴ To incentivize Participants to add NOM Market Maker liquidity in Non-Penny Pilot Options, the Exchange offers Participants an opportunity to reduce this \$0.35 per contract fee to \$0.00 per contract, provided the Participant adds NOM Market Maker liquidity in Non-Penny Pilot Options of 7,500 or more ADV contracts per day in a month.⁵

In order to further incentivize NOM Market Makers to transact in Non-Penny Pilot Options on NOM, the Exchange proposes to introduce a new NOM Market Maker Rebate to Add Liquidity in Non Penny-Pilot Options, provided the Participant adds NOM Market Maker liquidity in Non-Penny Pilot Options of 10,000 or more ADV contracts per day in a month. The Participant would receive a \$0.30 per contract Rebate to Add Liquidity in Non-Penny Pilot

³ 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. See Chapter XV.

⁴ See Chapter XV, Section 2(1).

⁵ Id. at note 5.

Options as a NOM Market Maker. Participants that qualify for this proposed rebate would not be charged the NOM Market Maker Fee for Adding Liquidity in Non-Penny Pilot Options by virtue of already having qualified for the discounted fee of \$0.00 in note 5 (i.e., by meeting the lower NOM Market Maker Non-Penny volume threshold of 7,500 or more ADV contracts per day).

In essence, the Exchange is creating a new volume threshold that is higher than the existing threshold with this proposal. As such, there will be two NOM Market Maker volume-based tiers for adding liquidity in Non-Penny Pilot Options, the lower of which would provide a discounted fee of \$0.00 from \$0.35 for the qualifying Participant, while the higher would provide a rebate of \$0.30 for the qualifying Participant in lieu of the \$0.35 fee. Accordingly, the Exchange proposes to amend the existing volume requirement for the discounted fee in note 5 to state that Participants that add NOM Market Maker liquidity in Non-Penny Pilot Options of 7,500 to **9,999** ADV contracts per day in a month will be assessed a \$0.00 per contract Non-Penny Options Fee for Adding Liquidity in that month. Participants that add Non-Penny NOM Market Maker liquidity of 10,000 or more ADV contracts per day in a month will not be charged a Non-Penny Options Fee for Adding Liquidity and will instead receive the proposed \$0.30 per contract Non-Penny Rebate to Add Liquidity. Finally, the Exchange proposes to clarify in note 5 that the \$0.35 fee for adding liquidity will apply unless Participants meet the proposed volume thresholds, as described above.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ in particular, in

⁶ 15 U.S.C. 78f(b).

that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed change to offer Participants that send NOM Market Maker order flow the opportunity to receive a \$0.30 per contract Non-Penny Rebate to Add Liquidity, provided the Participant adds NOM Market Maker liquidity in Non-Penny Pilot Options of 10,000 or more ADV contracts per day in a month, is reasonable because the Exchange seeks to further incentivize Participants to add NOM Market Maker liquidity in Non-Penny Pilot Options to obtain the rebate. The Exchange believes that its proposal will encourage Participants to select NOM as a venue and in turn benefit other market participants with the opportunity to interact with such liquidity. Other options exchanges also offer volume-based rebates to market makers for adding liquidity.⁸

The Exchange also believes that the proposed NOM Market Maker Non-Penny Rebate to Add Liquidity is equitable and not unfairly discriminatory because all NOM Market Makers can qualify for the rebate by meeting the volume requirements described above. Furthermore, NOM Market Makers, unlike other market participants, add value through continuous quoting⁹ and the

⁷ 15 U.S.C. 78f(b)(4) and (5).

⁸ See MIAX Pearl Fee Schedule, Section 1)a) for the non-penny maker rebates offered to MIAX Pearl market makers. See also Nasdaq GEMX Schedule of Fees, Section I for the non-penny maker rebates offered to GEMX market makers.

⁹ Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. See Chapter VII, Section 5.

commitment of capital. In addition, encouraging NOM Market Makers to add greater liquidity benefits all market participants in the quality of order interaction. As such, the Exchange believes it is equitable and not unfairly discriminatory to offer only NOM Market Makers the opportunity to earn the proposed rebate because of the obligations borne by these market participants, as noted herein.

The Exchange also believes that the proposed change to amend the existing NOM Market Maker Non-Penny volume threshold from “7,500 or more ADV contracts” to “7,500 to 9,999 ADV contracts” is reasonable because the Exchange is essentially adding a higher volume-based tier with this proposal. The Exchange believes that the proposed change would clarify how the two NOM Market Maker Non-Penny tiers are applied—meeting the volume threshold in the lower tier would qualify the Participant for a discounted fee, and meeting the volume threshold in the higher tier would qualify the Participant for a rebate in lieu of the fee, as described above. In the same vein, the proposed change to clarify in note 5 that the \$0.35 fee for adding liquidity will apply unless Participants meet these volume thresholds is reasonable because it will clarify how the fee and rebate program proposed herein will apply.

The Exchange further believes that these clarifying changes to amend the existing NOM Market Maker Non-Penny volume threshold and describe how the \$0.35 fee will apply are equitable and not unfairly discriminatory because the changes will apply to all qualifying Participants.

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 proposed rebate and corresponding changes to the volume-based thresholds described above are all designed to increase competition by encouraging NOM Market Makers to provide greater

liquidity and maintain tight markets in Non-Penny Pilot Options. The Exchange 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. 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.

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.¹⁰

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.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2017-127 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-2017-127. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2017-127 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.¹¹

Eduardo A. Aleman
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).