SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97471; File No. SR-NASDAQ-2023-011)

May 10, 2023

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 7, 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 May 1, 2023, 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 and II 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 Nasdaq Options Market LLC ("NOM") Pricing Schedule at Options 7, Section 2.

The text of the proposed rule change is available on the Exchange's Website at https://listingcenter.nasdaq.com/rulebook/nasdaq/rules, 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 proposed rule change. The text of these statements may be examined at the places specified in

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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 NOM's Pricing Schedule at Options 7, Section 2(1), "Nasdaq Options Market - Fees and Rebates." Specifically, the Exchange proposes to amend note 2 within Options 7, Section 2(1).

Today, NOM Options 7, Section 2(1) provides for various fees and rebates applicable to NOM Participants. Specifically, the Exchange pays the following Rebates to Add Liquidity in Penny Symbols:

	Tier 1	**Tier 2**	**Tier 3**	**Tier 4**	**Tier 5**	**Tier 6**
Customer	($0.20)	($0.25)	($0.43)	($0.44)	($0.45)	($0.48)[7]
Professional	($0.20)	($0.25)	($0.43)	($0.44)	($0.45)	($0.47)
Broker-Dealer	($0.10)	($0.10)	($0.10)	($0.10)	($0.10)	($0.10)
Firm	($0.10)	($0.10)	($0.10)	($0.10)	($0.10)	($0.10)
Non-NOM Market Maker	($0.10)	($0.10)	($0.10)	($0.10)	($0.10)	($0.10)
NOM Market Maker	($0.20)	($0.25)	($0.30)[4]	($0.32)[4]	($0.44)	($0.48)

Additionally, today, NOM pays and assesses the following Fees and Rebates to Add Liquidity in Non-Penny Symbols:

Customer	($0.80)
Professional	($0.80)
Broker-Dealer	$0.45
Firm	$0.45
Non-NOM Market Maker	$0.45
NOM Market Maker	$0.35/($0.30)

Finally, the Exchange assesses the following Fees to Remove Liquidity in Penny and Non-Penny Symbols:

Fees to Remove Liquidity in Penny and Non-Penny Symbols

	Penny Symbols	**Non-Penny Symbols**
Customer	$0.49	$0.85
Professional	$0.49	$0.85
Broker-Dealer	$0.50	$1.10
Firm	$0.50	$1.10
Non-NOM Market Maker	$0.50	$1.10
NOM Market Maker	$0.50	$1.10

Currently, the Non-NOM Market Makers[3] and NOM Market Makers[4] who remove liquidity in Penny Symbols and Non-Penny Symbols are subject to note 2 within NOM Options 7, Section 2(1), which provides,

> Participants that add 1.30% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of total industry customer equity and ETF option ADV contracts per day in a month will be subject to the following pricing applicable to executions: a $0.48 per contract Penny Symbols Fee for Removing Liquidity when the Participant is (i) both the buyer and the seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.
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> Participants that add 1.50% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of total industry customer equity and ETF option ADV contracts per day in a month and meet or exceed the cap for The Nasdaq Stock Market Opening Cross during the month will be subject to the following pricing applicable to executions less than 10,000 contracts: a $0.32 per contract Penny Symbols Fee for Removing

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3 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. See Options 7, Section 1(a).

4 The term "NOM Market Maker" or ("M") is a Participant that has registered as a Market Maker on NOM pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. 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 Options 7, Section 1(a).

> Liquidity when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.
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> Participants that add 1.75% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of total industry customer equity and ETF option ADV contracts per day in a month will be subject to the following pricing applicable to executions less than 10,000 contracts: a $0.32 per contract Penny Symbols Fee for Removing Liquidity when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.

At this time, the Exchange proposes to amend note 2 within NOM Options 7, Section 2(1) to increase the $0.32 per contract NOM Market Maker and Non-NOM Market Maker Penny Symbol and Non-Penny Symbol Fees to Remove Liquidity to $0.38 per contract for executions less than 10,000 contracts when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. In order to receive the lower NOM Market Maker and Non-NOM Market Maker Penny Symbol and Non-Penny Symbol Fees to Remove Liquidity of $0.38 per contract, Participants would continue to either: (1) add 1.50% of Customer,[5] Professional, [6] Firm,[7] Broker-Dealer[8] or Non-NOM Market

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[5] The term "Customer" or ("C") 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 broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(a)(47)). See Options 7, Section 1(a).

[6] The term "Professional" or ("P") 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 Options 1, Section 1(a)(47). All Professional orders shall be appropriately marked by Participants. See Options 7, Section 1(a).

[7] The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC. See Options 7, Section 1(a).

[8] 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. See Options 7, Section 1(a).

Maker liquidity in Penny Symbols and/or Non-Penny Symbols of total industry customer equity and ETF option ADV contracts per day in a month and meet or exceed the cap for The Nasdaq Stock Market Opening Cross during the month; or (2) add 1.75% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of total industry customer equity and ETF option ADV contracts per day in a month. The $0.38 per contract fee is in comparison to the $0.50 per contract Penny Symbol Fee to Remove Liquidity for NOM Market Makers and Non-NOM Market Makers and the $1.10 per contract Non-Penny Symbol Fee to Remove Liquidity for NOM Market Makers and Non-NOM Market Makers. Customers and Professionals would continue to pay a $0.49 per contract Penny Symbols Fee to Remove Liquidity and an $0.85 per contract Non-Penny Symbol Fee to Remove Liquidity. Broker-Dealers and Firms would continue to pay a $0.50 per contract Penny Symbols Fee to Remove Liquidity and an $1.10 per contract Non-Penny Symbol Fee to Remove Liquidity. Despite the increase to the Penny Symbol and Non-Penny Symbol Fees to Remove Liquidity for NOM Market Makers and Non-NOM Market Makers, the Exchange believes the incentive offered in note 2 within NOM Options 7, Section 2(1) will continue to incentivize NOM Participants to direct liquidity to NOM for an opportunity to pay lower NOM Market Makers and Non-NOM Market Makers Penny Symbol or Non-Penny Symbol Fees to Remove Liquidity.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

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 changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission[11] ("NetCoalition"), the D.C. Circuit stated, "[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'…."[12]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

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11 NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

12 Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

The Exchange's proposal to amend note 2 within NOM Options 7, Section 2(1) to increase the $0.32 per contract NOM Market Maker and Non-NOM Market Maker Penny Symbol and Non-Penny Symbol Fees to Remove Liquidity to $0.38 per contract for executions less than 10,000 contracts when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership and they meet the requisite order flow requirements[13] is reasonable because despite the increase to the NOM Market Maker and Non-NOM Market Maker Penny Symbol and Non-Penny Symbol Fees to Remove Liquidity, the Exchange believes the incentive offered in note 2 within NOM Options 7, Section 2(1) will continue to incentivize NOM Participants to direct liquidity to NOM for an opportunity to pay lower NOM Market Maker and Non-NOM Market Maker Penny Symbol and Non-Penny Symbol Fees to Remove Liquidity. Participants would continue to be offered an opportunity to lower NOM Market Maker and Non-NOM Market Maker Penny Symbol and Non-Penny Symbol Fees to Remove Liquidity, thereby attracting order flow to the Exchange to the benefit of all other market participants.

The Exchange's proposal to amend note 2 within NOM Options 7, Section 2(1) to increase the $0.32 per contract NOM Market Maker and Non-NOM Market Maker Penny Symbol and Non-Penny Symbol Fees to Remove Liquidity to $0.38 per contract for executions less than 10,000 contracts when the Participant is (i) both the buyer and seller or (ii) the

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13 In order to receive the lower fee of $0.38 per contract proposed in note 2 of Options 7, Section 2(1), Participants would continue to either: (1) add 1.50% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of total industry customer equity and ETF option ADV contracts per day in a month and meet or exceed the cap for The Nasdaq Stock Market Opening Cross during the month; or (2) add 1.75% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of total industry customer equity and ETF option ADV contracts per day in a month.

Participant removes liquidity from another Participant under Common Ownership and they meet the requisite order flow requirements is equitable and not unfairly discriminatory because the Exchange will uniformly pay the lower Non-NOM Marker Maker or NOM Market Maker Penny Symbol or Non-Penny Symbol Fees for Removing Liquidity to all qualifying NOM Participants. Offering these discounts to NOM Market Makers is equitable and not unfairly discriminatory because NOM Market Makers have obligations to the market and regulatory requirements which do not apply to other market participants.[14] A NOM Market Maker has the obligation, for example, to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The proposed differentiation as between NOM Market Makers and other market participants recognizes the differing contributions of NOM Market Makers. For the above reasons, the Exchange believes that NOM Market Makers are entitled to discounted fees, provided they qualify for the discount. The Exchange believes it is equitable and not unfairly discriminatory to offer the fee discount to Non-NOM Market Makers because the Exchange is offering Participants flexibility in the manner in which they are submitting their orders. Non-NOM Market Makers have obligations on other exchanges to qualify as a market maker. Also, the Exchange believes that market makers not registered on NOM will be encouraged to send orders to NOM as an away market maker (Non-NOM Market Maker) with this incentive. Because the incentive is being offered to both market makers registered on NOM and those not registered on NOM, the Exchange believes that the proposal is equitable and not unfairly discriminatory because it encourages market makers to

[14] See NOM Options 2, Sections 4 and 5.

direct liquidity to NOM to the benefit of all Participants. This proposal recognizes the overall contributions made by market makers to a listed options market.

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.

Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact 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, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges. Because competitors are free adjust their order routing practices, the Exchange believes that the degree to which pricing changes in this market may impose any burden on competition is extremely limited.

Intra-market Competition

The proposed amendments do not impose an undue burden on intra-market competition. In terms of intra-market competition, the Exchange does not believe that its proposals will place any category of market participant at a competitive disadvantage. The Exchange's proposal to amend note 2 within NOM Options 7, Section 2(1) to increase the $0.32 per contract NOM Market Maker and Non-NOM Market Maker Penny Symbol and Non-Penny Symbol Fees to Remove Liquidity to $0.38 per contract for executions less than 10,000 contracts when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another

Participant under Common Ownership and they meet the requisite order flow requirements does not impose an undue burden on competition because the Exchange will uniformly pay the lower Non-NOM Marker Maker or NOM Market Maker Penny Symbol or Non-Penny Symbol Fees for Removing Liquidity to all qualifying NOM Participants. Offering these discounts to NOM Market Makers does not impose an undue burden on competition because NOM Market Makers have obligations to the market and regulatory requirements which do not apply to other market participants.[15] A NOM Market Maker has the obligation, for example, to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The proposed differentiation as between NOM Market Makers and other market participants recognizes the differing contributions of NOM Market Makers. For the above reasons, the Exchange believes that NOM Market Makers are entitled to discounted fees, provided they qualify for the discount. Offering the fee discount to Non-NOM Market Makers does not impose an undue burden on competition because the Exchange is offering Participants flexibility in the manner in which they are submitting their orders. Non-NOM Market Makers have obligations on other exchanges to qualify as a market maker. Also, the Exchange believes that market makers not registered on NOM will be encouraged to send orders to NOM as an away market maker (Non-NOM Market Maker) with this incentive. Because the incentive is being offered to both market makers registered on NOM and those not registered on NOM, the Exchange believes that the proposal does not impose an undue burden on competition because it encourages market makers to direct liquidity to NOM to the benefit of

15 See NOM Options 2, Sections 4 and 5.

all Participants. This proposal recognizes the overall contributions made by market makers to a listed options market.

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[16] and paragraph (f)(2) of Rule 19b-4 thereunder.[17] 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.

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-2023-011 on the subject line.

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16 15 U.S.C. 78s(b)(3)(A).

17 17 CFR 240.19b-4(f)(2).

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-2023-011. 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-NASDAQ-2023-011, 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.[18]

Sherry R. Haywood,

Assistant Secretary

[18] 17 CFR 200.30-3(a)(12).