

Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

### Applicants' Representations

1. The Company, a Delaware corporation, is an externally managed, non-diversified, closed-end management investment company that has elected to be regulated as a business development company ("BDC") under the Act.<sup>1</sup> The Company seeks to maximize the total return to its stockholders through both current income and capital appreciation through debt and minority equity investments. The Investment Adviser, a Delaware limited liability company, is the investment adviser to the Company. The Investment Adviser is registered under the Investment Advisers Act of 1940.

2. Golub SBIC, a Delaware limited partnership, is a small business investment company ("SBIC") licensed by the Small Business Administration ("SBA") to operate under the Small Business Investment Act of 1958 ("SBIA"). Golub SBIC is excluded from the definition of investment company by section 3(c)(7) of the Act. The Company directly owns 99% of Golub SBIC in the form of a limited partner interest. The General Partner owns 1% of Golub SBIC in the form of a general partner interest. The GP Managing Member, a Delaware corporation, is a wholly-owned subsidiary of the Company and serves as the managing member of the General Partner. The GP Managing Member and the Company are the sole members of the General Partner.

### Applicants' Legal Analysis

1. The Company requests an exemption pursuant to section 6(c) of the Act from the provisions of sections 18(a) and 61(a) of the Act to permit it to adhere to a modified asset coverage requirement with respect to any direct or indirect wholly owned subsidiary of the Company that is licensed by the SBA to operate under the SBIA as a SBIC and relies on Section 3(c)(7) for an exemption from the definition of "investment company" under the 1940 Act (each, a "SBIC Subsidiary").<sup>2</sup>

<sup>1</sup> Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

<sup>2</sup> All existing entities that currently intend to rely on the order are named as applicants. Any other existing or future entity that may rely on the order

Applicants state that companies operating under the SBIA, such as the SBIC Subsidiary, will be subject to the SBA's substantial regulation of permissible leverage in their capital structure.

2. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security or selling any such security of which it is the issuer unless the company complies with the asset coverage requirements set forth in that section. Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications. Section 18(k) exempts an investment company operating as an SBIC from the asset coverage requirements for senior securities representing indebtedness that are contained in section 18(a)(1)(A) and (B).

3. Applicants state that the Company may be required to comply with the asset coverage requirements of section 18(a) (as modified by section 61(a)) on a consolidated basis because the Company may be deemed to be an indirect issuer of any class of senior security issued by Golub SBIC or another SBIC Subsidiary. Applicants state that applying section 18(a) (as modified by section 61(a)) on a consolidated basis generally would require that the Company treat as its own all assets and any liabilities held directly either by itself, by Golub SBIC, or by another SBIC Subsidiary. Accordingly, the Company requests an order under section 6(c) of the Act exempting the Company from the provisions of section 18(a) (as modified by section 61(a)), such that senior securities issued by each SBIC Subsidiary that would be excluded from the SBIC Subsidiary's asset coverage ratio by section 18(k) if it were itself a BDC would also be excluded from the Company's consolidated asset coverage ratio.

4. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if and to the extent that 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. Applicants state that the requested relief satisfies the section 6(c) standard. Applicants contend that, because the SBIC Subsidiary would be entitled to rely on section 18(k) if it were a BDC itself, there is no policy reason to deny the

in the future will comply with the terms and condition of the order.

benefit of that exemption to the Company.

### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

The Company shall not issue or sell any senior security, and the Company shall not cause or permit Golub SBIC or any other SBIC Subsidiary to issue or sell any senior security of which the Company, Golub SBIC or any other SBIC Subsidiary is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61) of the Act; provided that, immediately after the issuance or sale by any of the Company, Golub SBIC or any other SBIC Subsidiary of any such senior security, the Company, individually and on a consolidated basis, shall have the asset coverage required by section 18(a) of the Act (as modified by section 61(a)). In determining whether the Company has the asset coverage on a consolidated basis required by section 18(a) of the Act (as modified by section 61(a)), any senior securities representing indebtedness of Golub SBIC or another SBIC Subsidiary shall not be considered senior securities and, for purposes of the definition of "asset coverage" in section 18(h), shall be treated as indebtedness not represented by senior securities.

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

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011-21322 Filed 8-19-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold an Open Meeting on August 24, 2011 at 10 a.m., in the Auditorium, Room L-002, to hear oral argument in an appeal by Eric J. Brown, Matthew J. Collins, Kevin J. Walsh, and Mark W. Wells (collectively, "Respondents") and a cross-appeal by the Division of Enforcement from an initial decision of an administrative law judge.

Brown and Walsh were formerly associated with registered broker-dealer Prime Capital Services, Inc. ("Prime Capital"), and Collins and Wells are currently associated with Prime Capital.

The law judge found that, in sales of variable annuities to elderly customers, Respondents violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b-5, and Exchange Act Section 17(a) and Exchange Act Rule 17a-3. The law judge also found that Collins failed to reasonably supervise Brown within the meaning of Exchange Act Sections 15(b)(4)(E) and 15(b)(6). For these violations, the law judge issued cease-and-desist orders against Respondents, ordered Respondents to disgorge commissions earned from selling certain variable annuities, barred Respondents from associating with a broker, dealer, or investment adviser, and imposed a third-tier civil monetary penalty of \$130,000 against each Respondent.

Issues likely to be considered at oral argument include whether Respondents violated the above provisions and, if so, the extent to which, under the circumstances, sanctions are warranted.

For further information, please contact the Office of the Secretary at (202) 551-5400.

Dated: August 17, 2011.  
**Elizabeth M. Murphy**,  
*Secretary*.  
 [FR Doc. 2011-21463 Filed 8-18-11; 11:15 am]  
**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65138; File No. SR-NASDAQ-2011-112]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Customer Rebates in Penny Pilot Options

August 15, 2011.

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 August 5, 2011, 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 modify Exchange Rule 7050 governing pricing for NASDAQ members using the NASDAQ Options Market (“NOM”), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to modify pricing for the Penny Pilot<sup>3</sup> Options (“Penny Options”) with respect to the Customer Rebate to Add Liquidity.

The text of the proposed rule change is set forth below. Proposed new text is in *italics* and deleted text is in [brackets].

\* \* \* \* \*

#### 7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

(1) Fees for Execution of Contracts on the NASDAQ Options Market

#### FEES AND REBATES

[per executed contract]

	Customer	Professional	Firm	Non-NOM market maker	NOM market maker
Penny Pilot Options:					
Rebate to Add Liquidity .....	◇ [\$0.36 ]	\$0.29	\$0.10	\$0.25	\$0.30
Fee for Removing Liquidity .....	\$0.45	\$0.45	\$0.45	\$0.45	\$0.45
NDX and MNX:					
Rebate to Add Liquidity .....	\$0.10	\$0.10	\$0.10	\$0.10	\$0.20
Fee for Removing Liquidity .....	\$0.50	\$0.50	\$0.50	\$0.50	\$0.40
All Other Options:					
Fee for Adding Liquidity .....	\$0.00	\$0.20	\$0.45	\$0.45	\$0.30
Fee for Removing Liquidity .....	\$0.45	\$0.45	\$0.45	\$0.45	\$0.45
Rebate to Add Liquidity .....	\$0.20	\$0.00	\$0.00	\$0.00	\$0.00

◇ The Customer Rebate to Add Liquidity in Penny Pilot Options will be paid as follows:

	Monthly volume	Rebate to add liquidity
Tier 1 .....	0-499,999	\$0.26
Tier 2 .....	500,000-799,999	\$0.32
Tier 3 .....	800,000-1,199,999	\$0.36
Tier 4 .....	1,200,000 and up	\$0.38

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

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

<sup>3</sup> The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2010. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR-NASDAQ-2008-026) (notice of filing and immediate effectiveness

establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR-NASDAQ-2009-091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR-NASDAQ-2009-097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455

(February 1, 2010), 75 FR 6239 (February 8, 2010) (SR-NASDAQ-2010-013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR-NASDAQ-2010-053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot). See also Exchange Rule Chapter VI, Section 5.