

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65318; File No. SR-NASDAQ-2011-124)

September 12, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Fees for Members Using the NASDAQ Options Market

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 September 6, 2011, The NASDAQ Stock Market LLC (“NASDAQ” or the “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 NASDAQ. 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 the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on September 6, 2011. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at NASDAQ’s principal office, 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, NASDAQ 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. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

NASDAQ is proposing to modify Rule 7050 governing the rebates and fees assessed for option orders entered into NOM. Specifically, NASDAQ is proposing to modify pricing for the Customer Rebate to Add Liquidity in Penny Options by adding an additional volume achievement to earn an enhanced rebate. The Exchange currently pays a Customer Rebate to Add Liquidity in Penny Options based on six volume tiers as follows:

	Monthly Volume	Rebate to Add Liquidity
Tier 1	Participant adds Customer liquidity of up to 24,999 contracts per day in a month	\$0.26
Tier 2	Participant adds Customer liquidity of 25,000 – 59,999 contracts per day in a month	\$0.34
Tier 3	Participant adds Customer liquidity of 60,000 – 124,999 contracts per day in a month	\$0.38
Tier 4	Participant adds Customer liquidity of 125,000 or more contracts per day in a month	\$0.40
Tier 5	Participant adds (1) Customer liquidity of 60,000 or more contracts per day in a month, and (2) NOM Market Maker liquidity of 60,000 or more contracts per day in a month	\$0.40
Tier 6	Participant adds Customer liquidity of 25,000 or more	\$0.35

	contracts per day in a month, and (2) the Participant simultaneously qualifies for credit under the Investor Support Program set forth in Rule 7014.	
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To further encourage firms that route Customer orders to increase Customer order flow to the Exchange, the Exchange is proposing to modify the Customer Rebates to Add Liquidity in Penny Pilot by adding a monthly volume target for NOM Participants that qualify for Tiers 2 and 6. Specifically, firms that qualify for Tier 2 by adding Customer Liquidity in Penny Options of 25,000 to 59,999 contracts per day for the month, can receive an additional \$0.02 rebate by contributing 750,000 contracts of Customer Liquidity in Penny Options between September 6 and September 30, 2011. Also, firms that qualify for Tier 6 by adding Customer Liquidity in Penny Options of 25,000 or more contracts per day for the month and also qualifying for a credit under NASDAQ’s Investor Support Program (set forth in Rule 7014),³ can receive an additional \$0.02 rebate by contributing 750,000 contracts of Customer Liquidity in Penny Options between September 6 and September 30, 2011. NOM Participants that qualify for these two new tiers will receive an additional \$0.02 rebate only for executions occurring between September 6 and September 30, 2011; volume executed on September 1, 2011 and September 2, 2011 will not be eligible.

2. Statutory Basis

³ For a detailed description of the Investor Support Program, see Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010)(NASDAQ-2010-141)(notice of filing and immediate effectiveness)(the “ISP Filing”). See also Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010)(NASDAQ-2010-153)(notice of filing and immediate effectiveness); and 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011)(NASDAQ-2010-154)(notice of filing and immediate effectiveness).

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,⁴ in general, and with Section 6(b)(4) of the Act,⁵ 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.

The Exchange believes that the proposed new pricing tiers are equitable, reasonable and not unfairly discriminatory because they continue an existing program to encourage broker-dealers acting as agent for Customer orders to select the Exchange as a venue to post Customer orders. The Exchange believes that its success at attracting Customer order flow benefits all market participants by improving the quality of order interaction and executions at the Exchange.

The Exchange further believes that limiting the new tiers to firms already qualifying for Tiers 2 and 6 (and not those that qualify for Tier 3, 4 and 5) is equitable and not unfairly discriminatory because NOM Participants in Tiers 3, 4, and 5 already earn a higher rebate. For example, a NOM Participant that qualify [sic] for the new tiers will receive a rebate of either \$0.36 or \$0.37 per contract, whereas NOM Participants that qualify for Tiers 3, 4 and 5 receive a \$0.38 per contract rebate.

The Exchange believes that the proposed new pricing tiers for Customer Rebates to Add Liquidity in Penny Options is equitable and not unfairly discriminatory because the Exchange will uniformly pay a Rebate to Add Liquidity to Customers executing Penny Options based on the 750,000 volume target and monthly tiers proposed and discussed herein.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive or

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4).

rebate opportunities to be inadequate. The Exchange believes that the proposed rebate scheme is competitive and similar to other rebates and tiers opportunities in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts the rebates present on the Exchange today and substantially influenced the proposal set forth above.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, the Exchange does not believe that the proposed changes will impair the ability of members 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

Written comments were neither solicited nor 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.⁶ 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

⁶ 15 U.S.C. 78s(b)(3)(a)(ii).

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-2011-124 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2011-124. 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 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 No. SR-NASDAQ-2011-124 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Elizabeth M. Murphy
Secretary

⁷ 17 CFR 200.30-3(a)(12).