

designated as the Settling Bank to settle with DTC on the Participant's behalf;

(iv) clarify that certain online reports DTC provides Participants and Settling Banks through the processing day reflect "intraday" gross debits and credits, and net debit and credit balances;

(v) clarify that a Settling Bank's end-of-day net-net settlement balance includes the Settling Bank's own settlement obligations as a Participant if it settles for itself;

(vi) add text for the purpose of context, consistent with the Rules, that each Participant is obligated to settle timely with DTC and if its Settling Bank refuses to settle for it then it must make alternative arrangements to make payment to DTC via Fedwire;

(vii) add text for the purpose of context, consistent with the Rules, that a Participant that acts as its own Settling Bank may not refuse to settle for itself and that it will be in default if it does not fund its settlement obligation;

(viii) for clarity, change the heading to an existing example of how a Settling Bank's settlement balance is calculated from "Settlement Example" to "Example of the Calculation of a DTC Settling Bank's Net-Net Settlement Balance";

(ix) remove the provision from the Guide indicating that that a Settling Bank that settles only for itself will need to affirmatively opt out in order to not be required to affirmatively acknowledge its settlement balance, and add text simply stating that a Settling Bank that settles only for itself will not be required to acknowledge its settlement balance;

(x) clarify the interest charged to Participants for a failure to settle;

(xi) delete references to a Settling Bank's failure to timely settle its settlement balance from being referred to as a "failure to settle" and remove references to related procedures as being "failure-to-settle" procedures, as the terminology could be confused with an individual Participant's failure to meet its settlement obligation;

(xii) rewrite text in the Guide in light of the proposed changes, as applicable, including Addendum A of the Guide, to incorporate proposed changes, consolidate text, clarify text for readability and eliminate duplication;

(xiii) clarify certain Settling Bank and settlement processing timeframes;

(xiv) apply initial capitalization as appropriate for the terms "Participant" and "Settling Bank" where they are used as defined terms;

(xv) remove references to Participant Terminal System (PTS) functions, which are no longer used for DTC settlement processing; and

(xvi) insert the title of the Guide on the Guide's front page.

*Implementation.* The effective date of the proposed rule change will be announced via a DTC Important Notice.

## II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act<sup>16</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. The Commission believes the proposal is consistent with Section 17A(b)(3)(F) of the Act<sup>17</sup> and Rule 17Ad-22(d)(5),<sup>18</sup> as described in detail below.

*Consistency with Section 17A(b)(3)(F) of the Act.* Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>19</sup> As described above, the change will reduce delays in the settlement process by allowing DTC to collect net debits and release net credits within scheduled timeframes despite the failure of a Settling Bank to affirmatively acknowledge its end-of-day net-net settlement balance or notify DTC of its refusal to settle for a Participant for which it is the designated Settling Bank on a timely basis. This requirement will reduce uncertainty and associated risks that may currently arise from Failure to Acknowledge, thus facilitating the prompt and accurate clearance and settlement of securities transactions.

*Consistency with Rule 17Ad-22(d)(5).* Rule 17Ad-22(d)(5) under the Act requires a clearing agency, such as DTC, to establish, implement, maintain and enforce written policies and procedures reasonably designed to employ money settlement arrangements that eliminate or strictly limit the clearing agency's settlement bank risks and require funds transfers to the clearing agency to be final when effected.<sup>20</sup> As described above, the change should reduce DTC's credit and liquidity risk by mitigating the risk that end-of-day net-net debit settlement balances would not be paid due to the failure of a Settling Bank to respond to DTC after posting of final settlement figures. The change also should create an arrangement that reduces delays in the settlement process

by allowing DTC to collect net debits and release net credits within scheduled timeframes, which will limit the settlement risk to DTC. As such, the Commission believes that the proposal is consistent with Rule 17Ad-22(d)(5).<sup>21</sup>

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>22</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR-DTC-2015-011 be, and hereby is, *approved*.<sup>23</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-00898 Filed 1-19-16; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76886; File No. SR-NASDAQ-2015-166]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Chapter XV, Entitled "Options Pricing"

January 13, 2016.

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 December 30, 2015, 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.

<sup>21</sup> *Id.*

<sup>22</sup> 15 U.S.C. 78q-1.

<sup>23</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>24</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>16</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>17</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>18</sup> 17 CFR 240.17Ad-22(d)(5).

<sup>19</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>20</sup> 17 CFR 240.17Ad-22(d)(5).

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter XV, entitled "Options Pricing," at Section 2, which governs pricing for Exchange members using the NASDAQ Options Market ("NOM"), the Exchange's facility for executing and routing standardized equity and index options.

The Exchange purposes [sic] to amend it [sic] Customer,<sup>3</sup> Professional<sup>4</sup> and NOM Market Maker<sup>5</sup> Penny Pilot Options<sup>6</sup> Rebate to Add Liquidity tiers.

<sup>3</sup> The term "Customer" applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation that is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Chapter I, Section 1(a)(48)).

<sup>4</sup> The term "Professional" 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). See NOM Rules at Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

<sup>5</sup> A "Non-NOM Market Maker" is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

<sup>6</sup> 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 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 [sic] extension and replacement of Penny Pilot); 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR-NASDAQ-2012-075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012); 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR-NASDAQ-2012-143) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2013); 69787 (June 18, 2013), 78 FR 37858 (June 24, 2013) (SR-NASDAQ-2013-082) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2013); 71105 (December 17, 2013), 78 FR 77530 (December 23, 2013) (SR-NASDAQ-2013-154) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2014); 79 FR 31151 [sic] (May 23, 2014), 79 FR 31151 (May 30, 2014) (SR-NASDAQ-2014-056) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2014); 73686 (December 2, 2014) [sic], 79 FR 71477 (November 25, 2014) [sic] (SR-NASDAQ-2014-115) (notice of filing and immediate effectiveness and extension and

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments [sic] become operative on January 4, 2016.

The text of the proposed rule change is available on the Exchange's Web site at <http://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

The Exchange proposes certain amendments to the NOM transaction fees set forth at Chapter XV, Section 2 for executing and routing standardized equity and index options under the Penny Pilot Options program. The proposed changes are as follows:

Note "c" of Chapter XV, Section 2(1)

- Proposal to amend note "c" criteria, at part (2), to decrease the percentage of total industry customer equity and ETF option ADV contract per day in a month from 1.40% to 1.30%.

- The Exchange is bolding the numbers and letters in this paragraph for ease of reference.

#### NOM Market Maker Penny Pilot Options Rebate To Add Liquidity Tiers

- Proposal to amend Tier 6 of the NOM Market Maker Penny Pilot Options Rebate to Add Liquidity to remove an existing qualification from Tier 6.

These rule changes are described in greater detail below.

replacement of Penny Pilot through June 30, 2015) and 75283 (June 24, 2015), 80 FR 37347 (June 30, 2015) (SR-NASDAQ-2015-063) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot) See also NOM Rules, Chapter VI, Section 5.

Note "c" of Chapter XV, Section 2(1)

The Exchange currently pays Customer and Professional Rebates to Add Liquidity based on an eight tier rebate structure. For purposes of qualifying for a Customer and Professional Rebate to Add Liquidity tier, the Exchange determines the applicable percentage of total industry customer equity and ETF option average daily volume by including the Participant's Penny Pilot and Non-Penny Pilot volume that adds liquidity.<sup>7</sup>

The Exchange proposes, beginning January 4, 2016, to amend note "c," which permits Participants that qualify for the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity<sup>8</sup> to achieve a higher rebate. Currently, note "c" states: "[P]articipants that (1) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.15% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional \$0.02 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (2) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.40% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional \$0.05 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction

<sup>7</sup> Tiers 6 and 7 are exceptions because these tiers are calculated based on Total Volume. Total Volume is defined as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker, and NOM Market Maker volume in Penny Pilot Options and/or Non-Penny Pilot Options which either adds or removes liquidity on NOM. See note "b" in Section 2(1) of Chapter XV. The Exchange utilizes data from The Options Clearing Corporation ("OCC") to determine the total industry customer equity and ETF options ADV figure. OCC classifies equity and ETF options volume under the equity options category. Also, both customer and professional orders that are transacted on options exchanges clear in the customer range at OCC and therefore both customer and professional volume would be included in the total industry figure to calculate rebate tiers.

<sup>8</sup> Tier 8 of the Customer and Professional Rebate to Add Liquidity Tiers currently pays a \$0.48 per contract rebate to Participants that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month or Participant adds (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 30,000 or more contracts per day in a month and (2) the Participant has certified for the Investor Support Program set forth in Rule 7014.

which adds liquidity in Penny Pilot Options in that month; or (3)(a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% of total industry customer equity and ETF option ADV contracts per day in a month and (b) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.10% or more of Consolidated Volume in a month will receive an additional \$0.03 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in a month.”<sup>9</sup>

The Exchange proposes to amend the criteria in note “c” at part (2) to decrease the percentage of total industry customer equity and ETF option ADV contract per day in a month from 1.40% to 1.30%. The Exchange believes that this decrease will offer Participants an opportunity to qualify for the part (2) incentive and receive a \$0.05 per contract<sup>10</sup> additional rebate, in addition to the Tier 8 rebate, by amending the qualification to require less volume.<sup>11</sup> The Exchange believes that this incentive will continue to encourage Participants to add even more liquidity on NOM to earn a higher Tier 8 rebate. The Exchange is not amending the other criteria, (1) and (3), in note “c” to qualify for an additional rebate.

The Exchange also proposes to bold the numbers and letters that define the various parts of note ‘c’ for ease of reference.

<sup>9</sup> Consolidated Volume means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of an equity member’s trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member’s trading activity.

<sup>10</sup> Note “c” offers three distinct incentives for Participants that qualify for the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity. The part (2) rebate, as amended, would be paid to Participants that added Customer, Professional, Firm, NOM Market Maker [sic], Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.30% or more of total industry customer equity and ETF option ADV contracts per day in a month.

<sup>11</sup> Only Participants that qualify for the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity are eligible for the note “c” incentives. The incentives are in addition to the Tier 8 rebate.

## NOM Market Maker Penny Pilot Options Rebate To Add Liquidity Tiers

The Exchange proposes, beginning January 4, 2016, to amend Tier 6 of the NOM Market Maker Penny Pilot Option Rebate to Add Liquidity to eliminate one of the criteria for qualifying for the \$0.42 per contract Tier 6 rebate. Currently, Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month and qualify for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options or Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.90% of total industry customer equity and ETF option ADV contracts per day in a month or Participants that add Customer, Professional, Firm, Non-NOM Market Maker, and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.40% or more of total industry customer equity and ETF option ADV contracts per day in a month receive a \$0.42 per contract NOM Market Maker Penny Pilot Options Rebate to Add Liquidity.

The Exchange proposes to remove the option to qualify for the Tier 6 NOM Market Maker Penny Pilot Options rebate by adding Customer, Professional, Firm, Non-NOM Market Maker, and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.40% or more of total industry customer equity and ETF option ADV contracts per day in a month. With this proposal, Participants will be able to qualify for the Tier 6 NOM Market Maker Rebate by either (1) adding NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies [sic] for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options or (2) adding NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.90% of total industry customer equity and ETF option ADV contracts per day in a month. While the Exchange is eliminating one of the methods to qualify for the Tier 6 NOM Market Maker Penny Pilot Options rebate, the Exchange believes that the rebate tier will continue to incentivize NOM Participants to continue to add liquidity to NOM.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>12</sup> in general, and with Section 6(b)(4) and 6(b)(5) of the Act,<sup>13</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 the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Customer volume is important because it continues to attract liquidity to the Exchange, which benefits all market participants. Further, with respect to Professional liquidity, the Exchange initially established Professional pricing in order to “. . . bring additional revenue to the Exchange.”<sup>14</sup> The Exchange noted in the Professional Filing that it believes “. . . that the increased revenue from the proposal would assist the Exchange to recoup fixed costs.”<sup>15</sup> The Exchange noted in that filing that it believes that establishing separate pricing for a Professional, which ranges between that of a Customer and market maker, accomplishes this objective.<sup>16</sup> NOM Market Makers have obligations to the market and regulatory requirements,<sup>17</sup> which normally do not apply to other market participants. A NOM Market Maker has the obligation to make continuous markets, engage in a course of dealings reasonably calculated to

<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>14</sup> See Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR-NASDAQ-2011-066) (“Professional Filing”). In this filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.<sup>1</sup>

<sup>15</sup> See Professional Filing.

<sup>16</sup> See Professional Filing. The Exchange also [sic] in the Professional Filing that it believes the role of the retail Customer in the marketplace is distinct from that of the Professional and the Exchange’s fee proposal at that time accounted for this distinction by pricing each market participant according to their roles and obligations.

<sup>17</sup> Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. See Chapter VII, Section 5.

contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a [sic] course of dealings.<sup>18</sup>

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine the price of non-core market data because national market system regulation “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>19</sup> Likewise, in *NetCoalition v. NYSE Arca, Inc.*<sup>20</sup> (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>21</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>22</sup>

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . . .”<sup>23</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Note “c” of Chapter XV, Section 2(1)

The Exchange’s proposal to amend note “c,” at part (2) to decrease the percentage of total industry customer equity and ETF option ADV contract per day in a month from 1.40% to 1.30% in part (2) to qualify for the additional Tier

8 NOM Market Maker [sic] Penny Pilot Option rebate is reasonable because additional Participants may qualify for this incentive because of the lower volume requirement. The Exchange believes that this incentive will continue to encourage Participants to add even more liquidity on NOM to earn a higher rebate. Participants that qualify for this incentive would be paid the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity of \$0.48 per contract plus the additional part (2) note “c” rebate of \$0.05 per contract for a total rebate of \$0.53 per contract.

The Exchange’s proposal to amend note “c,” at part (2) to decrease the percentage of total industry customer equity and ETF option ADV contract per day in a month from 1.40% to 1.30% in part (2) to qualify for the additional Tier 8 NOM Market Maker [sic] Penny Pilot Option rebate is equitable and not unfairly discriminatory because, today, all Participants may qualify for the Tier 8 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options and therefore are qualified to earn the additional note “c” rebates.<sup>24</sup> The Exchange will uniformly pay the Tier 8 and additional note “c” rebates to all Participants that transact the qualifying volume, respectively.

The Exchange’s proposal to bold the numbers and letters in note “c” is reasonable, equitable and not unfairly discriminatory because it will provide an easier point of reference for each criteria and rebate. Also, this proposed amendment is non-substantive.

NOM Market Maker Penny Pilot Options Rebate To Add Liquidity Tiers

The Exchange’s proposal to amend Tier 6 of the NOM Market Maker Penny Pilot Options Rebate to Add Liquidity to eliminate one of the criteria to qualify for the \$0.42 per contract Tier 6 rebate is reasonable because, despite the elimination of one of the methods to qualify for the Tier 6 NOM Market Maker Penny Pilot Options rebate, the Exchange believes that the Tier 6 rebate will continue to incentivize Participants to add liquidity to NOM in order to receive the rebate.

The Exchange’s proposal to amend Tier 6 of the NOM Market Maker Penny Pilot Options Rebate to Add Liquidity to eliminate one of the criteria to qualify for the \$0.42 per contract Tier 6 rebate is equitable and not unfairly discriminatory because the elimination

of the qualifying language in Tier 6 of the NOM Market Maker Penny Pilot Options Rebate to Add Liquidity will uniformly apply to all Participants. No Participant will be entitled to the Tier 6 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by adding Customer, Professional, Firm, Non-NOM Market Maker, and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.40% or more of total industry customer equity and ETF option ADV contracts per day in a month. Also, it is important to note that NOM Market Makers have obligations to the market and regulatory requirements,<sup>25</sup> which normally do not apply to other market participants. The Exchange believes that offering rebates to these market participants is equitable and not unfairly discriminatory in light of their obligations.

#### 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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed amendments to the Customer, Professional and NOM Market Maker Penny Pilot Options Rebate to Add Liquidity tiers do not impose an undue burden on inter-market competition because the Exchange’s execution services are completely voluntary and subject to extensive competition.

Note “c” of Chapter XV, Section 2(1)

The Exchange’s proposal to amend note “c,” at part (2) to decrease the

<sup>18</sup> *Id.*

<sup>19</sup> Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (“Regulation NMS Adopting Release”).

<sup>20</sup> *NetCoalition v. NYSE Arca, Inc.*, 615 F.3d 525 (D.C. Cir. 2010).

<sup>21</sup> See *NetCoalition*, at 534.

<sup>22</sup> *Id.* at 537.

<sup>23</sup> *Id.* at 539 (quoting ArcaBook Order, 73 FR at 74782–74783).

<sup>24</sup> Note “c” offers three distinct incentives for Participants that qualify for the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity.

<sup>25</sup> See note 17 above.

percentage of total industry customer equity and ETF option ADV contract per day in a month from 1.40% to 1.30% to qualify for the additional Tier 8 rebate does not impose an undue burden on intra-market competition because, today, all Participants may qualify for the Tier 8 Customer and Professional Penny Pilot Options Rebates to Add Liquidity and qualify to earn the note "c" additional rebates. The Exchange will uniformly pay the Tier 8 and additional note "c" rebates to all Participants that transact the qualifying volume, respectively.

Customer liquidity is critically important to the market and benefits all market participants. Greater customer liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by specialists and market makers. An increase in the activity of these market participants in turn facilitates tighter spreads. All Participants are eligible for these rebates if they transact the requisite volume. All Participants are eligible for the note "c" incentives if they transact the requisite volume. Also, the Exchange believes that encouraging Participants to add Professional liquidity creates competition among options exchanges, because the Exchange believes that the rebates may cause market participants to select NOM as a venue to send Professional order flow.

The Exchange's proposal to bold the numbers and letters in note "c" do not impose an undue burden on intra-market competition because the amendment is non-substantive.

#### NOM Market Maker Penny Pilot Options Rebate To Add Liquidity Tiers

The Exchange's proposal to amend Tier 6 of the NOM Market Maker Penny Pilot Options Rebate to Add Liquidity to eliminate one of the criteria to qualify for the \$0.42 per contract Tier 6 rebate does not impose an undue burden on intra-market competition because the elimination of the qualifying language in Tier 6 of the NOM Market Maker Penny Pilot Options Rebate to Add Liquidity will uniformly apply to all Participants. No Participant will be entitled to the Tier 6 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by adding Customer, Professional, Firm, Non-NOM Market Maker, and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.40% or more of total industry customer equity and ETF option ADV contracts per day in a month. The Exchange believes that offering rebates to these market participants is equitable and not

unfairly discriminatory in light of their obligations.<sup>26</sup>

#### 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>27</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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2015-166 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-2015-166. This file number should be included on the subject line if email 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 Web site 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-2015-166, and should be submitted on or before February 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Robert W. Errett,**  
Deputy Secretary.

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission Investor Advisory Committee will hold a meeting on Thursday, January 21, 2016, in Multi-Purpose Room LL-006 at the Commission's headquarters, 100 F Street NE., Washington, DC. The meeting will begin at 10:00 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's Web site at [www.sec.gov](http://www.sec.gov).

On December 23, 2015, the Commission issued notice of the Committee meeting (Release No. 33-10000), indicating that the meeting is open to the public (except during that portion of the meeting reserved for an administrative work session during lunch), and inviting the public to submit written comments to the

<sup>26</sup> See note 17 above.

<sup>27</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>28</sup> 17 CFR 200.30-3(a)(12).