



SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-99187; File No. SR- NASDAQ-2023-054)

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 7, Section 3

December 15, 2023

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 5, 2023, 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 Nasdaq Options Market LLC’s (“NOM”) Rules at Options 7, Section 3, Nasdaq Options Market - Ports and Other Services.³

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange initially filed the proposed pricing changes on November 28, 2023 (SR-NASDAQ-2023-050). On December 5, 2023, the Exchange withdrew that filing and submitted this filing.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Options 7, Section 3, Nasdaq Options Market - Ports and Other Services. Specifically, the Exchange proposes to amend Options 7, Section 3(i) to increase the per port, per month SQF Port⁴ and SQF Purge⁵ Port Fees for all ports over 20 ports (21 and above) from \$500 to \$750.⁶

Today, NOM assesses SQF Ports and SQF Purge Ports a per port, per month fee based on a tiered fee schedule. Specifically, NOM assesses an SQF Port and an SQF Purge Port fee of \$1,500 per port, per month for the first 5 ports (1-5), a \$1,000 per port, per month fee for the next 15 ports (6-20), and a \$750 per port, per month fee for all ports over 20 ports (21 and above).

The Exchange proposes to amend the per port, per month fee for SQF Ports and SQF Ports above 20 ports (21 and above) from \$500 to \$750 per port, per month. The Exchange is not amending the SQF Port and SQF Purge Port fees for ports below 20 ports. SQF Ports and SQF Purge Ports over 20 ports are unnecessary for a NOM Market Maker to fulfill its regulatory requirements.⁷ A NOM Market Maker requires only one SQF Port to submit quotes in its assigned options series into NOM. A NOM Market Maker may submit all quotes through one

⁴ “Specialized Quote Feed” or “SQF” is an interface that allows Market Makers to connect, send, and receive messages related to quotes and Immediate-or-Cancel Orders into and from the Exchange. Features include the following: (1) options symbol directory messages (e.g., underlying instruments); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; and (8) opening imbalance messages. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection, Market Order Spread Protection, or Size Limitation in Options 3, Section 15(a)(1) and (a)(2), and (b)(2), respectively. See Options 3, Section 7(e)(1)(B).

⁵ SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the NOM Market Maker.

⁶ The Exchange also proposes a technical amendment to remove an extraneous period in Options 7, Section 3 in the second paragraph.

⁷ See NOM Options 2, Sections 4 and 5.

SQF Port and utilize one SQF Purge Port to view its purge requests. While a NOM Market Maker may elect to obtain multiple SQF Ports and SQF Purge Ports to organize its business,⁸ only one SQF Port and SQF Purge Port is necessary for a NOM Market Maker to fulfill its regulatory quoting obligations.⁹

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed pricing change to increase fees for certain SQF Ports and SQF Purge Ports is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: "[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

⁸ For example, a NOM Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that NOM Participant.

⁹ NOM Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, NOM Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. The Exchange notes that SQF Ports are the only quoting protocol available on NOM and only NOM Market Makers may utilize SQF Ports. The same is true for SQF Purge Ports.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹²

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.”¹³

Numerous indicia demonstrate the competitive nature of this market. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

The Exchange believes that increasing the fee for SQF Ports and SQF Purge Ports over 20 ports (21 and above) from \$500 to \$750 per port, per month is reasonable because SQF Ports and SQF Purge Ports over 20 ports are unnecessary for a NOM Market Maker to fulfill its regulatory requirements.¹⁴ A NOM Market Maker requires only one SQF Port to submit quotes in its assigned options series into NOM. A NOM Market Maker may submit all quotes through one SQF Port and utilize one SQF Purge Port to view its purge requests. While a NOM Market Maker may elect to obtain multiple SQF Ports and SQF Purge Ports to organize its business,¹⁵ only one SQF Port and SQF Purge Port is necessary for a NOM Market Maker to fulfill its regulatory quoting obligations.

¹² NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹³ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁴ See NOM Options 2, Sections 4 and 5.

¹⁵ For example, a NOM Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Participant.

The Exchange believes that increasing the fee for SQF Ports and SQF Purge Ports over 20 ports (21 and above) from \$500 to \$750 per port, per month is equitable and not unfairly discriminatory because all NOM Market Makers would be assessed the same fees for SQF Ports and SQF Purge Ports to the extent that these NOM Market Makers have subscribed to more than 20 SQF Ports or SQF Purge Ports. NOM Market Makers are the only market participants that are assessed SQF Port and SQF Purge Port fees because they are the only market participants that are permitted to quote on the Exchange.

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.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets who also offer order entry protocols. 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. In such an environment, the Exchange must continually adjust its fees to remain competitive with other 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.

Intramarket Competition

The Exchange believes that increasing the fee for SQF Ports and SQF Purge Ports over 20 ports (21 and above) from \$500 to \$750 per port, per month does not impose an undue burden on competition because all NOM Market Makers would be assessed the same fees for SQF Ports and SQF Purge Ports to the extent that these NOM Market Makers have subscribed to more than 20 SQF Ports or SQF Purge Ports. NOM Market Makers are the only market participants that

are assessed SQF Port and SQF Purge Port fees because they are the only market participants that are permitted to quote on the Exchange.

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.¹⁶

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2023-054 on the subject line.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2023-054. 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 website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2023-054 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

¹⁷ 17 CFR 200.30-3(a)(12).

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-28039 Filed: 12/20/2023 8:45 am; Publication Date: 12/21/2023]