

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65381; File No. SR-NASDAQ-2011-128)

September 22, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Customer Rebates To Add Liquidity

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 September 15, 2011, 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 the Substance of the Proposed Rule Change

The Exchange proposes to modify Exchange Rule 7050 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 increase pricing for the Penny Pilot³ Options (“Penny Options”) with respect to the Customer Rebate to Add Liquidity.

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 December 31, 2011. 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 pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions on October 3, 2011.

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 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

NASDAQ is proposing to modify Exchange Rule 7050 governing the rebates and fees assessed for option orders entered into NOM. The Exchange is proposing to modify pricing for the Customer Rebate to Add Liquidity in Penny Options by amending Rebates to Add Liquidity and eliminating certain tiers.

The Exchange currently pays a Customer Rebate to Add Liquidity in Penny Options based on six volume tiers as follows:

effectiveness adding seventy-five classes to Penny Pilot); and 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). See also Exchange Rule Chapter VI, Section 5.

	Monthly Volume	Rebate to Add Liquidity
Tier 1	Participant adds Customer liquidity of up to 24,999 contracts per day in a month	\$0.26
Tier 2(a)	Participant adds Customer liquidity of 25,000 – 59,999 contracts per day in a month	\$0.34
Tier 2(b)	Participant (1) qualifies for Tier 2(a) above, and (2) adds Customer liquidity of 750,000 contracts during the period from September 6 through September 30, 2011	\$0.36 for Customer Liquidity added from September 6 through September 30, 2011
Tier 3	Participant adds Customer liquidity of 60,000 – 124,999 contracts per day in a month	\$0.38
Tier 4	Participant adds Customer liquidity of 125,000 or more contracts per day in a month	\$0.40
Tier 5^a	Participant adds (1) Customer liquidity of 60,000 or more contracts per day in a month, and (2) NOM Market Maker liquidity of 60,000 or more contracts per day in a month	\$0.40
Tier 6(a)	Participant adds Customer liquidity of 25,000 or more contracts per day in a month, and (2) the Participant simultaneously qualifies for credit under the Investor Support Program set forth in	\$0.35

	Rule 7014.	
Tier 6(b)	Participant (1) qualifies for Tier 6(a) above, and (2) adds Customer liquidity of 750,000 contracts during the period from September 6 through September 30, 2011	\$0.37 for Customer Liquidity added from September 6 through September 30, 2011

The Exchange is proposing to: (i) increase the Tier 2(a) Rebate to Add Liquidity from \$0.34 per contract to \$0.36 per contract and amend the title from “Tier 2(a)” to “Tier 2”; (ii) increase the Tier 6 Rebate to Add Liquidity from \$0.35 per contract to \$0.37 per contract and amend the title from “Tier 6(a)” to “Tier 6”; and (iii) and eliminate Tier 2(b) and Tier 6(b) language, which as of October 3, 2011 will be outdated as those terms expired after September 30, 2011.

The Exchange adopted these monthly volume achievement tiers in September 2011.⁴ The Exchange subsequently offered a monthly volume target for NOM Participants that qualified for Tiers 2 and 6.⁵ Specifically, firms that qualified for Tier 2 by adding Customer Liquidity in Penny Options of 25,000 to 59,999 contracts per day for the month could receive a \$0.02 per contract Rebate to Add Liquidity by contributing 750,000 contracts of Customer liquidity in Penny Options between September 6 and September 30, 2011. Also, firms that qualify for Tier 6 by adding Customer Liquidity in Penny Options of 25,000 or more contracts per day for the month and also qualifying for a credit under NASDAQ’s Investor Support Program (set forth in

⁴ See Securities Exchange Act Release No. 65317 (September 12, 2011) (SR-NASDAQ-2011-127).

⁵ See Securities Exchange Act Release No. 65318 (September 12, 2011) (SR-NASDAQ-2011-124).

Rule 7014),⁶ could receive a \$0.02 per contract Rebate to Add Liquidity by contributing 750,000 contracts of Customer liquidity in Penny Options between September 6 and September 30, 2011. These two incentives expired on close of business September 30, 2011 and will not be offered as of October 3, 2011. The Exchange is therefore proposing to delete the text associated with Tiers 2(b) and 6(b) as that text is outdated.

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. The Exchange is proposing two amendments to the Rebate to Add Liquidity tiers in addition to the elimination of the aforementioned language in Tier 2(b) and Tier 6(b).

First, the Exchange is proposing to increase the rebate for newly named Tier 2 firms that add between 25,000 and 59,999 contracts per day in month⁷ from a \$0.34 per contract Rebate to Add Liquidity to a \$0.36 per contract Rebate to Add Liquidity. The Exchange believes that the increased rebate will further incentivize firms to continue to contribute between 25,000 and 59,999 contracts per day.

⁶ For a detailed description of the Investor Support Program, see Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010)(NASDAQ-2010-141)(notice of filing and immediate effectiveness)(the “ISP Filing”). See also Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010)(NASDAQ-2010-153)(notice of filing and immediate effectiveness); and 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011)(NASDAQ-2010-154)(notice of filing and immediate effectiveness).

⁷ The per day average is based on a month containing 20 trading days, in this case between 500,000 and 799,999 [sic] contracts of liquidity per month.

Second, the Exchange is proposing to increase the rebate for newly named Tier 6 from a \$0.35 per contract Rebate to Add Liquidity to a \$0.37 per contract Rebate to Add Liquidity. Tier 6 firms are required to meet two criteria: (1) provide 25,000 or more contracts per day in a month;⁸ and (2) the Participant simultaneously qualifies for credit under the Investor Support Program as set forth in Rule 7014.⁹ By meeting the two criteria, Participants will receive a \$0.01 per contract rebate increase (\$0.37 per contract for meeting both criteria as opposed to \$0.36 per contract for meeting only the first of the two criteria and therefore only qualifying for a Tier 2 rebate). This proposal will continue to amount to a rebate of \$0.01 per contract higher for any contracts between 25,000 and 59,999 per day for qualifying participants in both markets (\$0.37 per contract as proposed in Tier 6) versus those that participate and qualify only on NOM (\$0.36 per contract as proposed in Tier 2). The rebate in Tier 6 is proposed to continue to incentivize participants in the Exchange's equity markets to also participate in the Exchange's options market.

The Exchange is not proposing any amendments to Tiers 1, 3, 4 and 5.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,¹⁰ in general, and with Section 6(b)(4) of the Act,¹¹ 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.

⁸ The per day average is based on a month containing 20 trading days, in this case 500,000 contracts of liquidity per month.

⁹ See Rule 7014. See also note 6.

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4).

The Exchange believes that the proposed new pricing tiers are equitable, reasonable and not unfairly discriminatory because they continue an existing program 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 that the proposed increased rebates for Tiers 2 and 6 are reasonable because as explained herein, the Exchange is seeking to further incentivize Participants to add liquidity to the Exchange. In addition, with respect to Tier 6, the Exchange believes the increased Rebates to Add Liquidity will incentivize participants in the Exchange's equity markets to also participate in the Exchange's options market.

The Exchange believes that the proposed increased rebates for Tiers 2 and 6 are equitable and not unfairly discriminatory because the proposed Rebates to Add Liquidity will apply to all Customer order flow in a uniform manner. All Customers will have the opportunity to earn even higher rebates by adding liquidity and obtaining higher tier rebates as compared to all other market participants.

The Exchange believes that its proposal to eliminate outdated language in Tier 2(b) and Tier 6(b) is reasonable and equitable because the elimination of outdated language will provide clarity to Exchange Rule 7050.

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 rebate scheme is competitive and similar to other rebates and tiers opportunities in place on other exchanges. The

Exchange believes that this competitive marketplace materially impacts the rebates present on the Exchange today and substantially influenced 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 Act¹² and paragraph (f)(2) of Rule 19b-4¹³ thereunder. 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.

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

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2011-128 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-2011-128. 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 such 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 No. SR-NASDAQ-2011-128 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Elizabeth M. Murphy
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).