

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100130; File No. SR-NASDAQ-2024-021)

May 14, 2024

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

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 May 1, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“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.

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) to be effective on December 1, 2023. On December 5, 2023, the Exchange withdrew SR-NASDAQ-2023-050 and placed it with SR-NASDAQ-2023-054. On January 16, 2023, the Exchange withdrew SR-NASDAQ-2023-054 and submitted SR-NASDAQ-2024-003. On March 7, 2024, the Exchange withdrew SR-NASDAQ-2024-003 and submitted SR-NASDAQ-2024-012. On May 1, 2024, the Exchange withdrew SR-NASDAQ-2024-012 and submitted this filing.

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 Options 7, Section 3, Nasdaq Options Market - Ports and Other Services.

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 \$500 per port, per month fee for all ports over 20 ports (21 and above).

At this time, the Exchange proposes to establish an increased fee for SQF Ports and SQF Ports above 20 ports (21 and above) that do not provide a minimum amount of liquidity on NOM. This increased fee is intended to incentivize Market Makers to add liquidity on NOM for the benefit of other market participants. Specifically, NOM proposes an SQF Port Fee and an SQF Purge Port Fee of \$750 per port for all ports above 20 ports if a Market Maker did not transact 1.50% of Total Customer Volume in electronic simple orders that adds liquidity in a

month.⁴ Market Makers who transact 1.50% of Total Customer Volume that adds liquidity in a month will continue to be assessed a \$500 per port fee for SQF Ports and SQF Purge Ports for over 20 ports. The Exchange believes that Market Makers will add liquidity to NOM in order to decrease their costs of doing business on the Exchange by achieving the lower SQF Port Fee and SQF Purge Port Fee for more than 20 ports.

Pursuant to Options 3, Section 7(e)(1)(B), NOM Market Makers may only enter quotes into SQF in their assigned options series. Pursuant to Options 3, Section 7(e)(1)(B), the SQF interface allows NOM Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. An SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. 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,⁵ only one SQF Port and SQF Purge Port is necessary for a NOM Market Maker to fulfill its regulatory quoting obligations.⁶

2. Statutory Basis

⁴ For purposes of this cap, “Total Customer Volume” shall be defined as a percentage of all cleared customer volume at The Options Clearing Corporation in Multiply Listed Equity Options and Exchange-Traded Products (“TCV”).

⁵ 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. The Exchange notes that 78% of NOM Market Makers pay the \$1,000 per port, per month fee for 6-20 ports and 39% pay the proposed \$750 per port, per month fee for over 20 ports.

⁶ 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.

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ 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 proposed pricing change to increase the SQF Port Fee and SQF Purge Port Fee for above 20 ports to \$750 per port if a Market Maker does not transact 1.50% of Total Customer Volume that adds liquidity in a month is reasonable because it will incentivize Market Makers to add liquidity on NOM to lower their costs. Further, 1.50% of Total Customer Volume that adds liquidity in a month is an achievable number for Market Makers who currently add volume to the Exchange. The Exchange believes that increasing the SQF Port Fee and SQF Purge Port Fee for above 20 ports from \$500 to \$750 per port is reasonable because Market Makers are obligated, among other things, to maintain a two-sided market in those options in which the Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market and compete with other Market Makers in all options in all capacities in which the Market Maker is registered to trade.⁹ The Exchange believes that it is reasonable to increase the SQF Port Fee and SQF Purge Port Fee for above 20 ports from \$500 to \$750 per port for Market Makers that do not transact 1.50% of Total Customer Volume that adds liquidity in a month because the Exchange believes that Market Makers that do not contribute a minimum amount of liquidity on NOM should not be subject to the same opportunities to lower their costs as those Market Makers that do contribute to liquidity and therefore provide the ability for other market

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

⁹ See Options 2, Section 4(a)(1) and (3).

participants to engage with that order flow. The Exchange believes that the increase is modest and would serve to encourage Market Makers to submit order flow to NOM in order to lower their cost and would result in additional order competition. The Exchange believes this proposal promotes liquidity, quote competition, and trading opportunities.

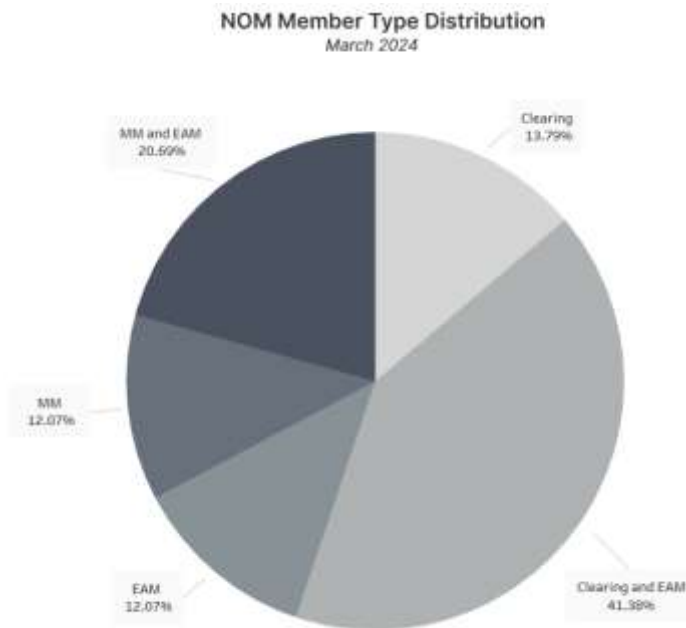
A NOM Market Maker requires only one SQF Port to submit quotes in its assigned options series into NOM. A NOM Market Maker may submit all quotes through one SQF Port and utilize one SQF Purge Port to view its purge requests. While a NOM Market Maker may elect to obtain multiple SQF Ports and SQF Purge Ports to organize its business,¹⁰ only one SQF Port and SQF Purge Port is necessary for a NOM Market Maker to fulfill its regulatory quoting obligations. For those Market Makers that elect to organize themselves by obtaining a greater number of SQF Ports and SQF Purge Ports they will be able to reduce their fees.¹¹ Participants may choose a greater number of SQF Ports or SQF Purge Ports, beyond one port, depending on that Participant's particular business model.

The proposed pricing change to increase the SQF Port Fee and SQF Purge Port Fee for above 20 ports to \$750 per port if a Market Maker does not transact 1.50% of Total Customer Volume that adds liquidity in a month is equitable and not unfairly discriminatory as the Exchange would uniformly apply the criteria when assessing fees. The Exchange notes that

¹⁰ 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.

¹¹ The number of ports that member organizations choose to purchase varies widely. Today, on Phlx, 2 Market Makers have 1 SQF Port, 5 Market Makers have 2-5 SQF Ports, 4 Market Makers have between 6-10 SQF Ports, and 11 Market Makers have more than 10 SQF Ports. Additionally, today, on Nasdaq GEMX, LLC no Market Makers have 1 SQF Port/SQF Purge Port, 1 Market Maker has 2-5 SQF Ports/SQF Purge Ports, 4 Market Makers have between 6-10 SQF Ports/SQF Purge Ports, and 8 Market Makers have more than 10 SQF Ports/SQF Purge Ports. Finally, on Nasdaq MRX LLC ("MRX"), 2 Market Makers have 1 SQF Ports/SQF Purge Ports, no Market Makers have 2-5 SQF Ports/SQF Purge Ports, 2 Market Makers have between 6-10 SQF Ports/SQF Purge Ports, and 6 Market Makers have more than 10 SQF Ports/SQF Purge Ports.

unlike other market participants, Market Makers are required to quote intra-day.¹² Further, unlike other market participants, Market Makers have obligations to the market to maintain a two-sided market in those options in which the Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market and compete with other Market Makers in all options in all capacities in which the Market Maker is registered to trade, among other obligations.¹³ These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to NOM. Allowing Market Makers to manage their costs by lowering the SQF Port and SQF Purge Port Fees for above 20 ports enables these essential market participants to manage their business model more effectively and better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on NOM. The following chart represents the classification of NOM members and the percentage of Market Makers.



¹² See Options 2, Section 5(d).

¹³ See Options 2, Section 4(a)(1) and (3).

The Exchange believes that Market Makers should be eligible for certain incentives because they fulfill a unique role on the Exchange and are the only market participants required to submit quotes to the Exchange. The proposed reduced fee for above 20 ports is designed to ensure that Market Makers that add a certain amount of liquidity on NOM could obtain lower fees for above 20 ports to reduce costs. The Exchange desires to reward Market Makers provided they are adding a certain amount of liquidity to NOM and would apply the criteria uniformly.

Finally, the reduced SQF Port and SQF Purge Port fees for above 20 ports is constrained by competitive forces and reasonably designed in consideration of the competitive environment in which the Exchange operates. This fee structure incents Market Makers to support increased liquidity, quote competition, and trading opportunities on the Exchange, for the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

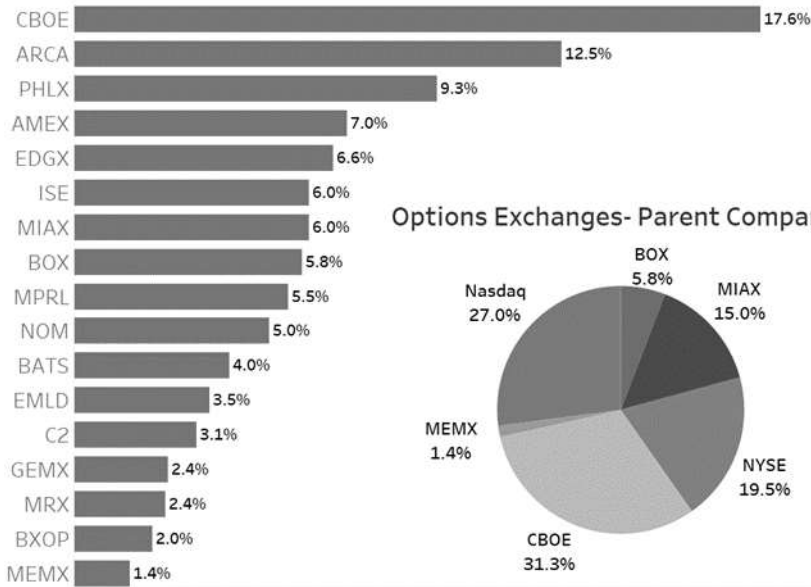
The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

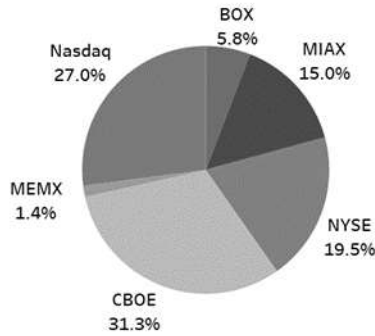
The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets who also offer order entry protocols. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. The chart below shows the February 2024 market share for multiply listed options by exchange. Of the 17 operating options exchanges, none currently has more than a 17.6% market share. Customers widely distribute their transactions across exchanges according to their business needs and the ability of each exchange to meet those needs

through technology, liquidity and functionality.

Options Market Share by Exchange: February 2024



Options Exchanges- Parent Company



Source: OCC, Nadsaq Economic Research

Market share is the percentage of volume on a particular exchange relative to the total volume across all exchanges, and indicates the amount of order flow directed to that exchange. High levels of market share enhance the value of trading and ports.

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 proposed pricing change to increase the SQF Port Fee and SQF Purge Port Fee for above 20 ports to \$750 per port if a Market Maker does not transact 1.50% of Total Customer Volume that adds liquidity in a month does not impose an undue burden on competition as the Exchange would uniformly apply the criteria when assessing fees. The Exchange notes that

unlike other market participants, Market Makers are required to quote intra-day.¹⁴ Further, unlike other market participants, Market Makers have obligations to the market to maintain a two-sided market in those options in which the Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market and compete with other Market Makers in all options in all capacities in which the Market Maker is registered to trade, among other obligations.¹⁵ These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to NOM. Allowing Market Makers to manage their costs by lowering the SQF Port and SQF Purge Port Fees for above 20 ports enables these essential market participants to manage their business model more effectively and better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on NOM. The Exchange believes that Market Makers should be eligible for certain incentives because they fulfill a unique role on the Exchange and are the only market participants required to submit quotes to the Exchange. The proposed reduced fee for above 20 ports is designed to ensure that Market Makers that add a certain amount of liquidity on NOM could obtain lower fees for above 20 ports to reduce costs. The Exchange desires to reward Market Makers provided they are adding a certain amount of liquidity to NOM and would apply the criteria uniformly.

Finally, the reduced SQF Port and SQF Purge Port fees for above 20 ports is constrained by competitive forces and reasonably designed in consideration of the competitive environment in which the Exchange operates. This fee structure incents Market Makers to support increased liquidity, quote competition, and trading opportunities on the Exchange, for the benefit of all

¹⁴ See Options 2, Section 5(d).

¹⁵ See Options 2, Section 4(a)(1) and (3).

market 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.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-2024-021 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-2024-021. 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-2024-021 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

Sherry R. Haywood,
Assistant Secretary.

¹⁷ 17 CFR 200.30-3(a)(12).