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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66360; File No. SR-NASDAQ-2012-022)

February 8, 2012

Self-Regulatory Organizations; NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Options 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 January 31, 2012, 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 NASDAQ. 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 NASDAQ Stock Market LLC proposes to modify Chapter XV, entitled “Option Fees,” at Sec. 2 governing pricing for NASDAQ members using the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend the applicability of the Customer Rebate to Add Liquidity and Fee for Removing Liquidity for the Penny Pilot³ Options (“Penny Options”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through June 30, 2012. 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

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on February 1, 2012.

The text of the proposed rule change is available on the Exchange's Website at <http://www.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. 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

NASDAQ proposes to modify Chapter XV, entitled "Option Fees," at Sec. 2 governing the rebates and fees assessed for option orders entered into NOM. Specifically, the Exchange is proposing to modify the four tier structure for paying Customer Rebates to Add Liquidity in Penny Pilot Options. The Exchange proposes to increase the tiers to five tiers and further incentivize NOM Participants to route Customer orders to the Exchange by paying an additional rebate for certain orders after the NOM Participant has met a volume criteria. The Exchange

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). See also Exchange Rule Chapter VI, Section 5.

believes that incentivizing NOM Participants to send additional Customer orders to the Exchange will benefit all market participants by adding liquidity to the market.

Specifically, the Exchange currently pays a Customer Rebate to Add Liquidity in Penny Pilot Options based on the following tier structure:

	Monthly Volume	Rebate to Add Liquidity
Tier 1	Participant adds Customer liquidity of up to 49,999 contracts per day in a month	\$0.26
Tier 2	Participant adds Customer liquidity of 50,000 or more contracts per day in a month	\$0.42
Tier 3^a	Participant adds (1) Customer liquidity of 100,000 or more contracts per day in a month, and (2) NOM Market Maker liquidity of 40,000 or more contracts per day in a month	\$0.43
Tier 4^b	Participant adds (1) Customer liquidity of 25,000 or more contracts per day in a month, and (2) the Participant has certified for the Investor Support Program set forth in Rule 7014; and (3) the Participant executed at least one order on NASDAQ's equity market.	\$0.40

^a For purposes of Tier 3, the Exchange will aggregate the trading activity of separate NOM Participants when computing average daily volumes where 75 percent common ownership or control exists between NOM Participants.

^b For purposes of Tier 4, the Exchange will allow a NOM Participant to qualify for the rebate if a NASDAQ member under common ownership with the NOM Participant has certified for the Investor Support Program and executed at least one order on NASDAQ's equity market. Common ownership is defined as 75 percent common ownership or control.

The Exchange proposes to amend the Customer Rebate to Add Liquidity in Penny Pilot Options to a five tier structure as follows:

	Monthly Volume	Rebate to Add Liquidity
Tier 1	Participant adds Customer liquidity of up to 14,999 contracts per day in a month	\$0.26
Tier 2	Participant adds Customer liquidity of 15,000 to 49,999 contracts per day in a month	\$0.38
Tier 3	Participant adds Customer liquidity of 50,000 or more contracts per day in a month	\$0.42
Tier 4^a	Participant adds (1) Customer liquidity of 100,000 or more contracts per day in a month, and (2) NOM Market Maker liquidity of 40,000 or more contracts per day in a month	\$0.43
Tier 5^b	Participant adds (1) Customer liquidity of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014; and (3) the Participant executed at least one order on NASDAQ's equity market	\$0.40

^a For purposes of Tier 4, the Exchange will aggregate the trading activity of separate NOM Participants when computing average daily volumes where 75 percent common ownership or control exists between NOM Participants.

^b For purposes of Tier 5, the Exchange will allow a NOM Participant to qualify for the rebate if a NASDAQ member under common ownership with the NOM Participant has certified for the Investor Support Program and executed at least one order on NASDAQ's equity market. Common ownership is defined as 75 percent common ownership or control.

Currently, Tier 1 firms that add up to 49,999 contracts per day in a month of liquidity, in a Penny Pilot Option, receive a rebate of \$ 0.26 per contract. The Exchange is proposing to amend Tier 1 to change the contract amount to 14,999 contracts with the same \$0.26 per contract rebate. Based on past experience, the Exchange anticipates that all firms currently receiving the \$0.26 rebate will maintain their current level of rebate or achieve a higher rebate in Tier 2.

The Exchange is proposing a new Tier 2 with a \$0.38 per contract rebate for firms that add Customer liquidity in Penny Pilot Options between 15,000 to 49,999 contracts per day in a month. This proposed new tier would result in a greater rebate for current Tier 1 Participants who add liquidity between 15,000 and 49,999 contracts.

The Exchange is not proposing any changes to current Tiers 2, 3 and 4 other than to rename them as Tiers 3, 4 and 5, respectively. The Exchange would also make conforming amendments to current notes “a” and “b” to reference newly named Tiers 4 and 5, respectively, as well.

The Exchange currently pays an additional \$0.01 per contract rebate on each Customer order of 5,000 or more, displayed or non-displayed contracts, which adds liquidity in a Penny Pilot Option, as long as that NOM Participant has qualified for a rebate in Tier 2, 3 or 4 for that month.⁴ The Exchange proposes to amend the language in the rule text to include “Tier 5” as well. The Exchange would continue to apply this additional \$0.01 per contract rebate on all tiers except Tier 1.

The Exchange also proposes to further incentivize NOM Participants by reducing the Customer Fee for Removing Liquidity in a Penny Pilot Option from \$0.45 per contract to \$0.44 per contract. The Exchange believes that this decrease in the amount assessed a Customer to remove liquidity will also attract additional order flow to the Exchange.

The Exchange is also proposing to make a typographical correction to the Fee Schedule to remove unnecessary punctuation. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on February 1, 2012.

⁴ This rebate is in addition to the rebate for the qualifying tier.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,⁵ in general, and with Section 6(b)(4) 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 or system which NASDAQ operates or controls.

The Exchange believes that the proposed new pricing tiers are reasonable, equitable and not unfairly discriminatory because they continue an existing program⁷ to encourage broker-dealers acting as agent for Customer orders to select the Exchange as a venue to post Customer orders. The Exchange believes that its success at attracting Customer order flow benefits all market participants by improving the quality of order interaction and executions at the Exchange. The Exchange believes the existing monthly volume thresholds have incentivized firms that route Customer orders to the Exchange to increase Customer order flow to the Exchange. The Exchange desires to continue to encourage firms that route Customer orders to increase Customer order flow to the Exchange by offering greater Customer rebates for greater liquidity added to the Exchange.

Specifically, the Exchange believes that the increased rebates would further incentivize firms to continue to send more Customer volume to the Exchange. Today, the Exchange pays any Customer order up to 49,999 contracts per day in a given month a rebate of \$0.26 per contract for adding liquidity in Penny Pilot Options. The Exchange would continue to pay this

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

⁷ The Exchange adopted these monthly volume achievement tiers in September 2011. See Securities Exchange Act Release Nos. 65317 (September 12, 2011), 76 FR 57778 (September 16, 2011) (SR-NASDAQ-2011-124), 65317 (September 12, 2011), 76 FR 61129 (October 3, 2011) (SR-NASDAQ-2011-127) and 66126 (January 10, 2012), 77 FR 2335 (January 17, 2012) (SR-NASDAQ-2012-003).

same rebate for Tier 1 for any Customer order up to 14,999 contracts per day in a given month that adds liquidity in Penny Pilot Options. Any Participant that adds between 15,000 and 49,999 contracts per day in a month would receive an increased rebate of \$0.38 per contract with this proposal (up from \$0.26 per contract). The Exchange believes that its proposal to create a new Tier 2 and pay a greater rebate for certain Tier 1 orders is reasonable, equitable and not unfairly discriminatory because a greater rebate would incentivize NOM Participants to send a greater number of Customer orders that add liquidity in Penny Pilot Options between 15,000 and 49,999 contracts, which in turn would benefit all market participants by increasing liquidity on NOM. Also, all NOM Participants transacting Customer orders continue to have the ability to earn a rebate on NOM because there is no minimum order requirement.

The Exchange believes that it continues to be reasonable to offer a rebate of \$0.01 per contract on each Customer order of 5,000 or more displayed or non-displayed contracts, which adds liquidity in a Penny Pilot Option, as long as that NOM Participant has qualified for a rebate in Tier 2, 3, 4 and now 5 for that month. This \$0.01 per contract rebate is in addition to the rebate for the qualifying tier. With this proposal, more participants that are currently in Tier 1 would qualify for the additional rebate if they transacted a Customer order of 5,000 or more displayed or non-displayed contracts, which adds liquidity in Penny Pilot Options.⁸ The Exchange believes that this enhanced incentive, which will be available to a greater number of NOM Participants, will encourage those NOM Participants to send larger orders to the Exchange, which in turn would also assist those Participants that send Customer orders in Penny Pilot Options to earn higher rebates by qualifying for a higher tier as well as bringing additional liquidity to the Exchange. The Exchange further believes that continuing to limit the enhanced

⁸ Specifically, those Participants adding between 15,000 and 49,999 contracts per day in a month.

\$0.01 per contract rebate to firms qualifying for Tiers 2, 3, 4 or 5 (and not those that qualify for Tier 1) is equitable and not unfairly discriminatory because generally NOM Participants in proposed Tier 1 that add up to 14,999 contracts per day in a month are not sending Customer orders of 5,000 or more contracts. If those Participants in Tier 1 sent three Customer orders of 5,000 or more per day in a given month to the Exchange, they would qualify for the Tier 2 rebate as well as the additional enhanced rebate. The Exchange believes that it is equitable and not unfairly discriminatory to incentivize those NOM Participants that qualify for higher volume tiers as they are the most likely to obtain the enhanced rebate and continue to send larger orders, which provides more liquidity to the Exchange. Finally, the Exchange would pay the enhanced rebate uniformly to those NOM Participants that qualify for Tiers 2, 3, 4 or 5 and meet the Customer order volume discussed herein for Penny Pilot Options.

The Exchange also believes that it is reasonable to lower the Customer Fee for Removing Liquidity in Penny Pilot Options because a lower fee will attract more NOM Participants to remove Customer orders. The Exchange also believes that it is equitable and not unfairly discriminatory to lower the fee for Customers, as compared to other market participants, because encouraging NOM Participants to transact Customer orders will benefit all market participants by increasing liquidity on NOM. Also, all NOM Participants that transact Customer orders would be uniformly impacted by the proposal.

The Exchange's proposal to correct a typographical error within the Rule is reasonable, equitable and not unfairly discriminatory because it will make the Rule more consistent with the current text.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order

flow to competing exchanges if they deem fee levels at a particular exchange to be excessive or rebate opportunities to be inadequate. The Exchange believes that the proposed fee and rebate scheme are competitive and similar to other fees, rebates and tier opportunities in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts the fees and rebates present on the Exchange today and substantially influences the proposal set forth above.

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.

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.⁹ 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 necessary or appropriate in the public interest, for the protection of investors, or 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.

⁹ 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. Please include File Number SR-NASDAQ-2012-022 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2012-022. 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-2012-022 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.¹⁰

Kevin M. O'Neill
Deputy Secretary

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¹⁰ 17 CFR 200.30-3(a)(12).