

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69236; File No. SR-NASDAQ-2013-049)

March 26, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Rebates for Mini Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on March 15, 2013, 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 modify Chapter XV, Section 2, entitled “NASDAQ Options Market – Fees and Rebates,” which governs pricing for NASDAQ members using the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options, to establish fees and rebates for the option contracts overlying 10 shares of a security (“Mini Options”) applicable to NASDAQ members using NOM.³

The text of the proposed rule change is available at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 68720 (Jan. 24, 2013), 78 FR 6382 (Jan. 30, 2013).

<http://nasdaq.cchwallstreet.com/>, at the Exchange’s principal office, 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 purpose of this proposal is to modify Chapter XV, Section 2, entitled “NASDAQ Options Market – Fees and Rebates,” to establish fees and rebates for Mini Options applicable to NASDAQ members using NOM.

Specifically, the Exchange is proposing to assess market participants on a per trade basis the following fees and rebates on Mini Options:

	Customer	Professional, Firm, Broker/Dealer, Non-NOM Market Maker	NOM Market Maker
Rebate to Add Liquidity	\$0.030	\$0.000	\$0.015
Fee to Remove Liquidity	\$0.049	\$0.049	\$0.049

The Exchange believes that the \$0.030 and \$0.015 rebate per trade for Customers and NOM Market Makers, respectively, should encourage these market participants to

trade Mini Options on NOM and serves as a means to incentivize order flow and to promote this new infant product for trading on NOM. The Exchange is not offering at this time any rebate per trade to Professionals, Firms, Broker/Dealers, or Non-NOM Market Makers.

The Fee to Remove Liquidity for all market participants will be \$0.049 on a per trade basis. The Exchange believes that this is an equitable allocation of reasonable fees since the Exchange is assessing all market participants the same rate to transact trades in Mini Options.

On a per trade basis, the Rebate to Add Liquidity or Fee to Remove Liquidity will be rounded to the nearest \$0.01 using standard rounding rules. For example, a NOM Market Maker adding liquidity is contra to a Customer removing liquidity for seven contracts. The NOM Market Maker's total Rebate to Add Liquidity for this transaction will be \$0.105 rounded to \$0.11 and the Customer will be assessed \$0.343 rounded to \$0.34.

Additionally, Mini Options volume will not count toward the Penny Pilot and Non-Penny pilot tiers, where applicable.

While the changes to the NOM rules pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 18, 2013.

2. Statutory Basis

The Exchange believes that its proposal to amend its rules is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Sections 6(b)(4) of the

⁴ 15 U.S.C. 78f(b).

Act⁵ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

Even though the Exchange is proposing lower per trade fees as compared to standard option contracts, as it believes is necessary for the product to trade on NOM due to its smaller exercise and assignment value of a Mini Option, the Exchange recognizes the costs to the Exchange to process quotes and orders in Mini Options, perform regulatory surveillance and retain quotes and orders for archival purposes will be comparable to the same as a for a standard contract. The Exchange believes, therefore, that adopting the proposed fees for Mini Options is appropriate, not unreasonable, not unfairly discriminatory and not burdensome on competition between participants or between the Exchange and other exchanges in the listed options market place.

Specifically, the proposed Fee to Remove Liquidity is equitable and not unfairly discriminatory because all market participants will be charged the same fee of \$0.049 per contract. The Exchange believes that treating all market participants equally, in turn, will increase order flow and will provide increased liquidity to the market and benefit all participants. The Exchange also believes that the proposed \$0.049 per contract Fee to Remove Liquidity is equitable and not unfairly discriminatory because in the current U.S. options market many of the standard contracts are quoted in pennies. Under this pricing structure, the minimum penny tick increment equates to a \$1.00 economic value difference per contract, given that a single standardized U.S. options contract covers 100 shares of the underlying stock. Where contracts are quoted in \$0.05 increments (non-pennies), the economic value per tick is \$5.00 in proceeds to the investor transacting in

⁵ 15 U.S.C. 78f(b)(4).

these contracts. Since the Exchange is planning to file to permit Mini Options to have the same minimum tick as permitted for standard options, including penny increments, the minimum penny tick increment equates to a \$0.10 economic value in comparison to fee structures on standard options on the make-take exchanges, including NOM, where securities quoted in penny increments are commonly in the \$0.30 to \$0.45 per contract range. A \$0.30 per contract rebate in a penny quoted security is a rebate equivalent to 30% of the value of the minimum tick. A \$0.45 per contract fee in a penny quoted security is a charge equivalent to 45% of the value of the minimum tick. For Mini Options the proposed Fee to Remove Liquidity is \$0.049 or 49% of the proposed value of that minimum tick, but still less than 50% of the proposed value of that minimum tick as in the case with standard options trading in penny increments today.

The Exchange believes that the proposed Rebate to Add Liquidity for Mini Options is equitable and not unfairly discriminatory because Customers and NOM Market Makers, receiving rebates of \$0.030 and \$0.015 per trade respectively, would be the only market participants to receive a rebate. The Exchange believes that it is reasonable to assess Customers and NOM Market Makers lower fees as compared to other market participants because these market participants contribute to the market in terms of liquidity and trading environment as compared to other market participants. For NOM Market Makers this includes its specific Market Maker quoting obligations and certain other obligations to the market that do not apply to other market participants.⁶ The Exchange believes that the differentiation between the rebates offered to Customers

⁶ See Exchange Rules Section VII, Market Participants, Sections 5, Obligations of Market Makers, and Section 6, Market Maker Quotations.

as compared with all other market participants, including NOM Market Makers, is justified and not unfairly discriminatory because it is in recognition of the important contribution that Customers provide to the market place. Increased Customer liquidity benefits all market participants seeking to provide liquidity to Customers.

Finally, the Exchange believes that the proposed fees and rebates are reasonable and not unfairly discriminatory because the fees are consistent with price differentiation that exists today on all option exchanges.

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 believes that by offering Mini Options it will encourage order flow to be directed to the Exchange, which will benefit all market participants by increasing liquidity on the Exchange. The Exchange will assess a Fee to Remove Liquidity of \$0.049 per contract on all market participants, essentially treating market participants equally and ignoring their varying contributions to the market. Additionally, Customers and NOM Market Makers are eligible for a Rebate to Add Liquidity. The Exchange believes these pricing amendments do not impose a burden on competition but rather that the proposed rule change will continue to promote competition on the Exchange and position the Exchange as an attractive alternative when compared to other options exchanges.

The Exchange believes that the adoption of the proposed fees and rebates for Mini Options, which will be listed for trading on one or more exchange, will not impose any unnecessary burden on intramarket competition. The Exchange operates in a highly

competitive market, comprised of eleven exchanges, where market participants are highly knowledgeable and can easily and without any material impediments, direct Mini Options orders to the options exchange that they believe is the most attractive for their business.

Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues on other products and therefore must continue to be reasonable and equitably allocated.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor 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.⁷ 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.

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:

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2013-049 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-2013-049. 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-2013-049 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.⁸

Elizabeth M. Murphy
Secretary

⁸ 17 CFR 200.30-3(a)(12).