

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2010-87 and should be submitted on or before November 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63055; File No. SR-NASDAQ-2010-124]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the NASDAQ Stock Market LLC Relating to Fees During Opening Cross**

October 6, 2010.

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 September 29, 2010, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 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 amend the applicability of its Fees for Execution of Contracts on the NASDAQ Options Market to the Opening Cross.<sup>3</sup>

While changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes

to be operative for transactions on October 1, 2010.

The text of the proposed rule change is set forth below. Proposed new text is in *italics* and deleted text is in **[brackets]**.

\* \* \* \* \*

**7050. NASDAQ Options Market**

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

(1) Fees for Execution of Contracts on the NASDAQ Options Market

**FEES AND REBATES (PER EXECUTED CONTRACT)**

	Customer	Firm	Non-NOM market maker	NOM market maker
Penny Pilot Options:				
Rebate to Add Liquidity .....	\$0.32	\$0.10	\$0.25	\$0.30
Fee for Removing Liquidity .....	\$0.43	\$0.45	\$0.45	\$0.45
NDX and MNX:				
Rebate to Add Liquidity .....	\$0.10	\$0.10	\$0.10	\$0.20
Fee for Removing Liquidity .....	\$0.50	\$0.50	\$0.50	\$0.40
All Other Options:				
Fee for Adding Liquidity .....	\$0.00	\$0.45	\$0.45	\$0.30
Fee for Removing Liquidity .....	\$0.43	\$0.45	\$0.45	\$0.45
Rebate to Add Liquidity .....	\$0.20	\$0.00	\$0.00	\$0.00

(2) Opening Cross  
All orders executed in the Opening Cross: [No Charge]

*Customer orders will receive the Rebate to Add Liquidity during the Exchange’s Opening Cross, unless the contra-side is also a Customer. Firms, Non-NOM Market Makers and NOM Market Makers will be assessed the Fee for Removing Liquidity during the Exchange’s Opening Cross.*

(3) Closing Cross  
\* \* \* \* \*

The text of the proposed rule change is available on the Exchange’s website at <http://www.nasdaqomx.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 Rule 7050 governing the fees assessed for options orders entered into NOM. Specifically, NASDAQ is proposing to modify pricing for its Fees for Execution of Contracts on NOM with respect to orders during the Exchange’s Opening Cross. The Exchange believes that its proposal will incentivize routers to send

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Exchange Chapter VI, Section 8 titled Nasdaq Opening Cross.

increased order flow during the Opening Cross.

The Exchange currently does not assess transaction fees during the Opening Cross. The Exchange is proposing to amend its fees to pay a rebate for Customer orders that are executed during the Opening Cross. The Exchange would not pay the rebate if a Customer were the contra-side of the trade.

Additionally, the Exchange is proposing to assess a Fee for Removing Liquidity to Firms, Non-Nom Market Makers and NOM Market Makers for executed transactions during the Exchange's Opening Cross.

While changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions on October 1, 2010.

## 2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Section 6(b)(4) of the Act,<sup>5</sup> 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 the proposed amendments to the fees and rebates for adding and removing liquidity are equitable and reasonable because they are within the range of fees assessed by other exchanges employing similar pricing schemes and that the proposed fees apply fairly to all similarly situated participants on NOM for reasons discussed in greater detail below.

With respect to the proposed rebates to Customer for executing orders during the Opening Cross, the Exchange believes that Customers will benefit from this rebate. Currently, there is no rebate and the rebate will only be proposed to be paid if another Customer is not on the contra-side of the transactions. This proposal will benefit Customers and incentivize market participant to route Customer orders to the Exchange. For these reasons, the Exchange believes that this proposal is both equitable and reasonable.

The Exchange's proposal to assess a Fee for Removing Liquidity on all market participants other than Customers, namely Firms, Non-NOM Market Makers and NOM Market Makers, during the Opening Cross is reasonable because the fees are within the range of fees assessed by other

exchanges employing similar pricing schemes. The proposal is equitable because it is being equally assessed on all market participants, other than Customers.

NASDAQ is one of eight options market in the national market system for standardized options. It is a mature, robust market that is highly competitive. Joining NASDAQ and electing to trade options is entirely voluntary. Under these circumstances, NASDAQ's fees must be competitive, fair and just in order for NASDAQ to attract order flow, execute orders, and grow as a market. NASDAQ thus believes that its fees are equitable, fair and reasonable and consistent with the Exchange Act.

### *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.<sup>6</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 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:

### *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-2010-124 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-2010-124. 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 inspection and copying in the Commission's Public Reference Room. 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-2010-124 and should be submitted on or before November 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>4</sup> 15 U.S.C. 78f.

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 200.30-3(a)(12).