

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96567; File No. SR-NASDAQ-2022-078)

December 22, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 7, Section 2 Concerning the NOM Pricing Schedule

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 14, 2022, 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 and II, 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 Nasdaq Options Market LLC (“NOM”) Pricing Schedule at Options 7, Section 2.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 NOM’s Pricing Schedule at Options 7, Section 2(1), “Nasdaq Options Market - Fees and Rebates.” Today, NOM Options 7, Section 2(1) provides for various fees and rebates applicable to NOM Participants.

Customer³ and Professional⁴ Rebates to Add Liquidity in Penny Symbols are paid per the highest tier achieved among the 6 available tiers. To determine the applicable percentage of total industry customer equity and ETF option average daily volume, unless otherwise stated, the Exchange considers the Participant’s Penny and Non-Penny Symbol Customer and/or Professional volume that adds liquidity. Below is the criteria for each Rebate to Add Liquidity in Penny Symbol tier.

Monthly Volume

Tier 1 Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols of up to 0.10% of total industry customer equity and ETF option average daily volume (“ADV”) contracts per day in a month

Tier 2 Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols

³ 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" (as that term is defined in Options 1, Section 1(a)(47)). See Options 7, Section 1(a).

⁴ 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 Options 1, Section 1(a)(47). All Professional orders shall be appropriately marked by Participants. See Options 7, Section 1(a).

and/or Non-Penny Symbols above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month

Tier 3 Participant: (a) adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month; or (b) adds Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.05% to less than 0.10% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for MARS

Tier 4 Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month

Tier 5 Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.40% to 0.80% of total industry customer equity and ETF option ADV contracts per day in a month

Tier 6 Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.70% or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participant : (1) adds Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.10% 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)

The Exchange proposes to amend the current Customer and Professional Rebates to Add Liquidity in Penny Symbols to amend Tiers 2-5 to remove the range of total industry customer equity and ETF option ADV contracts that must be met and, instead, simply note what percentage of total industry customer equity and ETF option ADV contracts a Participant needs to exceed. The Exchange is not amending the qualifications for any of the Customer and

Professional Rebates to Add Liquidity in Penny Symbols tiers, rather the Exchange proposes to streamline the qualifications as the Customer and Professional Rebate to Add Liquidity in Penny Symbols are paid per the highest tier achieved.

For example, Customer and Professional Rebate to Add Liquidity in Penny Symbols Tier 2 provides that a “Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month.” The Exchange would amend Customer and Professional Rebate to Add Liquidity in Penny Symbols Tier 2 to instead provide, “Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% of total industry customer equity and ETF option ADV contracts per day in a month.” This amendment does not change the criteria, rather it simply provides a floor that must be exceeded.⁵ The Exchange believes that this change will make the tier qualifications easier to understand and review. Similar changes would be made to Customer and Professional Rebate to Add Liquidity in Penny Symbols Tiers 3-5.

Customer and Professional Rebate to Add Liquidity in Penny Symbols Tier 3 currently states, “Participant: (a) adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month; or (b) adds Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.05%

⁵ Currently, Participants that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month qualify for a Tier 3 Customer and Professional Rebate to Add Liquidity in Penny Symbols rebate and would be paid the higher rebate.

to less than 0.10% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for MARS.” With the proposed change, Customer and Professional Rebate to Add Liquidity in Penny Symbols Tier 3 instead would provide, “Participant: (a) adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% of total industry customer equity and ETF option ADV contracts per day in a month; or (b) adds Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols above 0.05% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for MARS.”⁶

Customer and Professional Rebate to Add Liquidity in Penny Symbols Tier 4 currently states, “Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month.” With the proposed change, Customer and Professional Rebate to Add Liquidity in Penny Symbols Tier 4 instead would provide, “Participant adds Customer, Professional, Firm, Non-NOM Market

⁶ Currently, Participants that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month qualify for a Tier 4 Customer and Professional Rebate to Add Liquidity in Penny Symbols rebate and would be paid the higher rebate. Also, currently, Participants that add Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.10% or more of total industry customer equity and ETF option ADV contracts per day in a month qualify for a Tier 6 Customer and Professional Rebate to Add Liquidity in Penny Symbols rebate and would be paid the higher rebate provided in this case the Participant also 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.

Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.30% of total industry customer equity and ETF option ADV contracts per day in a month.”⁷

Customer and Professional Rebate to Add Liquidity in Penny Symbols Tier 5 currently states, “Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.40% to 0.80% of total industry customer equity and ETF option ADV contracts per day in a month.” With the proposed change, Customer and Professional Rebate to Add Liquidity in Penny Symbols Tier 5 instead would provide, “Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month.”⁸

The Exchange proposes similar changes to the NOM Market Maker⁹ Rebate to Add Liquidity in Penny Symbol tiers. There are currently 6 NOM Market Maker Rebate to Add Liquidity in Penny Symbol tiers. The NOM Market Maker Rebates to Add Liquidity in Penny

⁷ Currently, Participants that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.40% to 0.80% of total industry customer equity and ETF option ADV contracts per day in a month qualify for a Tier 5 Customer and Professional Rebate to Add Liquidity in Penny Symbols rebate and would be paid the higher rebate.

⁸ Currently, Participants that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.70% or more of total industry customer equity and ETF option ADV contracts per day in a month qualify for a Tier 6 Customer and Professional Rebate to Add Liquidity in Penny Symbols rebate and would be paid the higher rebate.

⁹ The term “NOM Market Maker” or (“M”) is a Participant that has registered as a Market Maker on NOM pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security. See Options 7, Section 1(a).

Symbols are paid per the highest tier achieved.¹⁰ The Exchange proposes to amend Tiers 2 and 3 in a similar fashion to reflect only the floor where a range is provided.

NOM Market Maker Rebate to Add Liquidity in Penny Symbols Tier 2 currently states, “Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month.” With the proposed change, Market Maker Rebate to Add Liquidity in Penny Symbols Tier 2 instead would provide, “Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% of total industry customer equity and ETF option ADV contracts per day in a month.”¹¹

NOM Market Maker Rebate to Add Liquidity in Penny Symbols Tier 3 currently states,

Participant: (a) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.07% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month, (2) transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent (i) 0.70% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market or (ii) 70 million shares or more ADV which adds liquidity in the same month on The Nasdaq Stock Market, (3) transacts in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.10% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, and (4) executes greater than 0.01% of CV via Market-on-Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross in the same month

¹⁰ The Exchange also proposes to make plural the word “Rebates” within note 3 of Options 7, Section 2(1).

¹¹ Currently, Participants that add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month qualify for a Tier 3 NOM Market Maker rebate and would be paid the higher rebate.

With the proposed change, the introductory part of NOM Market Maker Rebate to Add Liquidity in Penny Symbols Tier 3 instead would provide, “Participant: (a) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% of total industry customer equity and ETF option ADV contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.07% of total industry customer equity and ETF option ADV contracts per day in a month...”.¹²

The Exchange believes that the proposed amendments will further clarify the qualifications for the NOM Market Maker Rebate to Add Liquidity in Penny Symbols.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed changes to NOM Options 7, Section 2(1) are not substantive amendments to the current pricing structure for NOM, rather these changes streamline the qualifications for the Customer and Professional Rebate to Add Liquidity in Penny Symbols as well as the NOM Market Maker Rebate to Add Liquidity in Penny Symbols

¹² Currently, Participants that add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month qualify for a Tier 4 NOM Market Maker rebate and would be paid the higher rebate. Participants would qualify for a Tier 3 NOM Market Maker rebate if they added NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month.

¹³ 15 U.S.C. 78f(b)

¹⁴ 15 U.S.C. 78f(b)(5).

which are paid per the highest tier achieved. These amendments do not change the criteria, rather they simply provide a floor that must be exceeded to obtain the rebates. The Exchange believes that these amendments will make the tier qualifications easier to understand.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The proposed changes to NOM Options 7, Section 2(1) are not substantive amendments to the current pricing structure for NOM, rather these changes streamline the qualifications for the Customer and Professional Rebate to Add Liquidity in Penny Symbols as well as the NOM Market Maker Rebate to Add Liquidity in Penny Symbols which are paid per the highest tier achieved. These amendments do not change the criteria, rather they simply provide a floor that must be exceeded to obtain the rebates. The Exchange believes that these amendments will make the tier qualifications easier to understand.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁵ and subparagraph (f)(6) of Rule 19b-4¹⁶ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁷ normally does not become operative prior to 30 days after the date of the filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the operative delay so that the proposed rule change may become operative immediately upon filing. The Exchange states that this proposed rule change could immediately benefit market participants by making more clear the qualifications for achieving rebates on NOM by removing superfluous rule text. The Commission thus believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁸

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

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2022-078 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-2022-078. 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 Web site (<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-2022-078 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.¹⁹

Sherry R. Haywood,
Assistant Secretary.

¹⁹ 17 CFR 200.30-3(a)(12), (59).