

secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent Shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in-kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund Shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind

redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.<sup>3</sup> The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Brent J. Fields,**

*Secretary.*

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**BILLING CODE 8011-01-P**

<sup>3</sup> The requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79532; File No. SR-NASDAQ-2016-166]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Fees at Chapter XV, Section 2

December 12, 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 1, 2016, 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 amend the Exchange's transaction fees at 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. Nasdaq proposes to implement a new rebate for adding liquidity for Customer and Professional orders in Penny and Non-Penny Pilot Options as described further below.

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

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

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

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 create an alternative method for earning a rebate for adding liquidity for both Customers<sup>3</sup> and Professionals<sup>4</sup> in Penny Pilot<sup>5</sup> and Non-Penny Pilot Options. For Customers and Professionals transacting in Penny Pilot Options, the Exchange currently pays a volume-based tiered rebate to add liquidity. That rebate consists of 8 tiers, ranging from \$0.20 per contract to \$0.48 per contract, with the volume requirements increasing with each tier. Thus, a NOM Participant would qualify for a rebate of \$0.20 per contract in Tier 1 for Customers and Professionals if it added Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.10% of total industry customer equity and ETF option average daily volume ("ADV") contracts per day in a month. In comparison, a Participant would qualify for a rebate of \$0.48 in Tier 8 for Customers and Professionals if it adds 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 if the Participant adds: (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.25% 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.<sup>6</sup>

Currently, Customers and Professionals transacting in Non-Penny Pilot Options on NOM receive a \$0.80 per contract Rebate to Add Liquidity. In addition, a Participant that qualifies for a Customer or Professional Penny Pilot Options Rebate to Add Liquidity in Tiers 2, 3, 4, 5 or 6 in a month will receive an additional \$0.10 per contract Non-Penny Pilot Options Rebate to Add Liquidity for each transaction which adds liquidity in Non-Penny Pilot Options in that month. Furthermore, a Participant that qualifies for a Customer or Professional Penny Pilot Options Rebate to Add Liquidity in Tiers 7 or 8 in a month will receive an additional \$0.20 per contract Non-Penny Pilot Options Rebate to Add Liquidity for each transaction which adds liquidity in Non-Penny Pilot Options in that month.

The Exchange now proposes to add an additional rebate to Customers and Professionals for adding liquidity in both Penny Pilot and Non-Penny Pilot Options. Specifically, a NOM Participant will receive a \$0.53 per contract Rebate to Add Liquidity in Penny Pilot Options as a Customer or Professional, and \$1.00 per contract Rebate to Add Liquidity in Non-Penny Pilot Options as a Customer or Professional, if that NOM Participant transacts on the NASDAQ Stock Market through one or more of its Nasdaq Market Center MPIDs in the same month, and such transactions in all securities on the NASDAQ Stock Market that month through all of its Nasdaq Market Center MPIDs represent 3.00% or more of Consolidated Volume.<sup>7</sup> Participants that qualify for this rebate would not be eligible for any other rebates in Tiers 1–8 or other rebate incentives on NOM for Customer and Professional order flow in Chapter XV, Section 2(1).

For purposes of calculating the NOM Participant's total volume, the Exchange will add the NOM Participant's total volume transacted on the NASDAQ Stock Market in a given month across its Nasdaq Market Center MPIDs, and will

divide this number by the total industry Consolidated Volume.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>9</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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>10</sup>

Likewise, in *NetCoalition v. Securities and Exchange Commission*<sup>11</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>12</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>13</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

<sup>3</sup> 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 Chapter I, Section 1(a)(48)).

<sup>4</sup> 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 Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

<sup>5</sup> The Penny Pilot was established in March 2008. See Securities Exchange Act Release No. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR-NASDAQ-2008-026) (notice of filing and immediate effectiveness establishing Penny Pilot). Since that date, the Penny Pilot has been expanded and is currently extended through December 31, 2016 or the date of permanent approval, if earlier. See Securities Exchange Act Release No. 78037 (June 10, 2016), 81 FR 39299 (June 16, 2016) (SR-NASDAQ-2016-052).

<sup>6</sup> MARS refers to the Market Access and Routing Subsidy, which is set forth in Chapter XV, Section 6 [sic]. The MARS payment comprises four volume-based tiers, and is paid to NOM Participants that route eligible contracts to NOM through a participating NOM Participant's System. The MARS Payment will be paid on all executed Eligible Contracts that add liquidity. See Chapter XV, Section 6 [sic].

<sup>7</sup> Consolidated Volume would be determined as set forth in Nasdaq Rule 7018(a).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>10</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

<sup>11</sup> *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

<sup>12</sup> See *NetCoalition*, at 534–535.

<sup>13</sup> *Id.* at 537.

dealers'. . . .'<sup>14</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.

The Exchange notes that the purpose of the proposed rebates is to incentivize NOM Participants to transact greater volume on the NASDAQ Stock Market in order to qualify for a higher rebate on NOM. The Exchange believes that the amount of the rebate (\$0.53 per contract for Penny Pilot Options and \$1.00 per contract for Non-Penny Pilot Options) and the volume threshold for qualifying for the rebate (3.00% or more of Consolidated Volume) are reasonable. With respect to the rebate for Penny Pilot Options, the Exchange notes that the proposed \$0.53 per contract rebate is the same as the highest rebate currently available to Customers and Professionals for adding liquidity in Penny Pilot Options.<sup>15</sup> The Exchange

<sup>14</sup> *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

<sup>15</sup> As noted above, a NOM Participant will receive a rebate of \$0.48 per contract for adding liquidity as a Customer or Professional in Penny Pilot Options if it qualifies for Tier 8. In addition, as noted in footnote c of Chapter XV, Section 2, a NOM Participant may receive an additional rebate of up to \$0.05 per contract in Penny Pilot Options, for a total rebate of \$0.53 per contract. Specifically, Participants 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 and/or Professional 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 1.30% 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 and/or Professional Rebate to Add Liquidity for each transaction 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 0.80% of total industry customer equity and ETF option ADV contracts per day in a month, (b) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options above 0.15% of total industry customer equity and ETF option ADV contracts per day in a month, and (c) execute greater than 0.04% of Consolidated Volume (“CV”) via Market-on-Close/Limit-on-Close (“MOC/LOC”) volume within the NASDAQ Stock Market Closing Cross within a month will receive an additional \$0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in a month. Consolidated Volume shall mean 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

believes the proposed rebate of \$0.53 per contract is reasonable when compared to the highest rebate currently available to Customers and Professionals for adding liquidity in Penny Pilot Options, as the proposed rebate imposes comparable requirements on NOM Participants in order to qualify for that rebate. Similarly, the Exchange believes the proposed \$1.00 rebate per contract for Non-Penny Pilot Options is reasonable because it is comparable to the rebates that a NOM Participant currently receives for adding liquidity in Non-Penny Pilot Options as a Customer or Professional, which range from \$0.80 per contract to \$1.00 per contract.

The Exchange believes that the requirement that a NOM Participant transact 3.00% or more in Consolidated Volume on the NASDAQ Stock Market is reasonable because this requirement, while more stringent than other volume-based requirements that currently apply to NOM Participants that transact as Customers or Professionals in Penny Pilot and Non-Penny Pilot Options, reflects the fact that NOM Participants that qualify for this rebate would generally receive a larger rebate (for Penny Pilot Options, \$0.53 per contract versus \$0.20–\$0.53 per contract and, for Non-Penny Pilot Options, \$1.00 per contract versus \$0.80–\$1.00 per contract) than they would currently receive for transactions as Customer or Professionals in Penny Pilot and Non-Penny Pilot Options.

The Exchange believes it is reasonable to make this rebate exclusive of any other rebates in Tiers 1–8 or other rebate incentives on NOM for Customer and Professional order flow in Chapter XV, Section 2(1). As noted above, the proposed rebates are generally higher, and in some cases significantly higher, than the rebates that a NOM Participant may currently receive for adding liquidity in Penny Pilot and Non-Penny Pilot Options as a Customer or Professional. Given the size of the proposed rebates, the Exchange believes it is reasonable to make these rebates exclusive of other rebates on NOM for Customer and Professional order flow.

The Exchange also believes the other aspects of this proposal are also reasonable, equitable and not unfairly discriminatory. First, the Exchange notes that the proposed rebates apply to

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.

both transactions in Penny Pilot and Non-Penny Pilot Options.

Second, the Exchange believes that linking rebates on NOM to activity on the NASDAQ Stock Market is reasonable, equitable, and not unfairly discriminatory. The Exchange notes that previous and current rebates offered by NOM relate to activity on the NASDAQ Stock Market.<sup>16</sup> Similarly, the NASDAQ Stock Market offers reduced transaction fees that are based on activity on NOM.<sup>17</sup> Moreover, the Exchange notes that any NOM Options Participant may trade equities on the NASDAQ Stock Market because they are approved members.<sup>18</sup>

Third, while the requirements for qualifying for the proposed rebates may be more stringent than other requirements for qualifying for other rebates currently offered by NOM, the Exchange believes that these requirements are proportionate to the amount of the proposed rebates and equitably reflect the purpose of the proposed rebates, which is to incentivize NOM Participants to transact greater volume on the NASDAQ Stock Market. Moreover, all similarly-situated NOM Participants, *e.g.*, those that add liquidity in either Penny Pilot

<sup>16</sup> For example, in SR–NASDAQ–2015–047, the Exchange proposed to make NOM Participants that added liquidity in Penny Pilot Stocks [sic] as a Customer or Professional eligible for the Tier 8 rebate if, among other things, the Participant has certified for the Investor Support Program set forth in Rule 7014, or if the Participant qualified for rebates under the Qualified Market Maker (“QMM”) Program set forth in Rule 7014. See Securities Exchange Act Release No. 74931 (May 12, 2015), 80 FR 28308 (May 18, 2015) (SR–NASDAQ–2015–047).

Currently, footnote c of the NOM fee schedule provides that Participants 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 above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month, (2) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options above 0.15% of total industry customer equity and ETF option ADV contracts per day in a month, and (3) execute greater than 0.04% of Consolidated Volume (“CV”) via Market-on-Close/Limit-on-Close (“MOC/LOC”) volume within the NASDAQ Stock Market Closing Cross within a month will receive an additional \$0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in a month.

<sup>17</sup> For example, Nasdaq charges a reduced transaction fee of \$0.00295 if the member adds 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 ADV in the customer clearing range for Equity and ETF option contracts per day in a month on NOM. See Nasdaq Rule 7018.

<sup>18</sup> Although a NOM Participant may incur additional labor and/or costs to establish connectivity to the NASDAQ Stock Market, there are no additional membership fees for NOM Participants that want to transact on the NASDAQ Stock Market.

or Non-Penny Pilot Options as either Customers or Professionals and also transact on the NASDAQ Stock Market, are equally capable of qualifying for the proposed rebates, and the same rebates will be paid to all NOM Participants that qualify for them.

Fourth, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to offer this rebate to NOM Participants that add liquidity as Customers or Professionals, and not to offer this rebate to NOM Participants that add liquidity as Firms,<sup>19</sup> NOM Market Makers,<sup>20</sup> non-NOM Market Makers, or Broker-Dealers.<sup>21</sup> Nasdaq notes that Customer liquidity offers unique benefits to the market which benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that encouraging Participants to add Professional liquidity is similarly beneficial, as the rebates may cause market participants to select NOM as a venue to send Professional order flow, increasing competition among the exchanges. As with Customer liquidity, the Exchange believes that increased Professional additional order flow should benefit other market participants.

#### *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

<sup>19</sup>The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

<sup>20</sup>The term "NOM Market Maker" or ("M") is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. 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.

<sup>21</sup>The term "Broker-Dealer" or ("B") applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

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.

The Exchange does not believe that the proposed rebates will impose any burden on competition that is not necessary or appropriate. The Exchange notes that the purpose of the proposed rebate is to incentivize NOM Participants to transact on the NASDAQ Stock Market. All similarly-situated NOM Participants, *e.g.*, those that add liquidity in either Penny Pilot or Non-Penny Pilot Options as either Customers or Professionals and also transact the requisite volumes on the NASDAQ Stock Market, are equally capable of qualifying for the proposed rebates. Additionally, the Exchange will pay the same rebates to all NOM Participants that qualify for them. The Exchange believes that Customer and Professional order flow provides unique benefits to all participants on the Exchange and may even facilitate inter-market competition, and is therefore offering the proposed rebates to NOM Participants that add liquidity as either a Customer or a Professional accordingly. With respect to linking the proposed rebates to a participant's activity on the NASDAQ Stock Market, NOM currently offers rebates that are based on activity on the NASDAQ Stock Market. Similarly, the NASDAQ Stock Market currently offers reduced transaction fees that are based on activity on NOM. Finally, because they are approved members, any NOM Options Participant may trade equities on the NASDAQ Stock Market and therefore attempt to qualify for the proposed rebates.

#### *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>22</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-2016-166 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2016-166. 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

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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–2016–166 and should be submitted on or before January 6, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2016–30259 Filed 12–15–16; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79524; File No. SR–NYSEArca–2016–156]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Commentary .02 to Rule 6.72

December 12, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that, on November 28, 2016, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Commentary .02 to Rule 6.72 in order to extend the Penny Pilot in options classes in certain issues (“Pilot Program” or “Pilot”) previously approved by the Securities and Exchange Commission (“Commission”) through June 30, 2017. The Pilot

Program is currently scheduled to expire on December 31, 2016. The proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.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 self-regulatory organization 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 those 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 parts of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to extend the Pilot Program,<sup>4</sup> which is currently scheduled to expire on December 31, 2016, until June 30, 2017.<sup>5</sup> The Exchange believes that extending the Pilot would allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

During this extension of the Pilot, as is the case today, the Exchange may replace any option class that is currently included in the Pilot Program and that has been delisted with the next most actively traded, multiply listed option class that is not yet participating in the Pilot Program (“replacement class”). In light of the extension, the Exchange also proposes that any replacement class would be determined based on national average daily volume in the preceding six months, and would be added on the second trading day following January 1, 2017.<sup>6</sup>

<sup>4</sup> See Securities Exchange Act Release No. 34–55156 (January 23, 2007), 72 FR 4759 (February 1, 2007) (SR–NYSEArca–2006–73) (original approval of Pilot). The Pilot has been extended several times since the original approval, the most recent extension was obtained in earlier this year. See Securities Exchange Act Release No. 78174 (June 28, 2016), 81 FR 43332 (July 1, 2016) (SR–NYSEArca–2016–88) (most recent extension of the Pilot until December 31, 2016).

<sup>5</sup> See proposed Commentary .02 to Rule 6.72.

<sup>6</sup> See *id.* The month immediately preceding a replacement class’s addition to the Pilot Program (*i.e.*, December) would not be used for purposes of the analysis for determining the replacement class. Thus, a replacement class to be added on the

This filing does not propose any substantive changes to the Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

###### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5),<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

In particular, the proposed rule change, which extends the Penny Pilot Program for six months, allows the Exchange to continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. Accordingly, the Exchange believes that the proposal is consistent with the Act because it would allow the Exchange to extend the Pilot Program prior to its expiration on December 31, 2016. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of an existing program that operates on a pilot basis.

The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

The proposal to extend the Pilot Program is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove

second trading day following January 1, 2017 would be identified based on The Option Clearing Corporation’s trading volume data from June 1, 2016 through November 30, 2016. The Exchange will announce the replacement issues to the Exchange’s membership through a Trader Update.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b–4.