Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: October 11, 2023.

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98721; File No. SR–NASDAQ–2023–040]

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

October 11, 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 September 29, 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 (''NOM'') Pricing Schedule at Options 7, Section 2.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on October 2, 2023.

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 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. Today, NOM Options 7, Section 2(1) provides for various fees and rebates applicable to NOM Participants.

Today, NOM Market Maker[3] Rebates to Add Liquidity in Penny Symbols are paid per the highest tier achieved among the below tiers.

MONTHLY VOLUME

Tier 1	Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of up to 0.10% of total industry customer equity and ETF option average daily volume (''ADV'') contracts per day in a month.
Tier 2	Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% of total industry customer equity and ETF option ADV contracts per day in a month.
Tier 3	Participant: (a) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% of total industry customer equity and ETF option ADV contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.15% of total industry customer equity and ETF option ADV contracts per day in a month, (2) transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent (i) 0.50% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market or (ii) 50 million shares or more ADV which adds liquidity in the same month on The Nasdaq Stock Market, and (3) executes 1.5 million shares or more ADV in the same month utilizing the M–ELO order type on The Nasdaq Stock Market.
Tier 4	Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month.
Tier 5	Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month and transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.40% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market.
Tier 6	Participant: (a)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.95% of total industry customer equity and ETF option ADV contracts per day in a month, (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 30,000 or more contracts per day in a month must be removing liquidity, and (3) adds Firm, Broker-Dealer and Non-NOM Market Maker liquidity in Non-Penny Symbols of 10,000 or more contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.50% of total industry customer equity and ETF option ADV contracts per day in a month, and (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 15,000 or more contracts per day in a month must be removing liquidity.

''Total Volume'' is defined as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Symbols and/or Non-Penny Symbols which either adds or removes liquidity on NOM.

Proposal

At this time, the Exchange proposes to amend Tiers 5 and 6 of the NOM Market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''NOM Market Maker'' or (''M'') is a Participant that has registered as a Market Maker on NOM pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. 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. *See* Options 7, Section 1(a).

Maker Rebates to Add Liquidity in Penny Symbols.

NOM Market Maker Tier 5

Currently, the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols provides:

Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month and transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.40% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market.

The Exchange proposes to amend the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols by adding an additional qualifier to achieve the rebate. The Exchange proposes to provide that a Participant may add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.00% of total industry customer equity and ETF option ADV contracts per day in a month to qualify for the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols. In the alternative, as is the case today, a Participant may continue to add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month and transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.40% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market to qualify for the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols. Therefore, a Participant may qualify for the $0.44 per contract NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols by either qualifying for the new tier qualifier that is denoted by an ''a'' or the current qualifier which is denoted by a ''b.'' As proposed, the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols would provide:

Participant: (a) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.00% of total industry customer equity and ETF option ADV contracts per day in a month; or (b) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month and transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.40% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market.

The Exchange believes the additional proposed qualifier for the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols will provide Participants an additional way to achieve the Tier 5 rebate. The new qualification criteria is intended to attract additional order flow to NOM. Any Participant may interact with the additional liquidity attracted by this incentive.

NOM Market Maker Tier 6

Currently, the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols provides:

Participant: (a)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.95% of total industry customer equity and ETF option ADV contracts per day in a month, (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 30,000 or more contracts per day in a month must be removing liquidity, and (3) adds Firm, Broker-Dealer and Non-NOM Market Maker liquidity in Non-Penny Symbols of 10,000 or more contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.50% of total industry customer equity and ETF option ADV contracts per day in a month, and (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 15,000 or more contracts per day in a month must be removing liquidity.

Currently, there are two ways to qualify for the $0.48 per contract NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols. A Participant may add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.95% of total industry customer equity and ETF option ADV contracts per day in a month, (2) execute Total Volume of 250,000 or more contracts per day in a month, of which 30,000 or more contracts per day in a month must be removing liquidity, and (3) add Firm, Broker-Dealer and Non-NOM Market Maker liquidity in Non-Penny Symbols of 10,000 or more contracts per day in a month to qualify for the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols. This option is denoted as ''a.'' In the alternative, a Participant may add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.50% of total industry customer equity and ETF option ADV contracts per day in a month, and (2) execute Total Volume of 250,000 or more contracts per day in a month, of which 15,000 or more contracts per day in a month must be removing liquidity to qualify for the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols. This option is denoted as ''b.''

At this time, the Exchange proposes to amend the qualifier in ''b'' of the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols by lowering the (b)(1) qualifier from 1.50% to 1.40%. The proposed amended (b)(1) qualifier would require a Participant to add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.40% [4] of total industry customer equity and ETF option ADV contracts per day in a month. As proposed, the amended NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols would provide:

Participant: (a)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.95% of total industry customer equity and ETF option ADV contracts per day in a month, (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 30,000 or more contracts per day in a month must be removing liquidity, and (3) adds Firm, Broker-Dealer and Non-NOM Market Maker liquidity in Non-Penny Symbols of 10,000 or more contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.40% of total industry customer equity and ETF option ADV contracts per day in a month, and (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 15,000 or more contracts per day in a month must be removing liquidity.

The Exchange believes that lowering part of the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols qualifier will attract additional order flow to NOM by allowing additional Participants to qualify for this tier.

2. Statutory Basis

The proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options 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* [5] (''NetCoalition''), the D.C. Circuit stated, ''[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

[4] Of note, 1.50% equates to approximately 490,000 contracts per day adding liquidity and 1.40% equates to approximately 450,000 contracts per day adding liquidity.

[5] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

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'. . . ."[6]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of seventeen options exchanges to which market participants may direct their order flow. 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. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

NOM Market Maker Tier 5

The Exchange's proposal to amend the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols by adding an additional qualifier is reasonable because it will provide Participants another way to qualify for the Tier 5 rebate. NOM Participants that currently qualify for the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols will continue to qualify for this rebate because the current qualifications are not being amended. With this proposal, additional NOM Participants may be able to qualify for the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols utilizing the proposed new qualifier. The new qualification criteria is intended to attract additional order flow to NOM. Any Participant may interact with the additional liquidity attracted by this incentive.

The Exchange's proposal to amend the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols by adding an additional qualifier is equitable and not unfairly discriminatory because the proposed tier qualifier will be applied uniformly to all qualifying NOM Participants.

NOM Market Maker Tier 6

The Exchange's proposal to amend part "b" of the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols by lowering the (b)(1) qualifier from 1.50% to 1.40% is reasonable because it will attract additional order flow to NOM by allowing additional Participants to qualify for this tier. NOM Participants who currently qualify for the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols will continue to qualify for this rebate. With this proposal, additional Participants may be able to qualify for the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols with the proposed lower (b)(1) qualifier. The proposed lower (b)(1) qualification criteria is intended to attract additional order flow to NOM. Any Participant may interact with the additional liquidity attracted by this incentive.

The Exchange's proposal to amend part "b" of the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols by lowering the (b)(1) qualifier from 1.50% to 1.40% is equitable and not unfairly discriminatory because the proposed tier qualifier will be applied uniformly to all qualifying NOM 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.

Intermarket Competition

The Exchange 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 pricing to remain competitive with other exchanges. Because competitors are free to modify their pricing in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which pricing changes in this market may impose any burden on competition is extremely limited because other options exchanges offer similar pricing.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

Intramarket Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

NOM Market Maker Tier 5

The Exchange's proposal to amend the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols by adding an additional qualifier does not impose an undue burden on competition because the proposed tier qualifier will be applied uniformly to all qualifying NOM Participants.

NOM Market Maker Tier 6

The Exchange's proposal to amend part "b" of the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols by lowering the (b)(1) qualifier from 1.50% to 1.40% does not impose an undue burden on competition because the proposed tier qualifier will be applied uniformly to all qualifying NOM Participants.

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.[7]

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

[6] *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)).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

• Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2023–040 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–2023–040. 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–2023–040 and should be submitted on or before November 7, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Sherry R. Haywood,

Assistant Secretary.

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98722; File No. SR–CBOE–2023–060]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Fees for the Cboe Silexx Platform

October 11, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 5, 2023, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') 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 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

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend fees for the Cboe Silexx platform. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 fees for the Cboe Silexx platform (''Cboe Silexx''), effective September 29, 2023.[3] By way of background, the Silexx platform consists of a ''front-end'' order entry and management trading platform (also referred to as the ''Silexx terminal'') for listed stocks and options that supports both simple and complex orders, and a ''back-end'' platform which provides a connection to the infrastructure network. From the Silexx platform (*i.e.,* the collective front-end and back-end platform), a Silexx user has the capability to send option orders to U.S. options exchanges, send stock orders to U.S. stock exchanges (and other trading centers), input parameters to control the size, timing, and other variables of their trades, and also includes access to real-time options and stock market data, as well as access to certain historical data. The Silexx platform is designed so that a user may enter orders into the platform to send to an executing broker (including Trading Permit Holders (''TPHs'')) of its choice with connectivity to the platform, which broker will then send the orders to Cboe Options (if the broker is a TPH) or other U.S. exchanges (and trading centers) in accordance with the user's instructions. The Silexx front-end and back-end platforms are a software application that is installed locally on a user's desktop. Silexx grants users licenses to use the platform, and a firm or individual does not need to be a TPH to license the platform.

The Exchange offers several versions of its Silexx platform. Originally, the Exchange offered the following versions of the Silexx platform: Basic, Pro, Sell-Side, Pro Plus Risk and Buy-Side Manager (''Legacy Platforms''). The Legacy Platforms are designed so that a User may enter orders into the platform to send to the executing broker, including TPHs, of its choice with connectivity to the platform. The executing broker can then send orders to Cboe Options (if the broker-dealer is a TPH) or other U.S. exchanges (and trading centers) in accordance with the User's instructions. Users cannot directly route orders through any of the Legacy Platforms to an exchange or trading center nor is the platform

[3] The Exchange initially filed the proposed fee changes on September 29, 2023 (SR–CBOE–2023–059). On October 5, 2023, the Exchange withdrew that filing and submitted this proposal.