

Required fields are shown with yellow backgrounds and asterisks.

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) *	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>		<input type="checkbox"/>	
			Rule					
Pilot	Extension of Time Period for Commission Action *	Date Expires *	19b-4(f)(1)	19b-4(f)(2)	19b-4(f)(3)	19b-4(f)(4)	19b-4(f)(5)	19b-4(f)(6)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

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 and Non-Customer Fees for Removing 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 * 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 08/31/2012
By Edward S. Knight Executive Vice President and General Counsel
(Name *) (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 EFFF website.

Form 19b-4 Information (required)

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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)

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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

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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

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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

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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

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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 “Options Pricing,” at Section 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 Customer Rebate to Add Liquidity and Non-Customer Fees for Removing Liquidity in Penny Pilot³ Options.

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on September 4, 2012.

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); and 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR-NASDAQ-2012-075) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot through December 31, 2012). See also NOM Rules, Chapter VI, Section 5.

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 rule text 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 July 10, 2012. 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 "Options Pricing," at Section 2(1) governing the rebates and fees assessed for option orders entered into NOM. The Exchange is proposing to increase the Non-Customer Penny Pilot Options Fees for Removing Liquidity in order to offer additional Penny Pilot Options Customer Rebates to Add Liquidity to attract additional order flow to the Exchange to the benefit of all market participants.

Specifically, the Exchange is proposing to modify the five tier structure for paying Customer Rebates to Add Liquidity in Penny Pilot Options. Today, the Exchange pays Rebates to Add Liquidity in Penny Pilot Options as follows:

*** 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, 4 or 5 for that month.

	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 to 74,999 contracts per day in a month	\$0.43
Tier 4^a	Participant adds Customer liquidity of 75,000 or more contracts per day in a month or has Total Volume of 100,000 or more contracts per day in a month	\$0.44
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	\$0.42

^a For purposes of Tier 4, "Total Volume" shall be defined as Customer, Professional, Firm, NOM Market Maker and Non-NOM Market Maker volume in Penny Pilot Options which either adds or removes liquidity.

^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.

The Exchange proposes to add a Tier 6 to the Penny Pilot Options Customer Rebates to Add Liquidity and pay Customers a rebate of \$0.45 per contract when a Participant has Total Volume of 130,000 or more contracts per day in month. Total

Volume is defined as Customer, Professional, Firm, NOM Market Maker and Non-NOM Market Maker volume in Penny Pilot Options and Non-Penny Pilot Options which either adds or removes liquidity. In addition, NOM Participants under common ownership will be permitted to aggregate their volume to qualify for the Tier 6 rebate. The Exchange defines common ownership as 75 percent common ownership or control.⁴

In connection with offering the Tier 6 rebate, the Exchange proposes to eliminate the current incentive for Customer orders of 5,000 or more, displayed or non-displayed contracts, which add liquidity in Penny Pilot Options provided the NOM Participant has qualified for Tier 2, 3, 4 or 5 for that month. The Exchange believes that the Tier 6 incentive will encourage NOM Participants to send additional order flow to the Exchange and is therefore eliminating the incentive at this time.

The Exchange also proposes to amend Tier 4 which currently provides that a NOM Participant that adds Customer liquidity of 75,000 or more contracts per day in a month or has Total Volume of 100,000 or more contracts per day in month qualifies for a \$0.44 per contract rebate. The Exchange proposes to amend Tier 4 to state that only a NOM Participant that adds Customer liquidity of 75,000 or more contracts per day in a month qualifies for a \$0.44 per contract rebate.⁵ The Exchange would eliminate the qualifier of 100,000 or more contracts of Total Volume because it is instead offering the Tier 6 rebate. The Exchange would also eliminate note “a,” which is no longer relevant

⁴ NOM Participants may be requested by the Exchange’s Membership Department to demonstrate that they are under 75% common ownership if the information is not readily available in Web CRD.

⁵ The Exchange is not proposing to amend the amount of the \$0.44 per contract rebate at this time.

because it applied to Total Volume in Tier 4. The remainder of the notes would change lettering.

The Exchange also proposes to amend the Fees for Removing Liquidity in Penny Pilot Options. Professionals, Firms, Non-NOM Market Makers and NOM Market Makers who are currently assessed a \$0.45 per contract fee would be assessed a \$0.47 per contract Fee for Removing Liquidity in a Penny Pilot Option.⁶ In addition, the Exchange proposes to reduce the Professional, Firm, Non-NOM Market Maker and NOM Market Maker Penny Pilot Option Fees for Removing Liquidity by \$0.01 per contract for transactions in which the same participant is the buyer and the seller to further incentivize these NOM Participants to add and remove liquidity in the market.

b. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,⁷ in general, and with Section 6(b)(4) of the Act,⁸ in particular, in that they provide 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 addition of Tier 6 is reasonable because it is part of an existing program⁹ to encourage broker-dealers acting as agent for

⁶ The Customer Penny Pilot Fee for Removing Liquidity of \$0.45 per contract is not being amended.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

⁹ 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

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. Also, the Exchange believes the existing monthly volume thresholds have incentivized firms that route Customer orders to send additional 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 providing an additional opportunity to qualify for a Customer Rebate. The Exchange would allow a NOM Participant to total both Penny Pilot Option Volume and Non-Penny Pilot Option volume that adds or removes liquidity to qualify for the \$0.45 per contract Customer Rebate to Add Liquidity in Penny Pilot Options proposed in Tier 6. The Exchange believes that additional NOM Participants would be able to qualify for this tier, including NOM Participants who do not qualify for rebates today, as long as the 130,000 volume requirement was met. Proposed Tier 6 is a broader category because it includes Non-Penny Pilot Option volume to qualify for the rebate. The proposed Tier 6 Total Volume qualifier is similar to pricing currently in place on BATS Exchange, Inc. (“BATS”).¹⁰

12, 2011), 76 FR 61129 (October 3, 2011) (SR-NASDAQ-2011-127), 66126 (January 10, 2012), 77 FR 2335 (January 17, 2012) (SR-NASDAQ-2012-003), 66360 (February 8, 2012), 77 FR 8312 (February 14, 2012) (SR-NASDAQ-2012-022), 66768 (April 6, 2012), 77 FR 22015 (April 12, 2012) (SR-NASDAQ-2012-048) 67388 (July 10, 2012), 77 FR 42073 (July 17, 2012) (SR-NASDAQ-2012-083).

¹⁰ BATS pays rebates for certain Customer Penny Pilot orders based on, among other factors, total consolidated volume. BATS defines total consolidated volume as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply. See BATS BZX Exchange Fee Schedule. The Exchange is proposing to utilize Total Volume which would include Penny Pilot Option and Non-Penny Pilot Option volume which either

The Exchange believes that proposed Tier 6 is equitable and not unfairly discriminatory because the Exchange is proposing to offer an even higher Customer rebate in Penny Pilot Options of \$0.45 per contract to NOM Participants which will be based on Total Volume. NOM Participants may total all Penny Pilot Option and Non-Penny Pilot Option volume that either adds or removes liquidity to qualify for this new tier. The Exchange believes that this added incentive would allow additional NOM Participants to qualify and receive the Customer rebate. All NOM Participants that transact Customer orders in Penny Pilot Options are eligible for the Customer rebates.¹¹ The Exchange believes that allowing NOM Participants to qualify for proposed Tier 6 by totaling Penny and Non-Penny Option volume that adds or removes liquidity would enable a greater number of NOM Participants to qualify for the rebate because NOM Participants can utilize either Penny or Non-Penny Pilot volume to reach the 130,000 volume requirement. All NOM Participants may transact orders in both Penny and Non-Penny Pilot Options and the Exchange would equally apply the criteria for Tier 6 to all NOM Participants.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to permit NOM Participants under common ownership to aggregate their volume for purposes of qualifying for the Tier 6 rebate. Certain NOM Participants chose to segregate their businesses into different legal entities for purposes of conducting

adds or removes liquidity to qualify for the Customer Rebate to Add Liquidity in Penny Pilot Options.

¹¹ Tier 1 pays a rebate for NOM Participants that add Customer liquidity of up to 14,999 contracts per day in a month of Penny Pilot Options. There is no required minimum volume of Customer orders to qualify for a Customer Rebate to Add Liquidity.

business. The Exchange believes that these NOM Participants should be treated as one entity for purposes of qualifying for the Tier 6 rebate as long as there is at least 75% common ownership or control present among the NOM Participants. The Exchange currently permits a similar aggregation for the Tier 5 Total Volume calculation.

The Exchange believes that its proposal to eliminate the \$0.01 per contract rebate incentive for Customer orders of 5,000 or more, displayed or non-displayed, contracts that add liquidity in Penny Pilot Options for NOM Participants that qualified for certain tiers is reasonable because the Exchange has proposed an alternative incentive for NOM Participants in its proposal to adopt Tier 6 with a higher rebate. The Exchange believes the Tier 6 rebate will increase order flow to the Exchange because all Penny Pilot Option and Non-Penny Pilot Option volume that either adds or removes liquidity would count toward the 130,000 volume requirement to qualify for the rebate.

The Exchange believes that the proposal to eliminate the \$0.01 incentive is equitable and not unfairly discriminatory because it is being replaced with the Tier 6 rebate which offers a higher rebate to NOM Participants who may currently qualify for other tiers or a new rebate for NOM Participants that currently do not qualify for a rebate. Today, the \$0.01 incentive is applicable to NOM Participants that qualified for Tiers 2, 3, 4 and 5. Proposed Tier 6 would be applicable to the Total Volume of contracts in Penny and Non-Penny Pilot Options which either adds or removes liquidity for any market participant. The Exchange believes a greater number of NOM Participants may qualify for proposed Tier 6 as compared to other tiers which are limited to Customer volume in Penny Pilot Options.

The Exchange believes that the proposal to eliminate the text of Tier 4, which provides that NOM Participants may qualify for Tier 4 by achieving Total Volume of 100,000 or more contracts per day in a month, is reasonable, equitable and not unfairly discriminatory because the Exchange is proposing to offer a new Tier 6 rebate which would allow NOM Participants to achieve an even higher rebate if the NOM Participant is able to meet the increased volume requirement of 130,000 contracts per day in a month. The Exchange believes the new tier may further incentivize NOM Participants to send additional volume to the Exchange that either adds or removes liquidity in Penny or Non-Penny Pilot Options to qualify for the \$0.45 per contract rebate.

The Exchange believes that the increased Fees for Removing Liquidity in Penny Pilot Options are reasonable because they permit the Exchange to offer an increased Tier 6 rebate to attract additional order flow to NOM. The Exchange believes that the increased Fees for Removing Liquidity in Penny Pilot Options are equitable and not unfairly discriminatory because all market participants, other than Customers, are being assessed the same Fees for Removing Liquidity in Penny Pilot Options. The Exchange believes that Customer order flow brings unique benefits to the market which benefits all market participants and therefore Customers are assessed lower fees as compared to other market participants. Additionally, the Exchange is offering NOM Participants, other than Customers, the ability to reduce the Fees for Removing Liquidity by \$0.01 per contract when the same participant is the buyer and the seller. The Exchange believes that this additional fee reduction should further incentivize non-Customer NOM Participants to both add and remove liquidity in Penny Pilot Options on NOM. It is important to note that NOM Participants are unaware at the time the order is entered of the identity of the

contra-party. Because contra-parties are anonymous, NOM Participants would aggressively pursue order flow in order to receive the benefit of the reduction. Providing the additional incentive is reasonable for this reason and also is equitable and not unfairly discriminatory because all NOM Participants are entitled to receive the fee reduction when they are both the buyer and seller. By way of example, if a NOM Participant that is assigned the firm code “ABC” by the Exchange posted an order utilizing its Customer order router, which order was removed by an ABC firm proprietary order, the NOM Participant would receive the \$0.01 per contract fee reduction. The Exchange proposes to utilize the Exchange assigned firm code¹² to determine which NOM Participant executed an order and to apply the fee reduction to the Penny Pilot Option Fee for Removing Liquidity if the same non-Customer NOM Participant was the buyer and the seller to a transaction.¹³ The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to not offer the same fee reduction to Customers because the Customer fee is not being increased and will now be \$0.02 per contract lower than the Penny Pilot Options Fees for Removing Liquidity applicable to all other market participants.

The Exchange operates in a highly competitive market comprised of ten 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 and fees are competitive and similar to other

¹² Each NOM Participant is assigned a firm code by the Exchange.

¹³ In this example, the same NOM Participant added and removed the order and would be entitled to the fee reduction because the NOM Participant was the buyer and seller on the transaction.

fees, rebates and tier opportunities in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts rebates and fees present on the Exchange today and substantially influences 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 rebates and fees to compete effectively for the execution and routing of options contracts and to reduce the overall cost to investors of options trading. The Exchange believes that incentivizing NOM Participants to transact greater Customer volume on the Exchange benefits all market participants because of the increased liquidity to the market.

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.¹⁴

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

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

Not applicable.

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-2012-104)

September __, 2012

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on August 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 "Options Pricing," at Section 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Customer Rebate to Add Liquidity and Non-Customer Fees for Removing Liquidity in Penny Pilot³ Options.

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on September 4, 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.

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); and 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR-NASDAQ-2012-075) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot through December 31, 2012). See also NOM Rules, 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 “Options Pricing,” at Section 2(1) governing the rebates and fees assessed for option orders entered into NOM. The Exchange is proposing to increase the Non-Customer Penny Pilot Options Fees for Removing Liquidity in order to offer additional Penny Pilot Options Customer Rebates to Add Liquidity to attract additional order flow to the Exchange to the benefit of all market participants.

Specifically, the Exchange is proposing to modify the five tier structure for paying Customer Rebates to Add Liquidity in Penny Pilot Options. Today, the Exchange pays Rebates to Add Liquidity in Penny Pilot Options as follows:

*** 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, 4 or 5 for that month.

	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 to 74,999 contracts per day in a month	\$0.43
Tier 4^a	Participant adds Customer liquidity of 75,000 or more contracts per day in a month or has Total Volume of 100,000 or more contracts per day in a month	\$0.44
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	\$0.42

in Rule 7014; and (3) the Participant executed at least one order on NASDAQ's equity market

^a For purposes of Tier 4, "Total Volume" shall be defined as Customer, Professional, Firm, NOM Market Maker and Non-NOM Market Maker volume in Penny Pilot Options which either adds or removes liquidity.

^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.

The Exchange proposes to add a Tier 6 to the Penny Pilot Options Customer Rebates to Add Liquidity and pay Customers a rebate of \$0.45 per contract when a Participant has Total Volume of 130,000 or more contracts per day in month. Total Volume is defined as Customer, Professional, Firm, NOM Market Maker and Non-NOM Market Maker volume in Penny Pilot Options and Non-Penny Pilot Options which either adds or removes liquidity. In addition, NOM Participants under common ownership will be permitted to aggregate their volume to qualify for the Tier 6 rebate. The Exchange defines common ownership as 75 percent common ownership or control.⁴

In connection with offering the Tier 6 rebate, the Exchange proposes to eliminate the current incentive for Customer orders of 5,000 or more, displayed or non-displayed contracts, which add liquidity in Penny Pilot Options provided the NOM Participant has qualified for Tier 2, 3, 4 or 5 for that month. The Exchange believes that the Tier 6 incentive will encourage NOM Participants to send additional order flow to the Exchange and is therefore eliminating the incentive at this time.

⁴ NOM Participants may be requested by the Exchange's Membership Department to demonstrate that they are under 75% common ownership if the information is not readily available in Web CRD.

The Exchange also proposes to amend Tier 4 which currently provides that a NOM Participant that adds Customer liquidity of 75,000 or more contracts per day in a month or has Total Volume of 100,000 or more contracts per day in month qualifies for a \$0.44 per contract rebate. The Exchange proposes to amend Tier 4 to state that only a NOM Participant that adds Customer liquidity of 75,000 or more contracts per day in a month qualifies for a \$0.44 per contract rebate.⁵ The Exchange would eliminate the qualifier of 100,000 or more contracts of Total Volume because it is instead offering the Tier 6 rebate. The Exchange would also eliminate note “a,” which is no longer relevant because it applied to Total Volume in Tier 4. The remainder of the notes would change lettering.

The Exchange also proposes to amend the Fees for Removing Liquidity in Penny Pilot Options. Professionals, Firms, Non-NOM Market Makers and NOM Market Makers who are currently assessed a \$0.45 per contract fee would be assessed a \$0.47 per contact Fee for Removing Liquidity in a Penny Pilot Option.⁶ In addition, the Exchange proposes to reduce the Professional, Firm, Non-NOM Market Maker and NOM Market Maker Penny Pilot Option Fees for Removing Liquidity by \$0.01 per contract for transactions in which the same participant is the buyer and the seller to further incentivize these NOM Participants to add and remove liquidity in the market.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the

⁵ The Exchange is not proposing to amend the amount of the \$0.44 per contract rebate at this time.

⁶ The Customer Penny Pilot Fee for Removing Liquidity of \$0.45 per contract is not being amended.

provisions of Section 6 of the Act,⁷ in general, and with Section 6(b)(4) of the Act,⁸ in particular, in that they provide 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 addition of Tier 6 is reasonable because it is part of an existing program⁹ 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. Also, the Exchange believes the existing monthly volume thresholds have incentivized firms that route Customer orders to send additional 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 providing an additional opportunity to qualify for a Customer Rebate. The Exchange would allow a NOM Participant to total both Penny Pilot Option Volume and Non-Penny Pilot Option volume that adds or removes liquidity to qualify for the \$0.45 per contract Customer Rebate to Add Liquidity

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

⁹ 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), 66126 (January 10, 2012), 77 FR 2335 (January 17, 2012) (SR-NASDAQ-2012-003), 66360 (February 8, 2012), 77 FR 8312 (February 14, 2012) (SR-NASDAQ-2012-022), 66768 (April 6, 2012), 77 FR 22015 (April 12, 2012) (SR-NASDAQ-2012-048) 67388 (July 10, 2012), 77 FR 42073 (July 17, 2012) (SR-NASDAQ-2012-083).

in Penny Pilot Options proposed in Tier 6. The Exchange believes that additional NOM Participants would be able to qualify for this tier, including NOM Participants who do not qualify for rebates today, as long as the 130,000 volume requirement was met. Proposed Tier 6 is a broader category because it includes Non-Penny Pilot Option volume to qualify for the rebate. The proposed Tier 6 Total Volume qualifier is similar to pricing currently in place on BATS Exchange, Inc. (“BATS”).¹⁰

The Exchange believes that proposed Tier 6 is equitable and not unfairly discriminatory because the Exchange is proposing to offer an even higher Customer rebate in Penny Pilot Options of \$0.45 per contract to NOM Participants which will be based on Total Volume. NOM Participants may total all Penny Pilot Option and Non-Penny Pilot Option volume that either adds or removes liquidity to qualify for this new tier. The Exchange believes that this added incentive would allow additional NOM Participants to qualify and receive the Customer rebate. All NOM Participants that transact Customer orders in Penny Pilot Options are eligible for the Customer rebates.¹¹ The Exchange believes that allowing NOM Participants to qualify for proposed Tier 6 by totaling Penny and Non-Penny Option volume that adds or removes liquidity would

¹⁰ BATS pays rebates for certain Customer Penny Pilot orders based on, among other factors, total consolidated volume. BATS defines total consolidated volume as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply. See BATS BZX Exchange Fee Schedule. The Exchange is proposing to utilize Total Volume which would include Penny Pilot Option and Non-Penny Pilot Option volume which either adds or removes liquidity to qualify for the Customer Rebate to Add Liquidity in Penny Pilot Options.

¹¹ Tier 1 pays a rebate for NOM Participants that add Customer liquidity of up to 14,999 contracts per day in a month of Penny Pilot Options. There is no required minimum volume of Customer orders to qualify for a Customer Rebate to Add Liquidity.

enable a greater number of NOM Participants to qualify for the rebate because NOM Participants can utilize either Penny or Non-Penny Pilot volume to reach the 130,000 volume requirement. All NOM Participants may transact orders in both Penny and Non-Penny Pilot Options and the Exchange would equally apply the criteria for Tier 6 to all NOM Participants.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to permit NOM Participants under common ownership to aggregate their volume for purposes of qualifying for the Tier 6 rebate. Certain NOM Participants chose to segregate their businesses into different legal entities for purposes of conducting business. The Exchange believes that these NOM Participants should be treated as one entity for purposes of qualifying for the Tier 6 rebate as long as there is at least 75% common ownership or control present among the NOM Participants. The Exchange currently permits a similar aggregation for the Tier 5 Total Volume calculation.

The Exchange believes that its proposal to eliminate the \$0.01 per contract rebate incentive for Customer orders of 5,000 or more, displayed or non-displayed, contracts that add liquidity in Penny Pilot Options for NOM Participants that qualified for certain tiers is reasonable because the Exchange has proposed an alternative incentive for NOM Participants in its proposal to adopt Tier 6 with a higher rebate. The Exchange believes the Tier 6 rebate will increase order flow to the Exchange because all Penny Pilot Option and Non-Penny Pilot Option volume that either adds or removes liquidity would count toward the 130,000 volume requirement to qualify for the rebate.

The Exchange believes that the proposal to eliminate the \$0.01 incentive is equitable and not unfairly discriminatory because it is being replaced with the Tier 6

rebate which offers a higher rebate to NOM Participants who may currently qualify for other tiers or a new rebate for NOM Participants that currently do not qualify for a rebate. Today, the \$0.01 incentive is applicable to NOM Participants that qualified for Tiers 2, 3, 4 and 5. Proposed Tier 6 would be applicable to the Total Volume of contracts in Penny and Non-Penny Pilot Options which either adds or removes liquidity for any market participant. The Exchange believes a greater number of NOM Participants may qualify for proposed Tier 6 as compared to other tiers which are limited to Customer volume in Penny Pilot Options.

The Exchange believes that the proposal to eliminate the text of Tier 4, which provides that NOM Participants may qualify for Tier 4 by achieving Total Volume of 100,000 or more contracts per day in a month, is reasonable, equitable and not unfairly discriminatory because the Exchange is proposing to offer a new Tier 6 rebate which would allow NOM Participants to achieve an even higher rebate if the NOM Participant is able to meet the increased volume requirement of 130,000 contracts per day in a month. The Exchange believes the new tier may further incentivize NOM Participants to send additional volume to the Exchange that either adds or removes liquidity in Penny or Non-Penny Pilot Options to qualify for the \$0.45 per contract rebate.

The Exchange believes that the increased Fees for Removing Liquidity in Penny Pilot Options are reasonable because they permit the Exchange to offer an increased Tier 6 rebate to attract additional order flow to NOM. The Exchange believes that the increased Fees for Removing Liquidity in Penny Pilot Options are equitable and not unfairly discriminatory because all market participants, other than Customers, are being assessed the same Fees for Removing Liquidity in Penny Pilot Options. The Exchange

believes that Customer order flow brings unique benefits to the market which benefits all market participants and therefore Customers are assessed lower fees as compared to other market participants. Additionally, the Exchange is offering NOM Participants, other than Customers, the ability to reduce the Fees for Removing Liquidity by \$0.01 per contract when the same participant is the buyer and the seller. The Exchange believes that this additional fee reduction should further incentivize non-Customer NOM Participants to both add and remove liquidity in Penny Pilot Options on NOM. It is important to note that NOM Participants are unaware at the time the order is entered of the identity of the contra-party. Because contra-parties are anonymous, NOM Participants would aggressively pursue order flow in order to receive the benefit of the reduction. Providing the additional incentive is reasonable for this reason and also is equitable and not unfairly discriminatory because all NOM Participants are entitled to receive the fee reduction when they are both the buyer and seller. By way of example, if a NOM Participant that is assigned the firm code "ABC" by the Exchange posted an order utilizing its Customer order router, which order was removed by an ABC firm proprietary order, the NOM Participant would receive the \$0.01 per contract fee reduction. The Exchange proposes to utilize the Exchange assigned firm code¹² to determine which NOM Participant executed an order and to apply the fee reduction to the Penny Pilot Option Fee for Removing Liquidity if the same non-Customer NOM Participant was the buyer and the seller to a transaction.¹³ The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to not offer the same fee reduction to Customers because the

¹² Each NOM Participant is assigned a firm code by the Exchange.

¹³ In this example, the same NOM Participant added and removed the order and would be entitled to the fee reduction because the NOM Participant was the buyer and seller on the transaction.

Customer fee is not being increased and will now be \$0.02 per contract lower than the Penny Pilot Options Fees for Removing Liquidity applicable to all other market participants.

The Exchange operates in a highly competitive market comprised of ten 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 and fees 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 rebates and fees present on the Exchange today and substantially influences the proposal set forth above.

B. 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 rebates and fees to compete effectively for the execution and routing of options contracts and to reduce the overall cost to investors of options trading. The Exchange believes that incentivizing NOM Participants to transact greater Customer volume on the Exchange benefits all market participants because of the increased liquidity to the market.

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.¹⁴ 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

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-2012-104 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.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-NASDAQ-2012-104. 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-2012-104 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).

Exhibit 5

New text is underlined; deleted text is in brackets.

NASDAQ Stock Market Rules

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Chapter XV Options Pricing

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Sec. 2 NASDAQ Options Market—Fees and Rebates

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	\$0.4[5]7	\$0.4[5]7	\$0.4[5]7	\$0.4[5]7

* * * * *

[±]The Professional, Firm, Non-NOM Market Maker and NOM Market Maker Penny Pilot Options Fee for Removing Liquidity will be reduced by \$0.01 per contract for transactions in which the same NOM Participant is the buyer and the seller.

¹A Customer and NOM Market Maker will either receive a Rebate to Add Liquidity of \$0.20 per contract when trading against a Professional, Firm, NOM Market Maker or Non-NOM Market Maker or will pay a Fee to Add Liquidity of \$0.65 per contract when trading against a Customer.

*** 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, 4 or 5 for that month.]

	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 to 74,999 contracts per day in a month	\$0.43
Tier 4 ^[a]	Participant adds Customer liquidity of 75,000 or more contracts per day in a month [or has Total Volume of 100,000 or more contracts per day in a month]	\$0.44
Tier 5 ^{[b]a}	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	\$0.42
Tier 6 ^{b, c}	<u>Participant has Total Volume of 130,000 or more contracts per day in a month</u>	<u>\$0.45</u>

[^a For purposes of Tier 4, "Total Volume" shall be defined as Customer, Professional, Firm, NOM Market Maker and Non-NOM Market Maker volume in Penny Pilot Options which either adds or removes liquidity.]

[^{b]a 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.}

^b For purposes of Tier 6, “Total Volume” shall be defined as Customer, Professional, Firm, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and Non-Penny Pilot Options which either adds or removes liquidity.

^c For purposes of Tier 6, the Exchange will allow NOM Participants under common ownership to aggregate their volume to qualify for the rebate. Common ownership is defined as 75 percent common ownership or control.

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