

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-81121; File No. SR-NASDAQ-2017-067)

July 11, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Customer and Professional Penny Pilot Options Tier 8 Rebate to Add Liquidity

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, 2017, 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 modify the NASDAQ Options Market LLC’s (“NOM”) pricing at Chapter XV, Section 2(1), to amend the Customer<sup>3</sup> and Professional<sup>4</sup> Penny Pilot Options Tier 8 Rebate to Add Liquidity.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on July 3, 2017.

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

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

<sup>3</sup> The term “Customer” or (“C”) 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.” See Chapter XV.

<sup>4</sup> 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 Participants.

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 Customer and Professional Penny Pilot Options Rebate to Add Liquidity tiers. Specifically, the Exchange proposes to amend the current qualifications related to the Tier 8 Customer and Professional Penny Pilot Options rebate. The proposed new Tier 8 qualifications should continue to attract Customer and Professional order flow to NOM. This order flow benefits other market participants through order interaction.

Today, the Exchange pays Customer and Professional Penny Pilot Options Rebates to Add Liquidity as follows:

	<b>Rebate to</b>
	<b>Add</b>
<b>Monthly Volume</b>	<b>Liquidity</b>
<b>Tier</b> Participant adds Customer, Professional, Firm, Non-NOM Market Maker	\$0.20

<b>1</b>	and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.10% of total industry customer equity and ETF option average daily volume ("ADV") contracts per day in a month	
<b>Tier</b>	Participant adds Customer, Professional, Firm, Non-NOM Market Maker	\$0.25
<b>2</b>	and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month	
<b>Tier</b>	Participant adds Customer, Professional, Firm, Non-NOM Market Maker	\$0.42
<b>3</b>	and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month	
<b>Tier</b>	Participant adds Customer, Professional, Firm, Non-NOM Market Maker	\$0.43
<b>4</b>	and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month	
<b>Tier</b>	Participant adds Customer, Professional, Firm, Non-NOM Market Maker	\$0.45
<b>5</b>	and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.40% to 0.75% of total industry customer equity and ETF option ADV contracts per day in a month	
<b>Tier</b>	Participant has Total Volume of 100,000 or more contracts per day in a	\$0.45
<b>6</b>	month, of which 25,000 or more contracts per day in a month must be Customer and/or Professional liquidity in Penny Pilot Options	

**Tier 7** Participant has Total Volume of 150,000 or more contracts per day in a month, of which 50,000 or more contracts per day in a month must be

Customer and/or Professional liquidity in Penny Pilot Options

**Tier 8** Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny

Pilot Options above 0.75% or more of total industry customer equity and ETF

option ADV contracts per day in a month, or Participant adds: (1) Customer

and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot

Options of 0.25% or more of total industry customer equity and ETF option

ADV contracts per day in a month, and (2) has added liquidity in all

securities through one or more of its Nasdaq Market Center MPIDs that

represent 1.00% or more of Consolidated Volume in a month or qualifies for

MARS (defined below)

Today, the Exchange pays a \$0.48 per contract rebate<sup>5</sup> to Participants that qualify for a

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<sup>5</sup> Note “c,” which is applicable to the Tier 8 rebate, provides additional rebates to Participants that: (1) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.15% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional \$0.02 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (2) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.30% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional \$0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (3) (a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month, (b) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options above 0.15% of total industry customer equity and ETF option ADV

Tier 8 Customer or Professional Penny Pilot Options Rebate to Add Liquidity by adding Customer, Professional, Firm,<sup>6</sup> Non-NOM Market Maker<sup>7</sup> and/or Broker-Dealer<sup>8</sup> liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month, or adding: (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.25% or more of total industry customer equity and ETF option ADV contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS.<sup>9</sup>

The Exchange is proposing to continue to pay a \$0.48 per contract rebate provided, a NOM Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more of

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contracts per day in a month, and (c) execute greater than 0.04% of Consolidated Volume ("CV") via Market-on-Close/Limit-on-Close ("MOC/LOC") volume within the NASDAQ Stock Market Closing Cross within a month will receive an additional \$0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in a month.

Consolidated Volume shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of an equity member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity.

<sup>6</sup> The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

<sup>7</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>8</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.

<sup>9</sup> NOM Participants that have System Eligibility and have executed the requisite number of Eligible Contracts in a month are paid MARS rebates based on average daily volume in a month. See Chapter XV, Section 2(6).

total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds: (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of **0.20%** or more of total industry customer equity and ETF option ADV contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS.

The Exchange's proposal to amend the current qualification from Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.25% or more of total industry customer equity and ETF option ADV contracts per day in a month to 0.20% or more of total industry customer equity and ETF option ADV contracts per day in a month should provide Participants the ability to qualify for this tier by executing less contracts which represent industry volume in a given month. The Exchange believes that this amendment should incentivize Participants to transact more volume to qualify for a Tier 8 rebate since one of the qualifiers requires a lower percentage of total industry customer equity and ETF option ADV contracts per day in a month as compared to the current percentage.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>11</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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

The Exchange's proposal to amend the current qualifications related to the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity is reasonable because the rebate should continue to attract Customer and Professional order flow to NOM. The additional Customer and Professional order flow to NOM benefits other market participants by providing additional liquidity with which to interact. Customer liquidity offers unique benefits to the market which benefits all market participants. Customer liquidity 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. The Exchange believes that encouraging Participants to add Professional liquidity creates competition among options exchanges because the Exchange believes that the rebates may cause market participants to select NOM as a venue to send Professional order flow. Amending the current qualification 0.25% or more of total industry customer equity and ETF option ADV contracts to 0.20% or more of total industry customer equity and ETF option ADV contracts affords Participants the ability to qualify for this Tier 8 because it requires less volume as a result of the proposed lower percentage of industry volume. With this proposal, Participants that consistently send order flow to the Exchange may continue to qualify for Tier 8 rebates and other Participants may send additional order flow to qualify for a Tier 8 rebate with the lower requirement.

The Exchange's proposal to amend the current qualifications related to the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity is equitable and not unfairly discriminatory because all Participants are eligible to earn rebates. These rebates would be uniformly paid to all qualifying Participants.

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. The proposed pricing change is competitive and does not impose a burden on inter-market competition. If the change proposed herein is 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 change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

The Exchange's proposal to amend the current qualifications related to the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity does not impose an undue burden on intra-market competition because all Participants are eligible to earn rebates and these rebates would be uniformly paid to all qualifying Participants.

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>12</sup>

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2017-067 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-2017-067. 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-2017-067 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>13</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).