

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68899; File No. SR-NASDAQ-2013-027)

February 11, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Pricing Clarification

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 February 4, 2013, 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 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 Substance of the Proposed Rule Change

NASDAQ proposes to add references to certain terms in Chapter XV, entitled “Options Pricing,” which governs pricing for NASDAQ members using the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options. The Exchange also proposes a technical amendment to Section 2 of Chapter XV, entitled “NASDAQ Options Market – Fees and Rebates.”

The text of the proposed rule change is also available on the Exchange’s Website at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 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. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to add certain references to Chapter XV in order to provide greater clarity to the terms used throughout this Chapter for the purpose of assessing fees and paying rebates. Specifically, the Exchange proposes to add the terms “Customer,” “NOM Market Maker,” “Non-NOM Market Maker,” “Firm,” “Professional,” and “Broker-Dealer” to Chapter XV to provide guidance on how the Exchange applies the fees and rebates in Chapter XV to these categories of market participants. The Exchange proposes to state that the term “Customer” or (“C”) applies to any transaction that is identified by a NOM Participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of a broker or dealer or for the account of a “Professional” (as that term is defined in Chapter I, Section 1(a)(48)). The Exchange proposes to state that the term “NOM Market Maker” or (“M”) is a NOM 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 NOM Participant must be registered as a NOM Market Maker in at least one security.

The Exchange proposes to state that 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. The Exchange proposes to state that the term “Firm” or (“F”) applies to any transaction that is identified by a NOM Participant for clearing in the Firm range at OCC. The Exchange proposes to state that 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 Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by NOM Participants. Finally, the Exchange proposes to state that 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. The order capacity codes, “C,” “M,” “O,” “F,” “P,” and “B” are codes that have been established by the Exchange related to the order entry ports using the Financial Information Exchange (“FIX”) protocol.

The Exchange also proposes to define the term “Common Ownership” in Chapter XV. That term is currently defined and used throughout Section 2 of Chapter XV. The Exchange proposes to define it once at the beginning of Chapter XV as Participants under 75% common ownership or control and remove all other definitions in Section 2. The Exchange is not amending the current use of that term, but rather proposing to create a single definition for ease of reference.

The Exchange also proposes to define the terms “adding liquidity” and “removing liquidity” for purposes of Chapter XV, Section 2(1) pricing. Specifically, the Exchange

proposes to state that “[w]ith respect to Chapter XV, Sections 2(1) and (2) the order that is received by the trading system first in time shall be considered an order adding liquidity and an order that trades against that order shall be considered an order removing liquidity.” The Exchange believes that specifying which orders are considered adding and which orders are considered removing liquidity would further clarify NOM’s pricing.

Finally, the Exchange proposes to amend the numbering in Section 2 of Chapter XV to renumber the current Section 2(4). The Exchange recently filed a rule change to eliminate Section 2(3).³ At this time, the Exchange is proposing to renumber Section 2(4) as Section 2(3).

2. Statutory Basis

NASDAQ believes that its proposal to amend Chapter XV of the Rules to add references to various terms is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act⁵ in particular. The Exchange’s proposal to clarify its pricing is intended to provide additional guidance to market participants with respect to the application of fees and rebates in Chapter XV, similar to other options exchanges.⁶ Further, the Exchange also proposes to provide clarification regarding the manner in which the Exchange applies fee and rebates for adding and removing liquidity and define Common Ownership for ease of reference. The Exchange

³ See SR-NASDAQ-2013-013 (not yet published).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5) [sic].

⁶ See NASDAQ OMX PHLX LLC’s Pricing Schedule. See also the International Securities Exchange, LLC’s Fee Schedule.

believes the addition of these references will provide additional transparency to Chapter XV of the Exchange's Rules.

The Exchange does not believe that there is confusion among market participants with respect to the terms described herein, but rather that the addition of these terms to Chapter XV would serve to provide transparency and guidance to the benefit of all market participants. The Exchange believes that the proposal is consistent with Section 6(b)(5) in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by clarifying what fees and rebate in Chapter XV apply to certain transactions and market participants.

The Exchange is not amending the manner in which it applies pricing to various Participants. The proposed terms merely codify the manner in which the Exchange assesses fees and pays rebates today and defines Common Ownership today. Similarly, the manner in which fees and rebates for adding and removing liquidity are applied is not changing but merely codified by the addition of the terms to Chapter XV.

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

NASDAQ 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 is merely filing this clarification to specify how certain fees and rebates in Chapter XV are applied to market participants. The Exchange believes that this clarification will provide greater transparency to market participants. The Exchange does not believe that this amendment creates intramarket competition among Participants as it is applied uniformly to all Participants. The Exchange believes that clarifying the

applicability of certain fees and rebates for adding and removing liquidity within the Pricing Schedule provides market participants clear guidance.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁸

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. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

⁷ 15 U.S.C. 78s(b)(3)(a)(ii).

⁸ 17 CFR 240.19b-4(f)(6).

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-2013-027 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-2013-027. 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 such filing also will be available for inspection and copying at NASDAQ's principal office. 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-2013-027, 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.⁹

Kevin M. O'Neill
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).