

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75423; File No. SR-NASDAQ-2015-070)

July 10, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Relating to Non-Penny Pilot Options Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 30, 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 the Exchange’s transaction fees at Chapter XV, Section 2 entitled “NASDAQ Options Market – Fees and Rebates,” which governs pricing for NASDAQ members using the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on July 1, 2015.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 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 Non-Penny Pilot Options<sup>3</sup> Fees for Removing Liquidity<sup>4</sup> for all market participants, except Customers.<sup>5</sup> The Exchange is

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<sup>3</sup> The Penny Pilot was established in March 2008 is currently expanded and extended through June 30, 2015. 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, 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 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,

also proposing to remove all fees for options overlying the PHLX Semiconductor Sector<sup>SM</sup> (SOX<sup>SM</sup>).

#### Non-Penny Pilot Options Fees For Removing Liquidity

The Exchange proposes to amend the Non-Penny Pilot Options Fees for Removing Liquidity (including NDX) for Professionals,<sup>6</sup> Firms,<sup>7</sup> Non-NOM Market

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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 (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), 79 FR 71477 (November 25, 2014) (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) (notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement of Penny Pilot Issues That Have Been Delisted). See also NOM Rules, Chapter VI, Section 5.

<sup>4</sup> The Non-Penny Pilot Options pricing includes options overlying the Nasdaq 100 Index traded under the symbol NDX. For transactions in NDX, a surcharge of \$0.15 per contract will be added to the Fee for Adding Liquidity and the Fee for Removing Liquidity in Non-Penny Pilot Options, except for a Customer who will not be assessed a surcharge.

<sup>5</sup> The term “Customer” 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 Chapter I, Section 1(a)(48)).

<sup>6</sup> The term “Professional” 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 Participants.

<sup>7</sup> The term “Firm” or (“F”) applies to any transaction that is identified by a

Makers,<sup>8</sup> NOM Market Makers<sup>9</sup> and Broker-Dealers<sup>10</sup> from \$0.89 to \$0.94 per contract.

Customers will continue to be assessed a Non-Penny Pilot Options Fee for Removing Liquidity of \$0.85 per contract. The Exchange believes that despite this fee increase, Fees for Removing Liquidity in Non-Penny Pilot Options remain competitive.

**SOX**

The Exchange is proposing to remove all fees related to SOX from Chapter XV, Section 2 of the NOM Rules. Currently, Chapter XV, Section 2 specifies the following fees related to SOX:

	<b>Fees and Rebates (per executed contract)</b>					
	<b>Customer</b>	<b>Professional Firm</b>		<b>Non-NOM Market Maker</b>	<b>NOM Market Maker</b>	<b>Broker-Dealer</b>
<b>SOX:</b>						
Fee for Adding Liquidity	\$0.40	\$0.89	\$0.89	\$0.89	\$0.40	\$0.89
Fee for Removing Liquidity	\$0.40	\$0.89	\$0.89	\$0.89	\$0.40	\$0.89

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Participant for clearing in the Firm range at OCC.

<sup>8</sup> 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.

<sup>9</sup> The term “NOM Market Maker” means 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.

<sup>10</sup> 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 Exchange is proposing to remove the above-referenced fees as will delist SOX from NOM as of July 1, 2015.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>11</sup> in general, and with Section 6(b)(4) and 6(b)(5) of the Act,<sup>12</sup> 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Non-Penny Pilot Options Fees For Removing Liquidity

The Exchange's proposal to increase the Professional, Firm, Non-NOM Market Maker, NOM Market Maker and Broker-Dealer Non-Penny Pilot Options Fees for Removing Liquidity from \$0.89 to \$0.94 per contract is reasonable because this fee remains competitive with fees at other exchanges.<sup>13</sup> Further, these fees are designed to attract and compete for order flow to the Exchange, which provides a greater opportunity for trading by all market participants.<sup>14</sup> In addition, the increased Non-Penny Pilot Options Fees for Removing Liquidity are reasonable because the fees generate revenue that would support the various rebates which NOM pays for adding liquidity, which

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<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>13</sup> See NYSE Arca's Options Fees and Charges. NYSE Arca assesses a take liquidity fee of \$0.94 per contract to Professional Customers, Firms and Broker-Dealers in Non-Penny Pilot Options. A NYSE Market Maker is assessed a take liquidity fee of \$0.92 per contract in Non-Penny Pilot Options. A Customer is assessed a take liquidity fee of \$0.85 per contract in Non-Penny Pilot Options.

<sup>14</sup> Id.

attracts order flow to the Exchange.

The Exchange's proposal to increase the Professional, Firm, Non-NOM Market Maker, NOM Market Maker and Broker-Dealer Non-Penny Pilot Options Fee for Removing Liquidity from \$0.89 to \$0.94 per contract is equitable and not unfairly discriminatory because the Exchange would uniformly assess all non-Customers a Non-Penny Pilot Options Fee for Removing Liquidity of \$0.94 per contract. Customers would be assessed the lowest Non-Penny Pilot Options Fee for Removing Liquidity of \$0.85 per contract. Customer order flow enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

### SOX

The Exchange's proposal to remove the Fees for Adding and Removing Liquidity in options overlying SOX is reasonable because the Exchange is delisting SOX from NOM on July 1, 2015.

The Exchange's proposal to remove the Fees for Adding and Removing Liquidity in options overlying SOX is equitable and not unfairly discriminatory because the Exchange is delisting SOX from NOM on July 1, 2015 and therefore no market participant will be subject to these fees.

#### 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's proposal to increase the Professional, Firm, Non-NOM Market Maker, NOM Market Maker and Broker-Dealer Non-Penny Pilot Options Fee for Removing Liquidity from \$0.89 to \$0.94 per contract does not create an undue burden on competition. All market participants, other than Customers, will be assessed a Non-Penny Pilot Options Fee for Removing Liquidity of \$0.94 per contract. Customers are assessed a lower Non-Penny Pilot Options Fee for Removing Liquidity because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants.

The Exchange's proposal to remove the Fees for Adding and Removing Liquidity in options overlying SOX does not create an undue burden on competition because no market participant will be subject to these fees.

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.<sup>15</sup> 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.

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<sup>15</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2015-070 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-2015-070. 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; 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-2015-070 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.<sup>16</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).