

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79105; File No. SR-NASDAQ-2016-133)

October 17, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Specialized Quote Feed Port Fees

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 October 3, 2016, 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 Chapter XV, entitled “Options Pricing,” at Section 3, entitled “NASDAQ Options Market – Access Services.” Chapter XV governs pricing for Exchange members using the NASDAQ Options Market LLC (“NOM”), the Exchange’s facility for executing and routing standardized equity and index options. The Exchange proposes to amend Specialized Quote Feed (“SQF”) Port³ Fees.

The text of the proposed rule change is available on the Exchange’s website at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ SQF ports are ports that receive inbound quotes at any time within that month. The SQF Port allows a NOM Market Maker to access information such as execution reports and other relevant data through a single feed. For example, this data would show which symbols are trading on NOM and the current state of an options symbol (*i.e.*, open for trading, trading, halted or closed). Auction notifications and execution reports are also available. NOM Market Makers rely on data available through the SQF Port to provide them the necessary information to perform market making activities.

<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 SQF Port Fees in Chapter XV, Section 3 of the NOM Rules, while the Exchange transitions to state-of-the-art hardware and software architecture to achieve a more efficient and more robust infrastructure to support the growing needs of our Options Participants ("NOM Refresh"). In connection with the NOM Refresh, NOM Market Makers will be required to make changes to connect to the new NOM System via their SQF Ports, among other changes. The number of SQF Ports required by NOM Market Makers may be reduced, since a single connection may be utilized to quote across all symbols. The Exchange anticipates that NOM Market Makers will benefit from the efficiency of the service that will be available to them as a result of the NOM Refresh. While NOM Market Makers will be required to make network and other technical changes in order to connect to NOM via SQF, the Exchange believes that costs will decline overall as a result of the more efficient connectivity offered by the NOM Refresh.

The Exchange intends to provide NOM Market Makers with new SQF ports for connectivity and functionality testing so that NOM Market Makers may migrate from the old to the new SQF Ports over a reasonable period of time. The Exchange proposes to amend the current SQF Port pricing of \$750 per port, per month for purposes of the NOM Refresh. During the months of October and November 2016 (“NOM Refresh Period”), NOM Market Makers will be subject to a Fixed SQF Port Fee. The Fixed SQF Port Fee will be the amount that was paid by the NOM Market Maker for SQF Ports for the month of August 2016. NOM Market Makers will not be assessed an SQF Port Fee for their use of the new version of the SQF Ports to connect to the new environment during the NOM Refresh Period.⁴ The current SQF Port Fee of \$750 will no longer be assessed to current NOM Market Makers. Only new SQF Ports would be utilized as of December 1, 2016; the current ports will be eliminated after the NOM Refresh is complete.

If a NOM Participant applies to be a new NOM Market Maker after October 3, 2016 and requests an SQF Port during the time period from October 3, 2016 through November 30, 2016, the new NOM Market Maker would be assessed \$750.00 per port, per month.

The Exchange intends to file a separate rule change to propose new SQF Ports Fees for December 2016.

The Exchange also proposes to delete the OTTO Port Transition Fee Waiver. This waiver states that NOM Participants will not be assessed an SQF Port Fee in the month in which the NOM Participant has cancelled an OTTO Port and transitioned to an SQF Port. In order to receive the waiver, the Participant is required to provide the Exchange with written notification

⁴ For example if a NOM Market Maker obtained 1 new SQF Port to test during the NOM Refresh Period, the NOM Market Maker would not be assessed a new SQF Port Fee for that port, but would only pay the Fixed SQF Port Fee during the two months.

of the transition. In light of the proposed amendments to SQF fees, the Exchange proposes to remove the OTTO Port Transition Fee Waive [sic].

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁷

Likewise, in NetCoalition v. Securities and Exchange Commission⁸ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.⁹

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

⁷ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁸ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

⁹ See NetCoalition, at 534 - 535.

As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹⁰

Further, “[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’”¹¹ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes it is reasonable to allow NOM Market Makers to utilize new SQF Ports at no cost during the NOM Refresh Period to transition their current SQF Ports to the new SQF Ports that will be offered as a result of the NOM Refresh. In order to ease the transition from the current ports to new ports, NOM Market Makers would be given an extended period to test functionality and connectivity and resolve any issues that may arise during the testing phase with the new SQF Ports. Therefore, pursuant to this proposal, new SQF Ports will be offered at no cost to those NOM Market Makers that currently pay \$750 per SQF Port, per month.

The Exchange believes it is equitable and not unfairly discriminatory to allow NOM Market Makers to utilize new SQF Ports at no cost because the Exchange is permitting all current NOM Market Makers, who will be paying the SQF Port Fixed Fee, the opportunity to

¹⁰ Id. at 537.

¹¹ 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)).

utilize the new SQF Ports at no costs.

The Exchange's proposal to transition to a Fixed SQF Port Fee during the NOM Refresh Period (October and November 2016) is reasonable because NOM Market Makers will be able to continue to utilize their existing SQF Ports during the NOM Refresh Period to continue to conduct their business at a fixed cost. The Exchange believes that this will allow NOM Market Makers to have flexibility when testing the new SQF Ports as they will not be limited in number by cost.

The Exchange believes that assessing a Fixed SQF Port Fee utilizing the August 2016 billing is reasonable because the Exchange desires to offer NOM Market Makers who currently have SQF Ports some certainty with respect to their costs through the NOM Refresh. The Exchange believes that utilizing the month of August 2016 as the Fixed SQF Port Fee is reasonable because it should reflect an accurate representation of the number of ports typically utilized by that particular NOM Market Maker for SQF Ports. The month of August is typically not an active trading month and should be representative of the typical pattern of usage for the NOM Market Maker. Also, these NOM Market Makers would not be assessed any fees to utilize as many new SQF Ports as they require to test in the new system.

The Exchange believes that assessing a Fixed SQF Port Fee utilizing the August 2016 billing is equitable and not unfairly discriminatory because the Exchange will assess all current users of SQF Ports a Fixed SQF Port Fee based on the same criteria.

The Exchange believes that assessing new NOM Market Makers that do not have any SQF Ports and became NOM Market Makers after October 3, 2016, the current SQF Port fee of \$750, per port, per month from October 3, 2016 through November 30, 2016 is reasonable because these NOM Market Makers would not be required to maintain two sets of ports during

the transition.¹² Existing NOM Market Makers will be required to maintain old as well as new SQF ports during portions of the migration. These NOM Market Makers would be able to commence utilizing the new SQF ports for testing. As previously explained, the technology refresh will increase the efficiency with which members can connect to the NOM System. As a result of the refresh, members would not be required to utilize the same number of ports as they do today to connect to the NOM System and therefore this should reduce the number of SQF ports required and lower costs.

The Exchange believes that assessing new NOM Market Makers that do not have any SQF Ports and became NOM Market Makers after October 3, 2016, the current SQF Port fee of \$750, per port, per month from October 3, 2016 through November 30, 2016 is equitable and not unfairly discriminatory because new NOM Market Makers would not be paying a Fixed SQF Port Fee for their current SQF Ports. All current NOM Market Makers would be paying a Fixed SQF Port Fee to utilize SQF Ports.

The Exchange's proposal to remove the OTTO Port Transition Fee Waiver is reasonable because the Exchange is amending the pricing for SQF Ports. Today, the Exchange is assessing \$750 to obtain either an OTTO or SQF Port. With the NOM Refresh, the Exchange proposed to amend pricing for SQF Ports and eliminate the waiver because the pricing for SQF Ports is currently changing and will be changed again in November. A NOM Market Maker that does not have any SQF Ports and desires to obtain an SQF Port would be assessed \$750.

The Exchange's proposal to remove the OTTO Port Transition Fee Waiver is equitable and not unfairly discriminatory because the Exchange will not offer any Participant the waiver.

¹² Currently, all NOM Market Makers are utilizing SQF Ports. If a NOM Participant applied to become a NOM Market Maker from October 3, 2016 through November 30, 2016, they could still obtain the current SQF Ports. After December 1, 2016, only the new SQF Ports would be offered to all NOM Market Makers.

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. In terms of inter-market competition, 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 to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. 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.

In this instance, the proposed changes to the SQF Port Fee do not impose a burden on competition because if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, 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.

In terms of intra-market competition, offering NOM Market Makers the opportunity to utilize certain SQF Ports during the NOM Refresh Period at no cost does not impose an undue burden on competition. NOM Market Makers would be able to readily test ports at no additional cost and without limit. The Exchange is permitting all current NOM Market Makers, who will be paying the SQF Port Fixed Fee, the opportunity to utilize the new SQF Ports at no costs.

The assessment of a Fixed SQF Port Fee does not impose an undue burden on competition

because utilizing the month of August 2016 as the Fixed SQF Port Fee is an accurate representation of the number of ports typically utilized by that particular NOM Market Maker for SQF Ports. The month of August is typically not an active trading month and should be representative of the typical pattern of usage for the NOM Market Maker. All current users of SQF Ports will be assessed a Fixed SQF Port Fee based on the same criteria.

The Exchange believes that assessing new NOM Market Makers that do not have any SQF Ports and become NOM Market Makers after October 3, 2016, the current SQF Port fee of \$750, per port, per month from October 3, 2016 through November 30, 2016 does not impose an undue burden on competition because new NOM Market Makers would not be paying a Fixed SQF Port Fee for their current SQF Ports. All current NOM Market Makers would be paying a Fixed SQF Port Fee to utilize SQF Ports.

The Exchange's proposal to delete the OTTO Port Transition Fee does not impose an undue burden on competition because the Exchange will not offer any Participant the waiver.

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.¹³

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,

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

the 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-2016-133 on the subject line.

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-2016-133. 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-2016-133 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.¹⁴

Robert W. Errett
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).