

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83824; File No. SR-NASDAQ-2018-063)

August 10, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Pricing at Chapter XV, Section 2 Entitled "Nasdaq Options Market – Fees and Rebates"

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 July 31, 2018, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("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 pricing at Chapter XV, Section 2 entitled "Nasdaq Options Market – Fees and Rebates," which governs pricing for Nasdaq Participants using The Nasdaq Options Market LLC ("NOM"), Nasdaq's facility for executing and routing standardized equity and index options. The Exchange proposes to amend an incentive offered today related to its subsidy program, the Market Access and Routing Subsidy or "MARS."

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on August 1, 2018.

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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

NOM proposes to amend the Exchange's pricing at Chapter XV, Section 2 entitled "Nasdaq Options Market – Fees and Rebates." Specifically, the Exchange proposes to amend an incentive in note "d" offered to NOM Participants that qualify for any MARS Payment Tier in Chapter XV, Section 2(6) related to the MARS subsidy program. MARS pays a subsidy to NOM Participants that provide certain order routing functionalities to other NOM Participants and/or use such functionalities themselves.<sup>3</sup>

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<sup>3</sup> Generally, under MARS, the Exchange pays participating NOM Participants to subsidize their costs of providing routing services to route orders to NOM. The Exchange believes that the proposed amendment to MARS will continue to attract higher volumes of electronic equity and ETF options volume to the Exchange from non-NOM Participants as well as NOM Participants. The order routing functionalities permit NOM Participants to provide access and connectivity to other Participants as well as utilize such access for themselves. The Exchange notes that one NOM Participant is eligible for payments under MARS, while another NOM Participant might potentially be liable for transaction charges associated with the execution of the order, because those orders were delivered to the Exchange through a NOM Participant's connection to the Exchange and that

## Background on MARS

Today, to qualify for MARS, a NOM Participant's routing system (hereinafter "System") is required to meet certain criteria.<sup>4</sup>

MARS Payments are made to NOM Participants that have System Eligibility and have routed the requisite number of Eligible Contracts daily in a month ("Average Daily Volume"), which were executed on NOM.<sup>5</sup> Today, NOM Participants that have System Eligibility and have executed the requisite number of Eligible Contracts in a month will be paid the following rebates:<sup>6</sup>

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Participant qualified for the MARS Payment.

<sup>4</sup> Specifically the Participant's System is required to: (1) enable the electronic routing of orders to all of the U.S. options exchanges, including NOM; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with NOM's API to access current NOM match engine functionality. The Participant's System would also need to cause NOM to be one of the top three default destination exchanges for (a) individually executed marketable orders if NOM is at the national best bid or offer ("NBBO"), regardless of size or time, or (b) orders that establish a new NBBO on NOM's Order Book, but allow any user to manually override NOM as a default destination on an order-by-order basis. Any NOM Participant is permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described herein and the Participant satisfies NOM that it appears to be robust and reliable. Participants remain solely responsible for implementing and operating its System.

<sup>5</sup> For the purpose of qualifying for the MARS Payment, Eligible Contracts may include Firm, Non-NOM Market Maker, Broker-Dealer, or Joint Back Office or "JBO" equity option orders that add liquidity and are electronically delivered and executed. Eligible Contracts do not include Mini Option orders.

<sup>6</sup> The specified MARS Payments are paid on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System and meet the requisite Eligible Contracts ADV. No payments are made with respect to orders that are routed to NOM, but not executed. Also, a Participant is not entitled to receive any other revenue from the Exchange for the use of its System specifically with respect to orders routed to NOM.

<b>Tiers</b>	<b>Average Daily Volume (“ADV”)</b>	<b>MARS Payment (Penny)</b>	<b>MARS Payment (Non- Penny)</b>
1	2,000	\$0.07	\$0.15
2	5,000	\$0.09	\$0.20
3	10,000	\$0.11	\$0.30
4	20,000	\$0.15	\$0.50
5	45,000	\$0.17	\$0.60

NOM Participants that qualify for Customer<sup>7</sup> and Professional<sup>8</sup> Penny Pilot Options Rebate to Add Liquidity Tier 6 will receive an extra \$0.09 per contract rebate in addition to any MARS Payment tier on MARS Eligible Contracts the NOM Participant qualifies for in a given month.

Incentive

Today, the Exchange pays certain Customer and Professional Penny Pilot Options Rebates to Add Liquidity. These rebates are structured as a 6 tier rebate program ranging from \$0.20 to \$0.48 per contract, with increasing volume requirements for each tier. In addition to the Customer and Professional Penny Pilot Options Rebates to Add Liquidity, the NOM Participant may also qualify for an additional rebate provided the NOM Participant qualifies for any MARS Payment Tier for each transaction which adds liquidity in Penny Pilot Options in that month. Further, the Exchange pays an additional \$0.04 per contract Penny Pilot Options Customer

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<sup>7</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 which is not for the account of broker or dealer or for the account of a “Professional.” See Chapter XV.

<sup>8</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. See Chapter XV.

and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month, in addition to qualifying Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tiers 1-6.<sup>9</sup> Also, today, NOM Participants that qualify for a note “c” incentive receive the greater of the note “c” or note “d” incentive.<sup>10</sup>

The Exchange now proposes to amend note “d” to increase the additional \$0.04 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity currently offered to NOM Participants that qualify for any MARS Payment Tier in addition to qualifying for Customer and/or Professional Rebate to Add Liquidity Tier 1 to \$0.05 per contract for each transaction which adds liquidity in Penny Pilot Options in that month. For those NOM Participants that qualify for Customer and/or Professional Rebate to Add Liquidity Tiers 2-6, the Exchange will continue to provide the additional \$0.04 per contract rebate for each transaction that adds liquidity in Penny Pilot Options in that month, provided the NOM Participant also qualifies for any MARS Payment Tier.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Sections 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 Participants and issuers and other persons using any facility or system which the Exchange

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<sup>9</sup> See Chapter XV, Section 2(1), note “d.”

<sup>10</sup> The note “c” incentive can be found at Chapter XV, Section 2(1) and provides additional incentives to NOM Participants that qualify for the Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tier 6 in addition to meeting certain criteria specified in note “c”.

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

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

operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is reasonable to amend note “d” in Chapter XV, Section 2(1) to increase the additional \$0.04 per contract rebate for NOM Participants qualifying for Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tier 1 in addition to qualifying for any MARS Payment tier to \$0.05 per contract for each transaction that adds liquidity in Penny Pilot Options for that month. The proposed amendment should continue to encourage NOM Participants to qualify for the Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tier 1 in addition to any MARS Payment tier, thereby executing a greater amount of order flow on NOM to the benefit of all market participants who may interact with the order flow. Furthermore, the proposed changes will allow the Exchange to remain competitive with other options exchanges that offer similar incentives.<sup>13</sup>

Further, the Exchange’s proposal to amend the note “d” incentive as described above is equitable and not unfairly discriminatory. All NOM Participants are eligible to qualify for a MARS Payment, provided they have System Eligibility, and all NOM Participants may be eligible for the Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tier 1 provided they execute qualifying volume. All NOM Participants are eligible to qualify for the

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<sup>13</sup> See MIA X PEARL Fee Schedule, Section 1)a). MIA X PEARL offers priority customers and non-priority customers a \$0.25 per contract maker rebate in tier 1 for adding liquidity in penny classes. See Cboe BZX Options Exchange (“BZX”) Fee Schedule. BZX offers customers and professionals a base rebate of \$0.25 per contract for adding liquidity in penny pilot options. Under NOM’s proposal, NOM Participants would similarly have the opportunity to earn up a \$0.25 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity in Tier 1 (i.e., the \$0.20 per contract Tier 1 rebate plus the additional \$0.05 note “d” incentive), provided they meet the requisite qualifications.

note “d” incentive provided the requisite requirements are met. The Exchange would uniformly pay the additional note “d” incentive to all qualifying NOM 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. The Exchange’s proposal to amend the note “d” incentive as described above does not impose an undue burden on competition. All NOM Participants are eligible to qualify for a MARS Payment, provided they have System Eligibility, and all NOM Participants may be eligible for a Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity provided they execute qualifying volume. All NOM Participants are eligible to qualify for the note “d” incentive provided the requisite requirements are met. The Exchange would uniformly pay the additional note “d” incentive to all qualifying NOM Participants. Furthermore, 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 Exchange’s proposal reflects this competitive environment as it will allow the Exchange remain competitive with other options exchanges that offer similar incentives, as discussed above.<sup>14</sup>

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.

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<sup>14</sup> See note 13 above.

### 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.

### 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-2018-063 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-2018-063. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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

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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NASDAQ-2018-063, 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>

Robert W. Errett  
Deputy Secretary

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