OMB APPROVAL
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Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2012 - * 003
Amendment No. (req. for Amendments *)

Proposed Rule Change by NASDAQ Stock Market

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☐	☑	☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

- ☐ 19b-4(f)(1)
- ☑ 19b-4(f)(2)
- ☐ 19b-4(f)(3)
- ☐ 19b-4(f)(4)
- ☐ 19b-4(f)(5)
- ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Relating to the Customer Rebate to Add Liquidity in Penny Pilot Options

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name * Angela
Last Name * Dunn
Title * Assistant General Counsel
E-mail * angela.dunn@nasdaqomx.com
Telephone * (215) 496-5692
Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 01/03/2012

By Edward S. Knight
(Name *)

Executive Vice President & General Counsel
(Title *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Edward S Knight,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required) Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change (required) Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change 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 amend the applicability of the Customer Rebate to Add Liquidity for the Penny Pilot[3] Options ("Penny Options").

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and a copy of the applicable portion of the Exchange's Fee Schedule is attached hereto as Exhibit 5.

(b) Not applicable.

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

2 17 CFR 240.19b-4.

3 The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2011. 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); 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); 65969 (December 15, 2011, 76 FR 79268 (December 21, 2011) (SR-NASDAQ-2011-169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot). See also Exchange Rule Chapter VI, Section 5.

(c) Not applicable.

2. <u>Procedures of the Self-Regulatory Organization</u>

The proposed rule change was approved by senior management of NASDAQ pursuant to authority delegated by the Board of Directors of NASDAQ on August 19, 2011. NASDAQ staff will advise the Board of Directors of NASDAQ of any action taken pursuant to delegated authority. No other action by NASDAQ is necessary for the filing of the rule change.

Questions regarding this rule filing may be directed to Angela Saccomandi Dunn, Associate General Counsel, at (215) 496-5692.

3. <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change</u>

a. <u>Purpose</u>

NASDAQ proposes to modify Exchange Rule 7050 governing the rebates and fees assessed for option orders entered into NOM. Specifically, the Exchange is proposing to modify the six tier structure for paying Customer Rebates to Add Liquidity in Penny Pilot Options. The Exchange proposes to reduce the tiers to four tiers and further incentivize NOM Participants to route Customer orders to the Exchange by paying an additional rebate for certain orders after the NOM Participant has met a volume criteria. The Exchange believes that incentivizing NOM Participants to send additional Customer orders to the Exchange will benefit all market participants by adding liquidity to the market.

Specifically, the Exchange currently pays a Customer Rebate to Add Liquidity in Penny Pilot Options based on the following tier structure:

	Monthly Volume	Rebate to Add Liquidity
Tier 1	Participant adds Customer liquidity of up to 24,999 contracts per day in a month	$0.26
Tier 2	Participant adds Customer liquidity of 25,000 - 59,999 contracts per day in a month	$0.36
Tier 3	Participant adds Customer liquidity of 60,000 - 124,999 contracts per day in a month	$0.38
Tier 4	Participant adds Customer liquidity of 125,000 or more contracts per day in a month	$0.40
Tier 5 [a]	Participant adds (1) Customer liquidity of 60,000 or more contracts per day in a month, and (2) NOM Market Maker liquidity of 60,000 or more contracts per day in a month	$0.40
Tier 6 [b]	Participant adds Customer liquidity of 25,000 or more contracts per day in a month, and (2) the Participant simultaneously qualifies for credit under the Investor Support Program set forth in Rule 7014.	$0.37

[a] For purposes of Tier 5, the Exchange will aggregate the trading activity of separate NOM Participants when computing average daily volumes where 75 percent common ownership or control exists between NOM Participants.

[b] For purposes of Tier 6, the Exchange will allow a NOM Participant to qualify for the rebate if a NASDAQ member under common ownership with the NOM Participant qualifies for a credit under the Investor Support Program. Common ownership is defined as 75 percent common ownership or control.

The Exchange proposes to amend the Customer Rebate to Add Liquidity in Penny Pilot Options to a four tier structure as follows:

	Monthly Volume	Rebate to Add Liquidity
Tier 1	Participant adds Customer liquidity of up to 49,999 contracts per day in a month	$0.26
Tier 2	Participant adds Customer liquidity of 50,000 or more contracts per day in a month	$0.42
Tier 3[a]	Participant adds (1) Customer liquidity of 100,000 or more contracts per day in a month, and (2) NOM Market Maker liquidity of 40,000 or more contracts per day in a month	$0.43
Tier 4 [b]	Participant adds (1) Customer liquidity of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014; and; (3) the Participant executed at least one order on NASDAQ's equity market.	$0.40

[a] For purposes of Tier 3, the Exchange will aggregate the trading activity of separate NOM Participants when computing average daily volumes where 75 percent common ownership or control exists between NOM Participants.

[b] For purposes of Tier 4, the Exchange will allow a NOM Participant to qualify for the rebate if a NASDAQ member under common ownership with the NOM Participant has certified under the Investor Support Program and executed at least one order on NASDAQ's equity market. Common ownership is defined as 75 percent common ownership or control.

Currently, Tier 1 firms that add up to 24,999 contracts per day in a month of liquidity receive a rebate of $ 0.26 per contract. The Exchange is proposing to amend Tier 1 to cover up to 49,999 contracts per day in a month, and to pay the same $0.26 per contract rebate. Based on past experience, the Exchange anticipates that all firms currently receiving the $0.26 rebate will maintain their current level of rebate.

Currently, Tier 2 firms that add between 25,000 and 59,999 contracts per day in a month receive a rebate of $0.36 per contract. The Exchange is proposing to amend Tier 2 to cover 50,000 or more contracts per day in a month, and to pay a rebate of $0.42 per contract. As a result, firms that currently contribute between 25,000 and 49,999 per day of liquidity in Customer contracts will receive a lower rebate (down from $0.36 to $0.26 per contract). However, firms that contribute between 50,000 and 59,999 contracts per day of Customer order liquidity will receive a higher rebate (up from $0.36 to $0.42 per contract). Based upon current volume levels and past trading patterns, the Exchange anticipates that firms will contribute sufficient liquidity to avoid receiving reduced rebates.

Currently, Tier 3 firms that add between 60,000 and 124,999 contracts per day in a month receive a rebate of $0.38 per contract. This tier is being eliminated. NOM Participants who previously qualified for Tier 3 would now qualify for Tier 2, which is now 50,000 or more contracts, and would receive a higher rebate in Tier 2 (up from $0.38 to $0.42 per contract).

Currently, Tier 4 firms that add 125,000 contracts or more per day in a month receive a rebate of $0.40 per contract. This tier is being eliminated. NOM Participants who previously qualified for Tier 4 would now qualify for Tier 2, which is now 50,000 or more contracts, and would receive a higher rebate in Tier 2 rebate (up from $0.40 to $0.42 per contract).

Currently, Tier 5 firms that (1) provide 60,000 or more contracts per day in a month of Customer order liquidity in Penny Pilot Options, and (2) provide 60,000 or more contracts per day of NOM Market Maker liquidity receive a rebate of $0.40 per contract if both criteria are met. For purposes of determining qualification for this tier, the Exchange aggregates[4] the trading activity of separate NOM Participants in calculating the average daily volume if there is at least 75% common ownership between the NOM Participants. The Exchange proposes to rename this Tier 5 as "Tier 3" and modify the Customer volume to require that firms: (1) provide 100,000 or more contracts per day in a month of Customer order liquidity in Penny Pilot Options (an increase from 60,000), and (2) provide 40,000 or more contracts per day of NOM Market Maker liquidity (a decrease from 60,000). If a firm meets both criteria, the Exchange would pay an increased rebate of $0.43 per contract. Based upon current volume levels and past trading patterns, the Exchange anticipates that firms will contribute sufficient liquidity to receive an increased rebate.

Currently, Tier 6 firms that (1) provide 25,000 or more contracts per day in a month of Customer order liquidity in Penny Pilot Options, and (2) simultaneously qualify for credit under the Investor Support Program ("ISP") as set forth in NASDAQ Rule 7014[5] receive a rebate of $0.37 per contract. Specifically, firms that qualify for a credit under the ISP by providing retail investor liquidity to NASDAQ's equity market can qualify for a higher rebate on NASDAQ's options market if they contribute 25,000 or

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4 Aggregation is necessary and appropriate because certain NOM participants conduct Customer and NOM Market Maker trading activity through separate but related broker-dealers.

5 For a detailed description of the ISP, see Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ-2010-141) (notice of filing and immediate effectiveness) (the "ISP Filing"). See also Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (NASDAQ-2010-153) (notice of filing and immediate effectiveness); and 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ-2010-154) (notice of filing and immediate effectiveness).

more contracts per day of Customer order liquidity in Penny Pilot Options on NOM. The Exchange proposes to rename this Tier 6 as "Tier 4" and pay an increased rebate of $0.40 per contract for firms that meet the criteria for this tier. In addition, the Exchange proposes to revise the requirement of newly named Tier 4 to state that firms (1) that provide 25,000 or more contracts per day in a month of Customer order liquidity in Penny Pilot Options, (2) where the Participant has certified for the ISP as set forth in Rule 7014; and (3) where the Participant executed at least one order on NASDAQ's equity market will receive the $0.40 per contract rebate. A member desiring to participate in the ISP must submit an application to the Exchange and designate one or more of its NASDAQ ports for ISP use.[6] The Exchange's proposal to qualify for newly named Tier 4 would not require the Participant to transact any ISP volume, however, the Participant would be required to execute at least one order on NASDAQ's equity market.[7] The Exchange provides a methodology by which members can demonstrate

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6 See Exchange Rule 7014.

7 Currently, in order to comply with Tier 6, a participant must qualify for credit under the ISP. In order to qualify for an ISP credit, a Participant would need to transact a certain amount of displayed liquidity through an ISP-designated port which results in an increase in the overall liquidity that the member provides to NASDAQ measured as a proportion of the consolidated share volume traded by all market participants across all trading venues. To this end, a member's "Baseline Participation Ratio" is determined by measuring the number of shares in liquidity-providing orders entered by the member (through any NASDAQ port) and executed on NASDAQ and dividing this number by the consolidated (across all trading venues) share volume of System Securities traded in a given month. To determine whether a member added liquidity to NASDAQ in a given month, NASDAQ would perform the same calculation on a monthly basis for the then-current month and compare the resulting ratio to the Baseline Participation Ratio. For a detailed description of the ISP, see Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ-2010-141) (notice of filing and immediate effectiveness) (the "ISP Filing"). See also Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (NASDAQ-2010-153) (notice of filing and immediate

their compliance with the requirements of Rule 7014. A member shall certify to the reasonable satisfaction of the Exchange: (i) its Baseline Participation Ratio[8]; and (ii) if requested by the Exchange, its compliance with any other sections or requirements of Rule 7014, but not more often than once a month during participation in ISP. The Exchange would permit a NOM Participant to qualify for newly named Tier 4 if that NOM Participant meets the Customer liquidity volume of 25,000 or more contracts per day in a month, has certified under Rule 7014 and has executed at least one order on NASDAQ's equity market. Based upon current volume levels and past trading patterns, the Exchange anticipates that firms will contribute sufficient liquidity to receive an increased rebate in this tier. The Exchange believes the increased rebate would encourage participants in the Exchange's equity markets to also participate in the Exchange's options market.

The Exchange also proposes to further incentivize those NOM Participants that qualify for proposed Tiers 2, 3 and 4 by offering to pay an additional $0.01 per contract rebate on each Customer order of 5,000 or more, displayed or non-displayed contracts, which adds liquidity in a Penny Pilot Option, as long as that NOM Participant has

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effectiveness); and 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ-2010-154) (notice of filing and immediate effectiveness). by transacting a certain volume.

8 The term "Baseline Participation Ratio" shall mean, with respect to a member, the lower of such member's Participation Ratio for the month of August 2010 or the month of August 2011, provided that in calculating such Participation Ratios, the numerator shall be increased by the amount (if any) of the member's Indirect Order Flow for such month, and provided further that if the result is zero for either month, the Baseline Participation Ratio shall be deemed to be 0.485% (when rounded to three decimal places). See NASDAQ Rule 7014(g)(1).

qualified for a rebate in Tier 2, 3 or 4 for that month. This would be in addition to the rebate for the qualifying tier.[9]

The Exchange is not otherwise amending the Customer Rebates to Add Liquidity.

b. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[10] in general, and with Section 6(b)(4) 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 or system which NASDAQ operates or controls.

The Exchange believes that the proposed new pricing tiers are reasonable, equitable and not unfairly discriminatory because they continue an existing program[12] to encourage broker-dealers acting as agent for Customer orders to select the Exchange as a venue to post Customer orders. The Exchange believes that its success at attracting Customer order flow benefits all market participants by improving the quality of order interaction and executions at the Exchange. The Exchange believes the existing monthly volume thresholds have incentivized firms that route Customer orders to the Exchange to increase Customer order flow to the Exchange. The Exchange desires to continue to encourage firms that route Customer orders to increase Customer order flow to the

9 The rebate would be paid for a partial execution.

10 15 U.S.C. 78f.

11 15 U.S.C. 78f(b)(4).

12 The Exchange adopted these monthly volume achievement tiers in September 2011. See Securities Exchange Act Release Nos. 65317 (September 12, 2011), 76 FR 57778 (September 16, 2011) (SR-NASDAQ-2011-124) and 65317 (September 12, 2011), 76 FR 61129 (October 3, 2011) (SR-NASDAQ-2011-127).

Exchange by offering greater Customer rebates for greater liquidity added to the Exchange.

Specifically, the Exchange believes that the increased rebates would further incentivize firms to continue to send more Customer volume to the Exchange. Today, the Exchange pays any Customer order up to 24,999 contracts per day in a given month a rebate of $0.26 per contract for adding liquidity in Penny Pilot Options. The Exchange would continue to pay this same rebate, but would pay such a rebate for any Customer order up to 49,999 contracts per day in a given month that adds liquidity in Penny Pilot Options. This would result in a decreased rebate to certain Participants that currently qualify for Tier 2. The Exchange believes that this increase in the number of Customer orders that qualify for Tier 1 is reasonable, equitable and not unfairly discriminatory because all Customer orders that add liquidity in Penny Pilot Options have the ability to earn the rebate; there is no minimum order requirement. Also, all NOM Participants transacting Customer orders in Penny Pilot Options are eligible to receive this rebate. The Exchange currently pays a higher rebate for Tier 2 Customer orders in Penny Pilot Options between 25,000 and 59,999 contracts per day in a given month of $0.36 per contract. The Exchange believes that offering the Tier 1 rebate up to 49,999 contracts per day and starting the Tier 2 rebate at 50,000 Customer contracts per day would encourage NOM Participants to send a greater number of Customer orders to the Exchange to obtain the increased rebate of $0.42 per contract.

The Exchange believes that amending Tier 2 from between 25,000 and 59,999 Customer orders per day in a given month to 50,000 or more Customer contracts per day in a given month (capturing those Customer contracts between 50,000 and 59,999) is reasonable because the Exchange is also offering a higher rebate of $0.42 per contract, an increase from the current $0.36 per contract. The Exchange believes that simplifying the current Tiers 1, 2, 3 and 4, which have no other qualifier than Customer volume, down to two tiers and offering a higher rebate of $0.42 per contract for any Customer order volume over 50,000 contracts per day in a given month, in Penny Pilot Options, would allow a greater number of NOM Participants to obtain a higher rebate. Those NOM Participants that currently qualify for Tiers 3 and 4 would be eligible for a higher rebate and a portion of those NOM Participants that currently qualify for Tier 2 would be eligible for the higher rebate. The Exchange believes that for these reasons, the proposal is equitable and not unfairly discriminatory.

The Exchange also proposes to amend current Tier 5, which would be renamed Tier 3, to increase the number of Customer contracts from 60,000 to 100,000 contracts per day in a given month and also decrease the second qualifier, concerning NOM Market Maker liquidity, from 60,000 to 40,000 per day in a given month. The Exchange believes that this amendment is reasonable because the Exchange is seeking to incentivize NOM Participants to transact a greater number of Customer orders. By increasing the number of Customer orders to 100,000 per day and lowering the second qualifier on Market Maker liquidity to 40,000 per day the Exchange desires to further incentivize NOM Participants to send additional Customer order flow, in Penny Pilot Options, to the Exchange and provide incentives for Market Makers to increase liquidity on the Exchange for the benefit of all NOM participants. The Exchange believes that Broker Dealers that make markets and also route Customer order flow to the Exchange today, would be incentivized to meet the new criteria and qualify for Tier 3 because of the lower Market Maker liquidity volume and the increased rebate. The Exchange proposes to increase the rebate from $0.40 per contract to $0.43 per contract in order to incentivize NOM Participants that also route Customer order flow to register to make markets on the Exchange. The Exchange believes that this newly named Tier 3 is equitable and not unfairly discriminatory because Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants. The Exchange has set a reasonable goal of 40,000 or more contracts per day of Market Maker liquidity on NOM, an achievable goal that should encourage increased Market Maker registration and liquidity on the Exchange. The Exchange believes that paying an increased rebate of $0.43 per contract ($0.01 per contract higher than Tier 2) is equitable and not unfairly discriminatory because increased Market Maker liquidity would, in turn, improve the amount of liquidity available on the Exchange and improve the quality of order interaction and executions on the Exchange.

The Exchange also proposes to amend current Tier 6, which would be renamed Tier 4, to increase the rebate from $0.37 per contract to $0.40 per contract to incentivize NOM Participants to transact additional Customer orders in Penny Pilot Options and encourage participants in the Exchange's equity markets to also participate in the Exchange's options market. The Exchange believes that this proposed amendment is reasonable because the Exchange seeks to incentivize NOM Participants to transact a greater number of Customer orders in Penny Pilot Options. Furthermore, the Exchange believes that it is reasonable to allow NOM Participants with a certain amount of Customer orders, to qualify for a Customer rebate by allowing a related NASDAQ member, under common ownership, to qualify for the rebate as specified herein. The

Exchange also believes that the amendments to the newly named Tier 4 criteria, namely 25,000 or more Customer contracts, has certified for ISP and executed at least one order on NASDAQ’s equity market, are reasonable because, as stated above, the Exchange believes that this proposal would incentivize NOM Participants to transact additional Customer orders and encourage participants in the Exchange's equity markets to also participate in the Exchange's options market. The Exchange believes this would encourage participants in the Exchange's equity markets to also participate in the Exchange's options market particularly because the Exchange’s proposal to qualify for newly named Tier 4 would not require the Participant to transact any volume, but only to certify for ISP.

The Exchange believes that the requirement to certify in combination with requiring the Participant to execute at least one order on NASDAQ’s equity market would promote the submission of liquidity-providing orders to NASDAQ. The ISP encourages members to add targeted liquidity that is executed in the NASDAQ Market Center. The Exchange believes that the ISP promotes submission of liquidity-providing orders to NASDAQ, which would benefit all NASDAQ members and all investors. By allowing members to certify under Rule 7014, while also meeting the volume criteria of 25,000 or more Customer contracts in Penny Pilot Options, the Exchange believes that the proposal would encourage greater participation in the options market. The Exchange believes that increased rebate and the amended criteria for newly named Tier 4 are equitable and not unfairly discriminatory because together these amendments are intended to encourage increased activity in both the NASDAQ Options Market and in the

ISP of the NASDAQ equity market. The goal of the ISP is to incentivize members[13] to provide liquidity from individual equity investors to the NASDAQ Market Center. The increased rebate in newly named Tier 4 would encourage firms that certify pursuant to Rule 7014 to increase the amount of Customer order liquidity provided to the NASDAQ Options Market. The addition of such liquidity, either through the ISP or through increased Customer order flow, would benefit all Exchange members that participate in those markets.[14] The Exchange believes that amending newly named Tier 4 to require firms to be certified for ISP instead of qualifying for a credit would provide further incentive for firms to add volume to NOM and also participate in the equities market because the firm has to execute at least one order in the equity market.

The Exchange believes that it is reasonable to offer a rebate of $0.01 per contract on each Customer order of 5,000 or more displayed or non-displayed contracts, which adds liquidity in a Penny Pilot Option, as long as that NOM Participant has qualified for a

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[13] The Commission has expressed its concern that a significant percentage of the orders of individual investors are executed at over the counter ("OTC") markets, that is, at off-exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. See Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, "Concept Release"). In the Concept Release, the Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. The Commission published the Concept Release to invite public comment on a wide range of market structure issues, including high frequency trading and un-displayed, or "dark," liquidity. See also Mary L. Schapiro, *Strengthening Our Equity Market Structure* (Speech at the Economic Club of New York, Sept. 7, 2010) ("Schapiro Speech," available on the Commission website) (comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

[14] NASDAQ Rule 7018(a) already provides incentives for firms to participate in both NASDAQ's equity market and its options market.

rebate in Tier 2, 3 or 4 for that month. This $0.01 per contract rebate would be in addition to the rebate for the qualifying tier. The Exchange believes that this enhanced incentive will encourage NOM Participants to send larger orders to the Exchange, which in turn would also assist those Participants that send Customer orders in Penny Pilot Options to earn higher rebates by qualifying for a higher tier as well as bringing additional liquidity to the Exchange. The Exchange further believes that limiting the enhanced $0.01 per contract rebate to firms already qualifying for Tiers 3, 4 or 5 (and not those that qualify for Tier 1) is equitable and not unfairly discriminatory because generally NOM Participants in Tier 1 today are not sending Customer orders of 5,000 or more contracts. If those Participants in Tier 1 sent ten Customer orders of 5,000 or more per day in a given month to the Exchange, they would qualify for Tier 2 and would be paid the additional enhanced rebate. The Exchange believes that it is equitable and not unfairly discriminatory to incentivize those NOM Participants that qualify for higher volume tiers as they are the most likely to obtain the enhanced rebate and continue to send larger orders, which provides more liquidity to the Exchange. Finally, the Exchange would pay the enhanced rebate uniformly to those NOM Participants that qualify for Tiers 2, 3 or 4 and meet the Customer order volume discussed herein for Penny Pilot Options.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive or rebate opportunities to be inadequate. The Exchange believes that the proposed rebate scheme is competitive and similar to other rebates and tiers opportunities in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts the rebates present on the Exchange today and substantially influenced the proposal set forth above.

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

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, NASDAQ has designed its fees to compete effectively for the execution and routing of options contracts and to reduce the overall cost to investors of options trading.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act.[15]

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

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

9. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

5. Text of the proposed rule change.

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-NASDAQ-2012-003)

January__, 2012

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ Stock Market, LLC Relating to the Customer Rebate to Add Liquidity in Penny Pilot Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b-4[2] thereunder, notice is hereby given that on January 3, 2012. 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 NASDAQ. 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 NASDAQ Stock Market LLC 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 amend the applicability of the Customer Rebate to Add Liquidity for the Penny Pilot[3] Options ("Penny Options").

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

2 17 CFR 240.19b-4.

3 The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2011. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008)(SR-

The text of the proposed rule change is available on the Exchange's Website at http://www.nasdaq.cchwallstreet.com, 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. 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

NASDAQ proposes to modify Exchange Rule 7050 governing the rebates and fees assessed for option orders entered into NOM. Specifically, the Exchange is proposing to modify the six tier structure for paying Customer Rebates to Add Liquidity in Penny Pilot Options. The Exchange proposes to reduce the tiers to four tiers and

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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); 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); 65969 (December 15, 2011, 76 FR 79268 (December 21, 2011) (SR-NASDAQ-2011-169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot). See also Exchange Rule Chapter VI, Section 5.

further incentivize NOM Participants to route Customer orders to the Exchange by paying an additional rebate for certain orders after the NOM Participant has met a volume criteria. The Exchange believes that incentivizing NOM Participants to send additional Customer orders to the Exchange will benefit all market participants by adding liquidity to the market.

Specifically, the Exchange currently pays a Customer Rebate to Add Liquidity in Penny Pilot Options based on the following tier structure:

	Monthly Volume	**Rebate to Add Liquidity**
Tier 1	Participant adds Customer liquidity of up to 24,999 contracts per day in a month	$0.26
Tier 2	Participant adds Customer liquidity of 25,000 - 59,999 contracts per day in a month	$0.36
Tier 3	Participant adds Customer liquidity of 60,000 - 124,999 contracts per day in a month	$0.38
Tier 4	Participant adds Customer liquidity of 125,000 or more contracts per day in a month	$0.40
Tier 5 [a]	Participant adds (1) Customer liquidity of 60,000 or more contracts per day in a month, and (2) NOM Market Maker liquidity of 60,000 or more contracts per day in a month	$0.40
Tier 6 [b]	Participant adds Customer liquidity of 25,000 or more contracts per day in a month, and (2) the Participant simultaneously qualifies for credit under the Investor Support Program set forth in Rule 7014.	$0.37

[a] For purposes of Tier 5, the Exchange will aggregate the trading activity of separate NOM Participants when computing average daily volumes where 75 percent common ownership or control exists between NOM Participants.

[b] For purposes of Tier 6, the Exchange will allow a NOM Participant to qualify for the rebate if a NASDAQ member under common ownership with the NOM Participant qualifies for a credit under the Investor Support Program. Common ownership is defined as 75 percent common ownership or control.

The Exchange proposes to amend the Customer Rebate to Add Liquidity in Penny Pilot Options to a four tier structure as follows:

	Monthly Volume	**Rebate to Add Liquidity**
Tier 1	Participant adds Customer liquidity of up to 49,999 contracts per day in a month	$0.26
Tier 2	Participant adds Customer liquidity of 50,000 or more contracts per day in a month	$0.42
Tier 3[a]	Participant adds (1) Customer liquidity of 100,000 or more contracts per day in a month, and (2) NOM Market Maker liquidity of 40,000 or more contracts per day in a month	$0.43
Tier 4 [b]	Participant adds (1) Customer liquidity of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014; and; (3) the Participant executed at least one order on NASDAQ's equity market.	$0.40

[a] For purposes of Tier 3, the Exchange will aggregate the trading activity of separate NOM Participants when computing average daily volumes where 75 percent common ownership or control exists between NOM Participants.

[b] For purposes of Tier 4, the Exchange will allow a NOM Participant to qualify for the rebate if a NASDAQ member under common ownership with the NOM Participant has certified under the Investor Support Program and executed at least one order on NASDAQ's equity market. Common ownership is defined as 75 percent common ownership or control.

Currently, Tier 1 firms that add up to 24,999 contracts per day in a month of liquidity receive a rebate of $ 0.26 per contract. The Exchange is proposing to amend

Tier 1 to cover up to 49,999 contracts per day in a month, and to pay the same $0.26 per contract rebate. Based on past experience, the Exchange anticipates that all firms currently receiving the $0.26 rebate will maintain their current level of rebate.

Currently, Tier 2 firms that add between 25,000 and 59,999 contracts per day in a month receive a rebate of $0.36 per contract. The Exchange is proposing to amend Tier 2 to cover 50,000 or more contracts per day in a month, and to pay a rebate of $0.42 per contract. As a result, firms that currently contribute between 25,000 and 49,999 per day of liquidity in Customer contracts will receive a lower rebate (down from $0.36 to $0.26 per contract). However, firms that contribute between 50,000 and 59,999 contracts per day of Customer order liquidity will receive a higher rebate (up from $0.36 to $0.42 per contract). Based upon current volume levels and past trading patterns, the Exchange anticipates that firms will contribute sufficient liquidity to avoid receiving reduced rebates.

Currently, Tier 3 firms that add between 60,000 and 124,999 contracts per day in a month receive a rebate of $0.38 per contract. This tier is being eliminated. NOM Participants who previously qualified for Tier 3 would now qualify for Tier 2, which is now 50,000 or more contracts, and would receive a higher rebate in Tier 2 (up from $0.38 to $0.42 per contract).

Currently, Tier 4 firms that add 125,000 contracts or more per day in a month receive a rebate of $0.40 per contract. This tier is being eliminated. NOM Participants who previously qualified for Tier 4 would now qualify for Tier 2, which is now 50,000 or more contracts, and would receive a higher rebate in Tier 2 rebate (up from $0.40 to $0.42 per contract).

Currently, Tier 5 firms that (1) provide 60,000 or more contracts per day in a month of Customer order liquidity in Penny Pilot Options, and (2) provide 60,000 or more contracts per day of NOM Market Maker liquidity receive a rebate of $0.40 per contract if both criteria are met. For purposes of determining qualification for this tier, the Exchange aggregates[4] the trading activity of separate NOM Participants in calculating the average daily volume if there is at least 75% common ownership between the NOM Participants. The Exchange proposes to rename this Tier 5 as “Tier 3” and modify the Customer volume to require that firms: (1) provide 100,000 or more contracts per day in a month of Customer order liquidity in Penny Pilot Options (an increase from 60,000), and (2) provide 40,000 or more contracts per day of NOM Market Maker liquidity (a decrease from 60,000). If a firm meets both criteria, the Exchange would pay an increased rebate of $0.43 per contract. Based upon current volume levels and past trading patterns, the Exchange anticipates that firms will contribute sufficient liquidity to receive an increased rebate.

Currently, Tier 6 firms that (1) provide 25,000 or more contracts per day in a month of Customer order liquidity in Penny Pilot Options, and (2) simultaneously qualify for credit under the Investor Support Program (“ISP”) as set forth in NASDAQ Rule 7014[5] receive a rebate of $0.37 per contract. Specifically, firms that qualify for a credit

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[4] Aggregation is necessary and appropriate because certain NOM participants conduct Customer and NOM Market Maker trading activity through separate but related broker-dealers.

[5] For a detailed description of the ISP, see Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ-2010-141) (notice of filing and immediate effectiveness) (the "ISP Filing"). See also Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (NASDAQ-2010-153) (notice of filing and immediate

under the ISP by providing retail investor liquidity to NASDAQ's equity market can qualify for a higher rebate on NASDAQ's options market if they contribute 25,000 or more contracts per day of Customer order liquidity in Penny Pilot Options on NOM. The Exchange proposes to rename this Tier 6 as “Tier 4” and pay an increased rebate of $0.40 per contract for firms that meet the criteria for this tier. In addition, the Exchange proposes to revise the requirement of newly named Tier 4 to state that firms (1) that provide 25,000 or more contracts per day in a month of Customer order liquidity in Penny Pilot Options, (2) where the Participant has certified for the ISP as set forth in Rule 7014; and (3) where the Participant executed at least one order on NASDAQ’s equity market will receive the $0.40 per contract rebate. A member desiring to participate in the ISP must submit an application to the Exchange and designate one or more of its NASDAQ ports for ISP use.[6] The Exchange’s proposal to qualify for newly named Tier 4 would not require the Participant to transact any ISP volume, however, the Participant would be required to execute at least one order on NASDAQ’s equity market.[7] The Exchange provides a methodology by which members can demonstrate

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effectiveness); and 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ-2010-154) (notice of filing and immediate effectiveness).

6 See Exchange Rule 7014.

7 Currently, in order to comply with Tier 6, a participant must qualify for credit under the ISP. In order to qualify for an ISP credit, a Participant would need to transact a certain amount of displayed liquidity through an ISP-designated port which results in an increase in the overall liquidity that the member provides to NASDAQ measured as a proportion of the consolidated share volume traded by all market participants across all trading venues. To this end, a member's "Baseline Participation Ratio" is determined by measuring the number of shares in liquidity-providing orders entered by the member (through any NASDAQ port) and executed on NASDAQ and dividing this number by the consolidated (across all trading venues) share volume of System Securities traded in a given month. To determine whether a member added liquidity to NASDAQ in a given month,

their compliance with the requirements of Rule 7014. A member shall certify to the reasonable satisfaction of the Exchange: (i) its Baseline Participation Ratio[8]; and (ii) if requested by the Exchange, its compliance with any other sections or requirements of Rule 7014, but not more often than once a month during participation in ISP. The Exchange would permit a NOM Participant to qualify for newly named Tier 4 if that NOM Participant meets the Customer liquidity volume of 25,000 or more contracts per day in a month, has certified under Rule 7014 and has executed at least one order on NASDAQ's equity market. Based upon current volume levels and past trading patterns, the Exchange anticipates that firms will contribute sufficient liquidity to receive an increased rebate in this tier. The Exchange believes the increased rebate would encourage participants in the Exchange's equity markets to also participate in the Exchange's options market.

The Exchange also proposes to further incentivize those NOM Participants that qualify for proposed Tiers 2, 3 and 4 by offering to pay an additional $0.01 per contract

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NASDAQ would perform the same calculation on a monthly basis for the then-current month and compare the resulting ratio to the Baseline Participation Ratio. For a detailed description of the ISP, see Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ-2010-141) (notice of filing and immediate effectiveness) (the "ISP Filing"). See also Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (NASDAQ-2010-153) (notice of filing and immediate effectiveness); and 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ-2010-154) (notice of filing and immediate effectiveness). by transacting a certain volume.

8 The term "Baseline Participation Ratio" shall mean, with respect to a member, the lower of such member's Participation Ratio for the month of August 2010 or the month of August 2011, provided that in calculating such Participation Ratios, the numerator shall be increased by the amount (if any) of the member's Indirect Order Flow for such month, and provided further that if the result is zero for either month, the Baseline Participation Ratio shall be deemed to be 0.485% (when rounded to three decimal places). See NASDAQ Rule 7014(g)(1).

rebate on each Customer order of 5,000 or more, displayed or non-displayed contracts, which adds liquidity in a Penny Pilot Option, as long as that NOM Participant has qualified for a rebate in Tier 2, 3 or 4 for that month. This would be in addition to the rebate for the qualifying tier.[9]

The Exchange is not otherwise amending the Customer Rebates to Add Liquidity.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[10] in general, and with Section 6(b)(4) 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 or system which NASDAQ operates or controls.

The Exchange believes that the proposed new pricing tiers are reasonable, equitable and not unfairly discriminatory because they continue an existing program[12] to encourage broker-dealers acting as agent for Customer orders to select the Exchange as a venue to post Customer orders. The Exchange believes that its success at attracting Customer order flow benefits all market participants by improving the quality of order interaction and executions at the Exchange. The Exchange believes the existing monthly volume thresholds have incentivized firms that route Customer orders to the Exchange to

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9 The rebate would be paid for a partial execution.

10 15 U.S.C. 78f.

11 15 U.S.C. 78f(b)(4).

12 The Exchange adopted these monthly volume achievement tiers in September 2011. See Securities Exchange Act Release Nos. 65317 (September 12, 2011), 76 FR 57778 (September 16, 2011) (SR-NASDAQ-2011-124) and 65317 (September 12, 2011), 76 FR 61129 (October 3, 2011) (SR-NASDAQ-2011-127).

increase Customer order flow to the Exchange. The Exchange desires to continue to encourage firms that route Customer orders to increase Customer order flow to the Exchange by offering greater Customer rebates for greater liquidity added to the Exchange.

Specifically, the Exchange believes that the increased rebates would further incentivize firms to continue to send more Customer volume to the Exchange. Today, the Exchange pays any Customer order up to 24,999 contracts per day in a given month a rebate of $0.26 per contract for adding liquidity in Penny Pilot Options. The Exchange would continue to pay this same rebate, but would pay such a rebate for any Customer order up to 49,999 contracts per day in a given month that adds liquidity in Penny Pilot Options. This would result in a decreased rebate to certain Participants that currently qualify for Tier 2. The Exchange believes that this increase in the number of Customer orders that qualify for Tier 1 is reasonable, equitable and not unfairly discriminatory because all Customer orders that add liquidity in Penny Pilot Options have the ability to earn the rebate; there is no minimum order requirement. Also, all NOM Participants transacting Customer orders in Penny Pilot Options are eligible to receive this rebate. The Exchange currently pays a higher rebate for Tier 2 Customer orders in Penny Pilot Options between 25,000 and 59,999 contracts per day in a given month of $0.36 per contract. The Exchange believes that offering the Tier 1 rebate up to 49,999 contracts per day and starting the Tier 2 rebate at 50,000 Customer contracts per day would encourage NOM Participants to send a greater number of Customer orders to the Exchange to obtain the increased rebate of $0.42 per contract.

The Exchange believes that amending Tier 2 from between 25,000 and 59,999 Customer orders per day in a given month to 50,000 or more Customer contracts per day in a given month (capturing those Customer contracts between 50,000 and 59,999) is reasonable because the Exchange is also offering a higher rebate of $0.42 per contract, an increase from the current $0.36 per contract. The Exchange believes that simplifying the current Tiers 1, 2, 3 and 4, which have no other qualifier than Customer volume, down to two tiers and offering a higher rebate of $0.42 per contract for any Customer order volume over 50,000 contracts per day in a given month, in Penny Pilot Options, would allow a greater number of NOM Participants to obtain a higher rebate. Those NOM Participants that currently qualify for Tiers 3 and 4 would be eligible for a higher rebate and a portion of those NOM Participants that currently qualify for Tier 2 would be eligible for the higher rebate. The Exchange believes that for these reasons, the proposal is equitable and not unfairly discriminatory.

The Exchange also proposes to amend current Tier 5, which would be renamed Tier 3, to increase the number of Customer contracts from 60,000 to 100,000 contracts per day in a given month and also decrease the second qualifier, concerning NOM Market Maker liquidity, from 60,000 to 40,000 per day in a given month. The Exchange believes that this amendment is reasonable because the Exchange is seeking to incentivize NOM Participants to transact a greater number of Customer orders. By increasing the number of Customer orders to 100,000 per day and lowering the second qualifier on Market Maker liquidity to 40,000 per day the Exchange desires to further incentivize NOM Participants to send additional Customer order flow, in Penny Pilot Options, to the Exchange and provide incentives for Market Makers to increase liquidity on the Exchange for the benefit of all NOM participants. The Exchange believes that Broker Dealers that make markets and also route Customer order flow to the Exchange today, would be incentivized to meet the new criteria and qualify for Tier 3 because of the lower Market Maker liquidity volume and the increased rebate. The Exchange proposes to increase the rebate from $0.40 per contract to $0.43 per contract in order to incentivize NOM Participants that also route Customer order flow to register to make markets on the Exchange. The Exchange believes that this newly named Tier 3 is equitable and not unfairly discriminatory because Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants. The Exchange has set a reasonable goal of 40,000 or more contracts per day of Market Maker liquidity on NOM, an achievable goal that should encourage increased Market Maker registration and liquidity on the Exchange. The Exchange believes that paying an increased rebate of $0.43 per contract ($0.01 per contract higher than Tier 2) is equitable and not unfairly discriminatory because increased Market Maker liquidity would, in turn, improve the amount of liquidity available on the Exchange and improve the quality of order interaction and executions on the Exchange.

The Exchange also proposes to amend current Tier 6, which would be renamed Tier 4, to increase the rebate from $0.37 per contract to $0.40 per contract to incentivize NOM Participants to transact additional Customer orders in Penny Pilot Options and encourage participants in the Exchange's equity markets to also participate in the Exchange's options market. The Exchange believes that this proposed amendment is reasonable because the Exchange seeks to incentivize NOM Participants to transact a greater number of Customer orders in Penny Pilot Options. Furthermore, the Exchange believes that it is reasonable to allow NOM Participants with a certain amount of Customer orders, to qualify for a Customer rebate by allowing a related NASDAQ member, under common ownership, to qualify for the rebate as specified herein. The Exchange also believes that the amendments to the newly named Tier 4 criteria, namely 25,000 or more Customer contracts, has certified for ISP and executed at least one order on NASDAQ's equity market, are reasonable because, as stated above, the Exchange believes that this proposal would incentivize NOM Participants to transact additional Customer orders and encourage participants in the Exchange's equity markets to also participate in the Exchange's options market. The Exchange believes this would encourage participants in the Exchange's equity markets to also participate in the Exchange's options market particularly because the Exchange's proposal to qualify for newly named Tier 4 would not require the Participant to transact any volume, but only to certify for ISP.

The Exchange believes that the requirement to certify in combination with requiring the Participant to execute at least one order on NASDAQ's equity market would promote the submission of liquidity-providing orders to NASDAQ. The ISP encourages members to add targeted liquidity that is executed in the NASDAQ Market Center. The Exchange believes that the ISP promotes submission of liquidity-providing orders to NASDAQ, which would benefit all NASDAQ members and all investors. By allowing members to certify under Rule 7014, while also meeting the volume criteria of 25,000 or more Customer contracts in Penny Pilot Options, the Exchange believes that the proposal would encourage greater participation in the options market. The Exchange believes that increased rebate and the amended criteria for newly named Tier 4 are equitable and not unfairly discriminatory because together these amendments are intended to encourage increased activity in both the NASDAQ Options Market and in the ISP of the NASDAQ equity market. The goal of the ISP is to incentivize members[13] to provide liquidity from individual equity investors to the NASDAQ Market Center. The increased rebate in newly named Tier 4 would encourage firms that certify pursuant to Rule 7014 to increase the amount of Customer order liquidity provided to the NASDAQ Options Market. The addition of such liquidity, either through the ISP or through increased Customer order flow, would benefit all Exchange members that participate in those markets.[14] The Exchange believes that amending newly named Tier 4 to require firms to be certified for ISP instead of qualifying for a credit would provide further incentive for firms to add volume to NOM and also participate in the equities market because the firm has to execute at least one order in the equity market.

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[13] The Commission has expressed its concern that a significant percentage of the orders of individual investors are executed at over the counter ("OTC") markets, that is, at off-exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. See Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, "Concept Release"). In the Concept Release, the Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. The Commission published the Concept Release to invite public comment on a wide range of market structure issues, including high frequency trading and un-displayed, or "dark," liquidity. See also Mary L. Schapiro, *Strengthening Our Equity Market Structure* (Speech at the Economic Club of New York, Sept. 7, 2010) ("Schapiro Speech," available on the Commission website) (comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

[14] NASDAQ Rule 7018(a) already provides incentives for firms to participate in both NASDAQ's equity market and its options market.

The Exchange believes that it is reasonable to offer a rebate of $0.01 per contract on each Customer order of 5,000 or more displayed or non-displayed contracts, which adds liquidity in a Penny Pilot Option, as long as that NOM Participant has qualified for a rebate in Tier 2, 3 or 4 for that month. This $0.01 per contract rebate would be in addition to the rebate for the qualifying tier. The Exchange believes that this enhanced incentive will encourage NOM Participants to send larger orders to the Exchange, which in turn would also assist those Participants that send Customer orders in Penny Pilot Options to earn higher rebates by qualifying for a higher tier as well as bringing additional liquidity to the Exchange. The Exchange further believes that limiting the enhanced $0.01 per contract rebate to firms already qualifying for Tiers 3, 4 or 5 (and not those that qualify for Tier 1) is equitable and not unfairly discriminatory because generally NOM Participants in Tier 1 today are not sending Customer orders of 5,000 or more contracts. If those Participants in Tier 1 sent ten Customer orders of 5,000 or more per day in a given month to the Exchange, they would qualify for Tier 2 and would be paid the additional enhanced rebate. The Exchange believes that it is equitable and not unfairly discriminatory to incentivize those NOM Participants that qualify for higher volume tiers as they are the most likely to obtain the enhanced rebate and continue to send larger orders, which provides more liquidity to the Exchange. Finally, the Exchange would pay the enhanced rebate uniformly to those NOM Participants that qualify for Tiers 2, 3 or 4 and meet the Customer order volume discussed herein for Penny Pilot Options.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive or rebate opportunities to be inadequate. The Exchange believes that the proposed rebate scheme is competitive and similar to other rebates and tiers opportunities in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts the rebates present on the Exchange today and substantially influenced the proposal set forth above.

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.

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.[15] 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 necessary or appropriate in the public interest, for the protection of investors, or 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

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

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 (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2012-003 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2012-003. This file number should be included on the subject line if e-mail 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 Web site (http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2012-003 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill
Deputy Secretary

[16] 17 CFR 200.30-3(a)(12).

Exhibit 5

New text is in brackets and deleted text is underlined.

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7050. NASDAQ Options Market—Fees
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	***	$0.29	$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:] noted below. Each Customer order of 5,000 or more, displayed or non-displayed contracts, which adds liquidity in Penny Pilot Options, will qualify for an additional rebate of $0.01 per contract provided the NOM Participant has qualified for a rebate in Tier 2, 3 or 4 for that month.

	Monthly Volume	**Rebate to Add Liquidity**
Tier 1	Participant adds Customer liquidity of up to [24]49,999 contracts per day in a month	$0.26
Tier 2	Participant adds Customer liquidity of [25,000 -]50,000 or more [9,999] contracts per day in a month	$0.[36]42
[Tier 3]	[Participant adds Customer liquidity of 60,000 - 124,999 contracts per day in a month]	[$0.38]
[Tier 4]	[Participant adds Customer liquidity of 125,000 or more contracts per day in a month]	[$0.40]
Tier [5]3 [a]	Participant adds (1) Customer liquidity of [6]100,000 or more contracts per day in a month, and (2) NOM Market Maker liquidity of [6]40,000 or more contracts per day in a month	$0.4[0]3
Tier [6]4 [b]	Participant adds (1)	$0.[37]40

Customer liquidity of 25,000 or more contracts per day in a month, [and] (2) the Participant [simultaneously qualifies]has certified for [credit under] the Investor Support Program set forth in Rule 7014; and (3) the Participant executed at least one order on NASDAQ's equity market .

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[a] For purposes of Tier [5]3, the Exchange will aggregate the trading activity of separate NOM Participants when computing average daily volumes where 75 percent common ownership or control exists between NOM Participants.

[b] For purposes of Tier [6]4, the Exchange will allow a NOM Participant to qualify for the rebate if a NASDAQ member under common ownership with the NOM Participant has certified for [qualifies for a credit under] the Investor Support Program and executed at least one order on NASDAQ's equity market. Common ownership is defined as 75 percent common ownership or control.

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