

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79619; File No. SR-NASDAQ-2016-178)

December 20, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to SQF Ports

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 December 16, 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 – Ports and other 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.

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). NOM Market Makers rely on data available through the SQF Port to provide them the necessary information to perform market making activities.

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 SQF Port Fees in Chapter XV, Section 3 of the NOM Rules. The Exchange recently transitioned 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 this recent NOM Refresh, NOM Market Makers were required to make certain changes to connect to the new NOM System via their SQF Ports. As a result of these changes to NOM, the number of SQF Ports required by NOM Market Makers should 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 is available to them as a result of the NOM Refresh.

The Exchange provided NOM Market Makers with new SQF ports for connectivity so that NOM Market Makers could support our migration from the old to the new SQF Ports during

our symbol rollout period. During the months of October and November 2016 (“NOM Refresh Period”) the Exchange offered NOM Market Makers a Fixed SQF Port Fee, which is the amount that was paid by the NOM Market Maker for SQF Ports for the month of August 2016.

Currently, NOM Market Makers are not assessed an SQF Port Fee for their use of the new version of the SQF Ports to connect to the new environment during this NOM Refresh Period.⁴

As of December 1, 2016, only new SQF Ports were utilized and the old SQF Ports were eliminated.

At this time, the Exchange is proposing to eliminate the Fixed SQF Port Fee and adopt the following incremental cost model for SQF Port Fees, per port, per month:

| Number of SQF Ports | Monthly Fee Per Port |
|--|-----------------------------|
| First 5 ports | \$1,500 per port |
| Next 15 ports (6-20) | \$1,000 per port |
| All ports over 20 ports (21 and above) | \$500 per port |

For example, if a NOM Market Maker desired 21 SQF Ports in December 2016, the NOM Market Maker would be billed \$1,500 for the first 5 ports (\$7,500), the next 15 ports will be billed \$1,000 (\$15,000) and the final port would be billed \$500 for a total SQF Port Fee for December of \$23,000.

⁴ For example if a NOM Market Maker obtained 1 new SQF Port to test during the NOM Refresh Period, the NOM Market Maker was not assessed a new SQF Port Fee for that port, but only pay the Fixed SQF Port Fee during the two months. The Exchange notes that it is removing language related to new NOM Market Makers that request SQF Ports after October 3, 2016 would be assessed \$750 per port, per month between October 3, 2016 and November 30, 2016. This language is no longer necessary. The Exchange notes that no NOM Market Makers were subject to this fee during the NOM Refresh Period.

While NOM Market Makers will be assessed higher fees for each port under 20 ports as compared to the original \$750 SQF Port Fee prior to the implementation of the Fixed SQF Port Fee,⁵ the Exchange believes that costs will decline overall as a result of the more efficient connectivity offered by the NOM Refresh and the need for fewer ports. The Exchange believes that it continues to offer SQF Ports to NOM Market Makers at competitive prices.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ 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 its 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.”⁸

⁵ Prior to the implementation of the Fixed SQF Port Fee, the Exchange assessed an SQF Port Fee of \$750 per port, per month. See Securities Exchange Act Release No. 79105 (October 17, 2016), 81 FR 72844 (October 21, 2016) (SR-NASDAQ-2016-133).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

Likewise, in NetCoalition v. Securities and Exchange Commission⁹ (“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.¹⁰ 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.”¹¹

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’”¹² 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 assess NOM Market Makers an incremental SQF Port Fee, per port, per month of \$1,500 for the first 5 SQF Ports, \$1,000 for the next 15 SQF Ports and \$500 for any ports over 20 SQF Ports because with the refresh fewer SQF Ports are required to connect to the Exchange. The technology refresh increased the efficiency with which Participants connect to the System. As a result of the refresh, Participants require fewer SQF Ports to connect to the System and therefore this should reduce the number of ports required

⁹ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁰ See NetCoalition, at 534 - 535.

¹¹ Id. at 537.

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)).

and lower costs. With the refresh, each NOM Market Maker will be required to have at least 1 port to connect to the match engine as compared to 2 SQF Ports prior to the refresh. NOM Participants may have some technological reasons for desiring additional SQF Ports based on their own technical infrastructure requirements. The Exchange believes that the proposed rates and particularly the number of ports at each price point are reasonable because the Exchange utilized historical port usage and price points to determine comparable pricing.

Finally, the Exchange believes that it is reasonable to offer lower rates for a greater amount of ports because all NOM Participants only require one SQF Port. The Exchange believes that since 2 ports were required previously and now only 1 port is required, this pricing results in no cost increase. NOM Market Makers were originally assessed an SQF Port Fee of \$750 per port prior to the implementation of the Fixed SQF Port Fee.¹³ With this proposal, one port which equates to \$1,500 per port, the equivalent of 2 ports at \$750 per port. The Exchange assesses these fees to cover costs associated with supporting its architecture. The Exchange believes it is reasonable to assess less fees beyond a certain number of ports because the costs are mostly recouped in the first tier. Today, Bats BZX Exchange, Inc. (“BATS BZX”) assesses \$1,500 to its market makers for Ports with Bulk Quoting Capabilities,¹⁴ which is comparable to the highest priced tier that NOM is proposing for SQF Ports. The Exchange notes that the SQF Ports also have bulk quoting capability.

The Exchange believes it is equitable and not unfairly discriminatory to assess NOM Market Makers an incremental SQF Port Fee, per port, per month of \$1,500 for the first 5 SQF Ports, \$1,000 for the next 15 SQF Ports and \$500 for any ports over 20 SQF Ports because all

¹³ Prior to the implementation of the Fixed SQF Port Fee, the Exchange assessed an SQF Port Fee of \$750 per port, per month. See Securities Exchange Act Release No. 79105 (October 17, 2016), 81 FR 72844 (October 21, 2016) (SR-NASDAQ-2016-133).

¹⁴ See Bats BZX Options Exchange Fee Schedule.

NOM Market Makers would be uniformly assessed the same SQF Port Fees, based on usage. Other NOM Participants that do not engage in market making activities do not utilize SQF Ports.

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 SQF Port Fees 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, assessing NOM Market Makers an incremental SQF Port Fee, per port, per month of \$1,500 for the first five SQF Ports, \$1,000 for six to 20 SQF Ports and \$500 for more than 20 SQF Ports does not impose an undue burden on competition because all NOM Market Makers would be uniformly assessed the same SQF Port

Fees, based on usage. Other NOM Participants that do not engage in market making activities do not utilize SQF Ports.

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.¹⁵

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.

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-2016-178 on the subject line.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2016-178. 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-2016-178 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.¹⁶

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Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).