



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104402; File No. SR-NASDAQ-2025-096]

### **Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 7, Section 2**

December 15, 2025.

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, 2025, 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 (“NOM”) Rules at Options 7, Section 2, Nasdaq Options Market - Fees and Rebates.

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

#### **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

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

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

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 NOM's Pricing Schedule at Options 7, Section 2, Nasdaq Options Market - Fees and Rebates, with respect to a NOM Market Maker rebate.

Pursuant to Options 7, Section 2(1), the Exchange currently assesses NOM Market Makers a \$0.35 per contract Fee to Add Liquidity in Non-Penny Symbols. This fee applies unless Participants meet the volume thresholds set forth in note 5. Note 5 currently stipulates that,

The NOM Market Maker Fee for Adding Liquidity in Non-Penny Symbols will apply unless Participants meet the volume thresholds set forth in this note. Participants that add NOM Market Maker liquidity in Non-Penny Symbols of 0.03% to 0.07% of total industry customer equity and ETF option ADV contracts per day in a month will be assessed a \$0.00 per contract Non-Penny Options Fee for Adding Liquidity in that month. Participants that add NOM Market Maker liquidity in Non-Penny Symbols of above 0.07% to 0.10% of total industry customer equity and ETF option ADV contracts per day in a month will receive a Non-Penny Rebate to Add Liquidity of \$0.30 per contract for that month instead of paying the Non-Penny Fee for Adding Liquidity. Participants that add NOM Market Maker liquidity in Non-Penny Symbols of above 0.10% of total industry customer equity and ETF option ADV contracts per day in a month will receive a Non-Penny Rebate to Add Liquidity of \$0.40 per contract for that month instead of paying the Non-Penny Fee for Adding Liquidity.

Accordingly, qualifying Participants are offered an opportunity to reduce the \$0.35 Fee to Add Liquidity in Non-Penny Symbols or earn a rebate if they meet the volume-based requirements under note 5.

The Exchange now proposes to amend the thresholds in note 5. Specifically, the Exchange proposes to provide that Participants that add NOM Market Maker liquidity in Non-Penny Symbols of 0.025% to 0.035% of total industry customer equity and ETF option ADV contracts per day in a month will be assessed a \$0.00 per contract Non-Penny Options Fee for Adding Liquidity in that month. Further, the Exchange proposes that Participants that add NOM

Market Maker liquidity in Non-Penny Symbols of above 0.035% to 0.075% of total industry customer equity and ETF option ADV contracts per day in a month will receive a Non-Penny Rebate to Add Liquidity of \$0.30 per contract for that month instead of paying the Non-Penny Fee for Adding Liquidity. Finally, the Exchange proposes that Participants that add NOM Market Maker liquidity in Non-Penny Symbols of above 0.075% of total industry customer equity and ETF option ADV contracts per day in a month will receive a Non-Penny Rebate to Add Liquidity of \$0.40 per contract for that month instead of paying the Non-Penny Fee for Adding Liquidity.

With this proposal, the Exchange is lowering the qualification requirements such that NOM Market Makers would be eligible for no Fee for Adding Liquidity in Non-Penny Symbols or a Non-Penny Rebate to Add Liquidity of \$0.30 or \$0.40 per contract in lieu of the Non-Penny Fee for Adding Liquidity. The Exchange believes that the note 5 incentives will encourage NOM Market Makers to add additional Non-Penny Symbol liquidity on NOM which in turn will benefit of all Participants.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>4</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

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<sup>3</sup> 15 U.S.C. 78f(b).

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

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>5</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>6</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>7</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>8</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>9</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’s proposal to amend the thresholds in note 5 is reasonable because the proposal lowers the qualification requirements such that NOM Market Makers would be eligible for no Fee for Adding Liquidity in Non-Penny Symbols or a Non-Penny Rebate to Add Liquidity of \$0.30 or \$0.40 per contract in lieu of the Non-Penny Fee for Adding Liquidity. The Exchange

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<sup>5</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>6</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>7</sup> See NetCoalition, at 534 - 535.

<sup>8</sup> Id. at 537.

<sup>9</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)).

believes that the note 5 incentives will encourage NOM Market Makers to add additional Non-Penny Symbol liquidity on NOM which in turn will benefit of all Participants.

The Exchange's proposal to amend the thresholds in note 5 is equitable and not unfairly discriminatory because the Exchange will uniformly apply the qualifying thresholds to NOM Market Makers. All NOM Market Makers are eligible to receive the note 5 incentives for Non-Penny Symbols. The Exchange does not believe that it is unfairly discriminatory to offer the note 5 incentives to only NOM Market Makers because these market participants add value through continuous quoting and the commitment of capital.<sup>10</sup> Because NOM Market Makers have these obligations to the market and regulatory requirements that normally do not apply to other market participants, the Exchange believes that offering the note 5 incentives to only NOM Market Makers is equitable and not unfairly discriminatory in light of their obligations. Finally, encouraging NOM Market Makers to add greater liquidity benefits all market participants in the quality of order interaction.

#### 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.

##### *Inter-market Competition*

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another venue in which to submit orders. 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. Because

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<sup>10</sup> See Options 2, Sections 4 and 5.

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.

#### *Intra-market Competition*

The Exchange's proposal to amend the thresholds in note 5 does not impose an undue burden on competition because the Exchange will uniformly apply the qualifying thresholds to all NOM Market Makers. All NOM Market Makers are eligible to receive the note 5 incentives for Non-Penny Symbols. The Exchange does not believe the proposal will impose an undue burden on competition by offering the note 5 incentives to only NOM Market Makers because these market participants add value through continuous quoting and the commitment of capital.<sup>11</sup> Because NOM Market Makers have these obligations to the market and regulatory requirements that normally do not apply to other market participants, the Exchange believes that offering the note 5 incentives to only NOM Market Makers does not impose an undue burden on competition in light of their obligations. Finally, encouraging NOM Market Makers to add greater liquidity benefits all market participants in the quality of order interaction.

#### 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>12</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

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<sup>11</sup> See Options 2, Sections 4 and 5.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

(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](mailto:rule-comments@sec.gov). Please include file number SR-NASDAQ-2025-096 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-2025-096. 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 filing 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-2025-096 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.<sup>13</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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