Required fields are shown with yellow backgrounds and asterisks.

OMB APPROVAL
OMB Number: 3235-0045 Estimated average burden hours per response...........38

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

File No.* SR - 2012 - * 022
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)(4)
☑ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☐ 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 Options Fees

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 * Associate 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 01/31/2012

By Edward S. Knight
(Name *)

Executive Vice President and 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 Chapter XV, entitled "Option Fees," at Sec. 2 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 and Fee for Removing Liquidity for the Penny Pilot[3] Options ("Penny Options").

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on February 1, 2012.

A notice of the proposed rule change for publication in the Federal Register is

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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 June 30, 2012. 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.

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.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

NASDAQ proposes to modify Chapter XV, entitled "Option Fees," at Sec. 2 governing the rebates and fees assessed for option orders entered into NOM. Specifically, the Exchange is proposing to modify the four tier structure for paying Customer Rebates to Add Liquidity in Penny Pilot Options. The Exchange proposes to increase the tiers to five 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 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, and (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 for 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.

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

	Monthly Volume	**Rebate to Add Liquidity**
Tier 1	Participant adds Customer liquidity of up to 14,999 contracts per day in a month	$0.26
Tier 2	Participant adds Customer liquidity of 15,000 to 49,999 contracts per day in a month	$0.38
Tier 3	Participant adds Customer liquidity of 50,000 or more contracts per day in a month	$0.42
Tier 4 [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 5 [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 4, 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 5, 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 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 49,999 contracts per day in a month of liquidity, in a Penny Pilot Option, receive a rebate of $ 0.26 per contract. The Exchange is proposing to amend Tier 1 to change the contract amount to 14,999 contracts with 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 or achieve a higher rebate in Tier 2.

The Exchange is proposing a new Tier 2 with a $0.38 per contract rebate for firms that add Customer liquidity in Penny Pilot Options between 15,000 to 49,999 contracts per day in a month. This proposed new tier would result in a greater rebate for current Tier 1 Participants who add liquidity between 15,000 and 49,999 contracts.

The Exchange is not proposing any changes to current Tiers 2, 3 and 4 other than to rename them as Tiers 3, 4 and 5, respectively. The Exchange would also make conforming amendments to current notes "a" and "b" to reference newly named Tiers 4 and 5, respectively, as well.

The Exchange currently pays 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 qualified for a rebate in Tier 2, 3 or 4 for that month.[4] The Exchange proposes to amend the language in the rule text to include "Tier 5" as well. The Exchange would continue to apply this additional $0.01 per contract rebate on all tiers except Tier 1.

The Exchange also proposes to further incentivize NOM Participants by reducing the Customer Fee for Removing Liquidity in a Penny Pilot Option from $0.45 per contract to $0.44 per contract. The Exchange believes that this decrease in the amount assessed a Customer to remove liquidity will also attract additional order flow to the Exchange.

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4 This rebate is in addition to the rebate for the qualifying tier.

The Exchange is also proposing to make a typographical correction to the Fee Schedule to remove unnecessary punctuation. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on February 1, 2012.

b. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] 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[7] 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

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5 15 U.S.C. 78f.

6 15 U.S.C. 78f(b)(4).

7 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), 65317 (September 12, 2011), 76 FR 61129 (October 3, 2011) (SR-NASDAQ-2011-127) and 66126 (January 10, 2012), 77 FR 2335 (January 17, 2012) (SR-NASDAQ-2012-003).

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 49,999 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 for Tier 1 for any Customer order up to 14,999 contracts per day in a given month that adds liquidity in Penny Pilot Options. Any Participant that adds between 15,000 and 49,999 contracts per day in a month would receive an increased rebate of $0.38 per contract with this proposal (up from $0.26 per contract). The Exchange believes that its proposal to create a new Tier 2 and pay a greater rebate for certain Tier 1 orders is reasonable, equitable and not unfairly discriminatory because a greater rebate would incentivize NOM Participants to send a greater number of Customer orders that add liquidity in Penny Pilot Options between 15,000 and 49,999 contracts, which in turn would benefit all market participants by increasing liquidity on NOM. Also, all NOM Participants transacting Customer orders continue to have the ability to earn a rebate on NOM because there is no minimum order requirement.

The Exchange believes that it continues to be 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, 4 and now 5 for that month. This $0.01 per contract rebate is in addition to the rebate for the qualifying tier. With this proposal, more participants that are currently in Tier 1 would qualify for the additional rebate if they transacted a Customer order of 5,000 or more displayed or non-displayed contracts, which adds liquidity in Penny Pilot Options.[8] The Exchange believes that this enhanced incentive, which will be available to a greater number of NOM Participants, will encourage those 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 continuing to limit the enhanced $0.01 per contract rebate to firms qualifying for Tiers 2, 3, 4 or 5 (and not those that qualify for Tier 1) is equitable and not unfairly discriminatory because generally NOM Participants in proposed Tier 1 that add up to 14,999 contracts per day in a month are not sending Customer orders of 5,000 or more contracts. If those Participants in Tier 1 sent three Customer orders of 5,000 or more per day in a given month to the Exchange, they would qualify for the Tier 2 rebate as well as 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, 4 or 5 and meet the Customer order volume discussed herein for Penny Pilot Options.

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8 Specifically, those Participants adding between 15,000 and 49,999 contracts per day in a month.

The Exchange also believes that it is reasonable to lower the Customer Fee for Removing Liquidity in Penny Pilot Options because a lower fee will attract more NOM Participants to remove Customer orders. The Exchange also believes that it is equitable and not unfairly discriminatory to lower the fee for Customers, as compared to other market participants, because encouraging NOM Participants to transact Customer orders will benefit all market participants by increasing liquidity on NOM. Also, all NOM Participants that transact Customer orders would be uniformly impacted by the proposal.

The Exchange's proposal to correct a typographical error within the Rule is reasonable, equitable and not unfairly discriminatory because it will make the Rule more consistent with the current text.

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 fee and rebate scheme are competitive and similar to other fees, rebates and tier opportunities in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts the fees and rebates present on the Exchange today and substantially influences the proposal set forth above.

4. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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.[9]

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

Not applicable.

9. Exhibits

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

5. Text of the proposed rule change.

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9 15 U.S.C. 78s(b)(3)(A)(ii).

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-NASDAQ-2012-022)

January__, 2012

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ Stock Market, LLC Relating to Options Fees

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 31, 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 Chapter XV, entitled "Option Fees," at Sec. 2 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 and Fee for Removing 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

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on February 1, 2012.

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.

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expanded and extended through June 30, 2012. 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to modify Chapter XV, entitled "Option Fees," at Sec. 2 governing the rebates and fees assessed for option orders entered into NOM. Specifically, the Exchange is proposing to modify the four tier structure for paying Customer Rebates to Add Liquidity in Penny Pilot Options. The Exchange proposes to increase the tiers to five 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 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, and (2) the	$0.40

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.

[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 for 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.

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

	Monthly Volume	**Rebate to Add Liquidity**
Tier 1	Participant adds Customer liquidity of up to 14,999 contracts per day in a month	$0.26
Tier 2	Participant adds Customer liquidity of 15,000 to 49,999 contracts per day in a month	$0.38
Tier 3	Participant adds Customer liquidity of 50,000 or more contracts per day in a month	$0.42
Tier 4 [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 5 [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

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[a] For purposes of Tier 4, 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 5, 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 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 49,999 contracts per day in a month of liquidity, in a Penny Pilot Option, receive a rebate of $ 0.26 per contract. The Exchange is proposing to amend Tier 1 to change the contract amount to 14,999 contracts with 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 or achieve a higher rebate in Tier 2.

The Exchange is proposing a new Tier 2 with a $0.38 per contract rebate for firms that add Customer liquidity in Penny Pilot Options between 15,000 to 49,999 contracts per day in a month. This proposed new tier would result in a greater rebate for current Tier 1 Participants who add liquidity between 15,000 and 49,999 contracts.

The Exchange is not proposing any changes to current Tiers 2, 3 and 4 other than to rename them as Tiers 3, 4 and 5, respectively. The Exchange would also make conforming amendments to current notes "a" and "b" to reference newly named Tiers 4 and 5, respectively, as well.

The Exchange currently pays 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 qualified for a rebate in Tier 2, 3 or 4 for that month.[4] The Exchange proposes to amend the language in the rule text to include "Tier 5" as well. The Exchange would continue to apply this additional $0.01 per contract rebate on all tiers except Tier 1.

The Exchange also proposes to further incentivize NOM Participants by reducing the Customer Fee for Removing Liquidity in a Penny Pilot Option from $0.45 per contract to $0.44 per contract. The Exchange believes that this decrease in the amount assessed a Customer to remove liquidity will also attract additional order flow to the Exchange.

The Exchange is also proposing to make a typographical correction to the Fee Schedule to remove unnecessary punctuation. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on February 1, 2012.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] 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.

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4 This rebate is in addition to the rebate for the qualifying tier.

5 15 U.S.C. 78f.

6 15 U.S.C. 78f(b)(4).

The Exchange believes that the proposed new pricing tiers are reasonable, equitable and not unfairly discriminatory because they continue an existing program[7] 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 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 49,999 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 for Tier 1 for any Customer order up to 14,999 contracts per day in a given month that adds liquidity in Penny Pilot Options. Any Participant that adds between 15,000 and 49,999 contracts per day in a month would receive an increased rebate of $0.38 per contract with this proposal (up from $0.26 per contract). The Exchange believes that its proposal to create a new Tier 2 and pay a

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[7] 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), 65317 (September 12, 2011), 76 FR 61129 (October 3, 2011) (SR-NASDAQ-2011-127) and 66126 (January 10, 2012), 77 FR 2335 (January 17, 2012) (SR-NASDAQ-2012-003).

greater rebate for certain Tier 1 orders is reasonable, equitable and not unfairly discriminatory because a greater rebate would incentivize NOM Participants to send a greater number of Customer orders that add liquidity in Penny Pilot Options between 15,000 and 49,999 contracts, which in turn would benefit all market participants by increasing liquidity on NOM. Also, all NOM Participants transacting Customer orders continue to have the ability to earn a rebate on NOM because there is no minimum order requirement.

The Exchange believes that it continues to be 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, 4 and now 5 for that month. This $0.01 per contract rebate is in addition to the rebate for the qualifying tier. With this proposal, more participants that are currently in Tier 1 would qualify for the additional rebate if they transacted a Customer order of 5,000 or more displayed or non-displayed contracts, which adds liquidity in Penny Pilot Options.[8] The Exchange believes that this enhanced incentive, which will be available to a greater number of NOM Participants, will encourage those 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 continuing to limit the enhanced $0.01 per contract rebate to firms qualifying for Tiers 2, 3, 4 or 5 (and not those that qualify for Tier 1) is equitable and not unfairly discriminatory because generally NOM

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8 Specifically, those Participants adding between 15,000 and 49,999 contracts per day in a month.

Participants in proposed Tier 1 that add up to 14,999 contracts per day in a month are not sending Customer orders of 5,000 or more contracts. If those Participants in Tier 1 sent three Customer orders of 5,000 or more per day in a given month to the Exchange, they would qualify for the Tier 2 rebate as well as 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, 4 or 5 and meet the Customer order volume discussed herein for Penny Pilot Options.

The Exchange also believes that it is reasonable to lower the Customer Fee for Removing Liquidity in Penny Pilot Options because a lower fee will attract more NOM Participants to remove Customer orders. The Exchange also believes that it is equitable and not unfairly discriminatory to lower the fee for Customers, as compared to other market participants, because encouraging NOM Participants to transact Customer orders will benefit all market participants by increasing liquidity on NOM. Also, all NOM Participants that transact Customer orders would be uniformly impacted by the proposal.

The Exchange's proposal to correct a typographical error within the Rule is reasonable, equitable and not unfairly discriminatory because it will make the Rule more consistent with the current text.

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 fee and rebate scheme are competitive and similar to other fees, rebates and tier opportunities in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts the fees and rebates present on the Exchange today and substantially influences 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.[9] 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.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

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 (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2012-022 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-2012-022. 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-2012-022 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.[10]

Kevin M. O'Neill
Deputy Secretary

[10] 17 CFR 200.30-3(a)(12).

Exhibit 5

New text is underlined; deletions are bracketed

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Options Rules

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Chapter XV Options Fees

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Sec 2. 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	$0.4[5]<u>4</u>	$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 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 or 5 for that month.

	Monthly Volume	**Rebate to Add Liquidity**
Tier 1	Participant adds Customer liquidity of up to 14[9],999 contracts per day in a month	$0.26
Tier 2	Participant adds Customer liquidity of 15,000 to 49,999 contracts per day in a month	$0.38
Tier [2]3	Participant adds Customer liquidity of 50,000 or more contracts per day in a month	$0.42
Tier [3]4 [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]5 [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]4, 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]5, 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 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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