

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 29	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2016 - * 070	Amendment No. (req. for Amendments *)
Filing by NASDAQ Stock Market Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
			Rule	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>		Section 806(e)(2) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>			
Description				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="A proposed rule change to amend Chapter XV, entitled Options Pricing, at Section 2."/>				
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 action.				
First Name *	<input type="text" value="Jurij"/>	Last Name *	<input type="text" value="Trypupenko"/>	
Title *	<input type="text" value="Associate General Counsel"/>			
E-mail *	<input type="text" value="jurij.trypupenko"/>			
Telephone *	<input type="text" value="(301) 978-8132"/>	Fax	<input type="text" value="(301) 978-8472"/>	
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.				
(Title *)				
Date	<input type="text" value="05/10/2016"/>	<input type="text" value="Executive Vice President and General Counsel"/>		
By	<input type="text" value="Edward S. Knight"/>	<input type="text" value="edward.knight@nasdaq.com"/>		
(Name *)				
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.				

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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 *

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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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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, security-based swap submission, or advance notice 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

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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 “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend Chapter XV, entitled “Options Pricing,” at Section 2, which governs pricing for Exchange members using the NASDAQ Options Market (“NOM”), the Exchange’s facility for executing and routing standardized equity and index options.³ The Exchange proposes to amend certain Penny Pilot Options⁴ pricing.

A notice of the proposed rule change for publication in the Federal Register is at Exhibit 1. The text of the proposed rule change is at Exhibit 5.

(b) Not applicable.

(c) Not applicable.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ References in this proposal to Chapter and Series refer to NOM rules, unless otherwise indicated.

⁴ The Penny Pilot was established in March 2008 and was last extended in 2015. 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); and 75283 (June 24, 2015), 80 FR 37347 (June 30, 2015) (SR-NASDAQ-2015-063) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016). All Penny Pilot Options listed on the Exchange can be found at <http://www.nasdaqtrader.com/Micro.aspx?id=phlx>.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on July 1, 2015. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Jurij Trypupenko
Associate General Counsel
Nasdaq, Inc.
(301) 978-8132

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

a. Purpose

The Exchange proposes certain amendments to the NOM transaction fees set forth at Chapter XV, Section 2, for executing and routing standardized equity and index Penny Pilot Options. Specifically, the Exchange proposes to reduce the fee for Customer⁵ or

⁵ The term “Customer” or (“C”) applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Chapter I, Section 1(a)(48)).

Professional⁶ that removes liquidity in SPY Options.⁷ The proposed change is discussed below.

The Exchange currently assesses Customer, Professional, Firm,⁸ Non-NOM Market Maker,⁹ NOM Market Maker,¹⁰ and Broker-Dealer¹¹ a \$0.50 per contract Fee for Removing Liquidity in Penny Pilot Options.¹² The Exchange proposes a slightly reduced Fee for Removing Customer and Professional Liquidity in SPY Options, which are the

⁶ The term “Professional” or (“P”) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

⁷ Options overlying Standard and Poor’s Depository Receipts/SPDRs (“SPY”) are based on the SPDR exchange-traded fund (“ETF”), which is designed to track the performance of the S&P 500 Index.

⁸ The term “Firm” or (“F”) applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

⁹ The term “Non-NOM Market Maker” or (“O”) is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

¹⁰ The term “NOM Market Maker” or (“M”) is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

¹¹ The term “Broker-Dealer” or (“B”) applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

¹² Customer, Professional, Firm, Non-NOM Market Maker, NOM Market Maker, and Broker-Dealer are NOM Participants. The term “Participant” or “Options Participant” means a firm, or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of participating in options trading on NOM as a “Nasdaq Options Order Entry Firm” or “Nasdaq Options Market Maker”.

largest volume Penny Pilot Options traded on the Exchange. Excluding the proposed change in SPY Options, the Penny Pilot Options Fee for Removing Liquidity, as also the Penny Pilot Options Rebate to Add Liquidity does not change.

Change 1 –Penny Pilot Options: Change Fee for Removing Customer and Professional Liquidity in SPY Options

The Exchange proposes to modify the Penny Pilot Options fees and rebates schedule (per executed contract) to slightly reduce the fee when a Customer or Professional removes liquidity in SPY Options. Specifically, the Exchange proposes to make note 3 applicable to Customer and Professional Penny Pilot Options in Chapter XV, Section 2(1), and to state that “A Customer or Professional that removes liquidity in SPY Options will be assessed a fee of \$0.47 per contract.” Currently, the fee for removing Penny Pilot Options liquidity, which includes SPY Options, is \$0.50 per contract.

The Exchange is proposing to decrease the noted SPY Option Fee for Removing Liquidity at this time because it believes that the proposed decrease will incentivize Participants to send Customer and Professional Order flow to the Exchange. This enables the Exchange to remain competitive with other options exchanges.

The Exchange is also making two housekeeping changes in NOM Chapter XV, Section 2(1). First, the Exchange is correcting a typo in Penny Pilot Options Rebate to Add Liquidity and indicating that note “d” is applicable to Professional just as it is to Customer.¹³ Second, the Exchange is adding “unless otherwise stated” in note “****” for better readability and clarity. The sentence as modified will read: “To determine the

¹³ See Securities Exchange Act Release No. 77661 (April 20, 2016), 81 FR 24668 (April 26, 2016) (SR-NASDAQ-2016-055) (notice of filing and immediate effectiveness), wherein the Exchange proposed to make note “d” applicable to Professional just as it is to Customer.

applicable percentage of total industry customer equity and ETF option average daily volume, unless otherwise stated, the Participant's Penny Pilot and Non-Penny Pilot Customer and/or Professional volume that adds liquidity will be included.”

b. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,¹⁵ 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 the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁶

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4), (5).

¹⁶ Securities Exchange Act Release No. 51808 (June 29, 2005), 70 FR 37496 at 37499 (File No. S7-10-04) (“Regulation NMS Adopting Release”).

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁷ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹⁸ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹⁹

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²⁰ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory for the following reasons.

¹⁷ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁸ See id. at 534-535.

¹⁹ See id. at 537.

²⁰ See id. at 539 (quoting Securities Exchange Act Commission at Release No. 59039 (December 2, 2008), 73 FR 74770 at 74782-74783 (December 9, 2008) (SR-NYSEArca-2006-21)).

Change 1 –Penny Pilot Options: Change Fee for Removing Customer and Professional Liquidity in SPY Options

The Exchange proposes to modify the Penny Pilot Options fees and rebates schedule (per executed contract) to slightly reduce the fee when a Customer or Professional removes liquidity in SPY Options. Specifically, the Exchange proposes to make note 3 applicable to Customer and Professional Penny Pilot Options in Chapter XV, Section 2(1), and to state that “A Customer or Professional that removes liquidity in SPY Options will be assessed a fee of \$0.47 per contract.” Currently, the fee is \$0.50 per contract.

The Exchange is proposing to decrease the noted SPY Option-related fee at this time because it believes that the proposed decrease will incentivize Participants to send Customer and Professional Order flow to the Exchange. This enables the Exchange to remain competitive with other options exchanges.

The Exchange’s proposal to reduce the noted SPY Option Fee for Removing Liquidity is reasonable because NOM Participants will continue to be incentivized, even more so with the proposed fee reduction, to send order flow to NOM.

The proposed rule change is reasonable because it continues to encourage market participant behavior through the fees and rebates system, which is an accepted methodology among options exchanges.²¹ It is reasonable to incentivize bringing flow to the Exchange by offering reduced fees.

²¹ See, e.g., fee and rebate schedules of other options exchanges, including, but not limited to, NASDAQ BX, Inc. (“BX Options”), NASDAQ PHLX LLC (“Phlx”), and Chicago Board Options Exchange (“CBOE”).

The Exchange believes it is equitable and not unfairly discriminatory to continue to charge the Fee for Removing Liquidity, as also the Rebate to Add Liquidity, in order to incentivize Professionals and Customers to bring liquidity to the Exchange. Such liquidity, and in particular Customer liquidity, attracts other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attract Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes it is equitable and not unfairly discriminatory to make the proposed reduction in the Fee for Removing Liquidity because it will be applied uniformly across all similarly situated Participants, while promoting bringing liquidity to the Exchange. The Exchange also believes that it is equitable and not unfairly discriminatory to make sure that Customer and Professional are harmonized and treated the same, as proposed.

As noted, liquidity attracts other market participants. Customer and Professional liquidity benefits all market participants by providing more trading opportunities, which attract Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The proposed changes enhance the competitiveness of the Exchange by continuing to incentivize bringing flow to the Exchange.

The Exchange does not believe that the two housekeeping changes have any impact on the reasonable and equitable and not unfairly discriminatory nature of the proposal.

The Exchange desires to continue to incentivize members and member organizations, through the Exchange's rebate and proposed reduced fee structure, to select the Exchange as a venue for bringing liquidity and trading by offering competitive pricing. Such competitive, differentiated pricing exists today on other options exchanges. The Exchange's goal is creating and increasing incentives to attract orders to the Exchange that will, in turn, benefit all market participants through increased liquidity at the Exchange.

4. 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. Specifically, the Exchange does not believe that its proposal to make changes to its Fee for Removing Liquidity where a Customer or Professional removes liquidity in SPY Options, as per proposed note 3, will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because the Exchange is simply continuing its fees and rebates for Penny Pilot Options, and enhancing its fee structure in order to remain competitive in the current environment.

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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In terms of intra-market competition, the Exchange notes that price differentiation among different market participants operating on the Exchange (e.g., Customer and Professional as opposed to others) is reasonable. Customer and Professional activity, for example, enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Moreover, in this instance, the proposed changes to reduce the Fee for Removing Liquidity where Customer or Professional removes liquidity in SPY Options does not impose a burden on competition because the Exchange's execution and routing services

are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result.

Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain order executions.

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)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,²² the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If

²² 15 U.S.C. 78s(b)(3)(A)(ii).

the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

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

5. Applicable portion of the Exchange's rule text.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2016-070)

May __, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Options Pricing at Chapter XV, Section 2

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on May 10, 2016, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter XV, entitled “Options Pricing,” at Section 2, which governs pricing for Exchange members using the NASDAQ Options Market (“NOM”), the Exchange’s facility for executing and routing standardized equity

¹ 15 U.S.C. 78s(b)(1).

² 17 C.F.R. 240.19b-4.

and index options.³ The Exchange proposes to amend certain Penny Pilot Options⁴ pricing.

The text of the proposed rule change is available on the Exchange's Website at <http://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 and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes certain amendments to the NOM transaction fees set forth at Chapter XV, Section 2, for executing and routing standardized equity and index Penny

³ References in this proposal to Chapter and Series refer to NOM rules, unless otherwise indicated.

⁴ The Penny Pilot was established in March 2008 and was last extended in 2015. 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); and 75283 (June 24, 2015), 80 FR 37347 (June 30, 2015) (SR-NASDAQ-2015-063) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016). All Penny Pilot Options listed on the Exchange can be found at <http://www.nasdaqtrader.com/Micro.aspx?id=phlx>.

Pilot Options. Specifically, the Exchange proposes to reduce the fee for Customer⁵ or Professional⁶ that removes liquidity in SPY Options.⁷ The proposed change is discussed below.

The Exchange currently assesses Customer, Professional, Firm,⁸ Non-NOM Market Maker,⁹ NOM Market Maker,¹⁰ and Broker-Dealer¹¹ a \$0.50 per contract Fee for

⁵ The term “Customer” or (“C”) applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Chapter I, Section 1(a)(48)).

⁶ The term “Professional” or (“P”) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

⁷ Options overlying Standard and Poor’s Depository Receipts/SPDRs (“SPY”) are based on the SPDR exchange-traded fund (“ETF”), which is designed to track the performance of the S&P 500 Index.

⁸ The term “Firm” or (“F”) applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

⁹ The term “Non-NOM Market Maker” or (“O”) is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

¹⁰ The term “NOM Market Maker” or (“M”) is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

¹¹ The term “Broker-Dealer” or (“B”) applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

Removing Liquidity in Penny Pilot Options.¹² The Exchange proposes a slightly reduced Fee for Removing Customer and Professional Liquidity in SPY Options, which are the largest volume Penny Pilot Options traded on the Exchange. Excluding the proposed change in SPY Options, the Penny Pilot Options Fee for Removing Liquidity, as also the Penny Pilot Options Rebate to Add Liquidity does not change.

Change 1 –Penny Pilot Options: Change Fee for Removing Customer and Professional Liquidity in SPY Options

The Exchange proposes to modify the Penny Pilot Options fees and rebates schedule (per executed contract) to slightly reduce the fee when a Customer or Professional removes liquidity in SPY Options. Specifically, the Exchange proposes to make note 3 applicable to Customer and Professional Penny Pilot Options in Chapter XV, Section 2(1), and to state that “A Customer or Professional that removes liquidity in SPY Options will be assessed a fee of \$0.47 per contract.” Currently, the fee for removing Penny Pilot Options liquidity, which includes SPY Options, is \$0.50 per contract.

The Exchange is proposing to decrease the noted SPY Option Fee for Removing Liquidity at this time because it believes that the proposed decrease will incentivize Participants to send Customer and Professional Order flow to the Exchange. This enables the Exchange to remain competitive with other options exchanges.

The Exchange is also making two housekeeping changes in NOM Chapter XV, Section 2(1). First, the Exchange is correcting a typo in Penny Pilot Options Rebate to

¹² Customer, Professional, Firm, Non-NOM Market Maker, NOM Market Maker, and Broker-Dealer are NOM Participants. The term “Participant” or “Options Participant” means a firm, or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of participating in options trading on NOM as a “Nasdaq Options Order Entry Firm” or “Nasdaq Options Market Maker”.

Add Liquidity and indicating that note “d” is applicable to Professional just as it is to Customer.¹³ Second, the Exchange is adding “unless otherwise stated” in note “****” for better readability and clarity. The sentence as modified will read: “To determine the applicable percentage of total industry customer equity and ETF option average daily volume, unless otherwise stated, the Participant’s Penny Pilot and Non-Penny Pilot Customer and/or Professional volume that adds liquidity will be included.”

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,¹⁵ 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 the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the

¹³ See Securities Exchange Act Release No. 77661 (April 20, 2016), 81 FR 24668 (April 26, 2016) (SR-NASDAQ-2016-055) (notice of filing and immediate effectiveness), wherein the Exchange proposed to make note “d” applicable to Professional just as it is to Customer.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4), (5).

market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁶

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁷ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹⁸ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹⁹

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²⁰ Although the court

¹⁶ Securities Exchange Act Release No. 51808 (June 29, 2005), 70 FR 37496 at 37499 (File No. S7-10-04) (“Regulation NMS Adopting Release”).

¹⁷ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁸ See id. at 534-535.

¹⁹ See id. at 537.

²⁰ See id. at 539 (quoting Securities Exchange Act Commission at Release No. 59039 (December 2, 2008), 73 FR 74770 at 74782-74783 (December 9, 2008) (SR-NYSEArca-2006-21)).

and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory for the following reasons.

Change 1 –Penny Pilot Options: Change Fee for Removing Customer and Professional Liquidity in SPY Options

The Exchange proposes to modify the Penny Pilot Options fees and rebates schedule (per executed contract) to slightly reduce the fee when a Customer or Professional removes liquidity in SPY Options. Specifically, the Exchange proposes to make note 3 applicable to Customer and Professional Penny Pilot Options in Chapter XV, Section 2(1), and to state that “A Customer or Professional that removes liquidity in SPY Options will be assessed a fee of \$0.47 per contract.” Currently, the fee is \$0.50 per contract.

The Exchange is proposing to decrease the noted SPY Option-related fee at this time because it believes that the proposed decrease will incentivize Participants to send Customer and Professional Order flow to the Exchange. This enables the Exchange to remain competitive with other options exchanges.

The Exchange’s proposal to reduce the noted SPY Option Fee for Removing Liquidity is reasonable because NOM Participants will continue to be incentivized, even more so with the proposed fee reduction, to send order flow to NOM.

The proposed rule change is reasonable because it continues to encourage market participant behavior through the fees and rebates system, which is an accepted

methodology among options exchanges.²¹ It is reasonable to incentivize bringing flow to the Exchange by offering reduced fees.

The Exchange believes it is equitable and not unfairly discriminatory to continue to charge the Fee for Removing Liquidity, as also the Rebate to Add Liquidity, in order to incentivize Professionals and Customers to bring liquidity to the Exchange. Such liquidity, and in particular Customer liquidity, attracts other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attract Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes it is equitable and not unfairly discriminatory to make the proposed reduction in the Fee for Removing Liquidity because it will be applied uniformly across all similarly situated Participants, while promoting bringing liquidity to the Exchange. The Exchange also believes that it is equitable and not unfairly discriminatory to make sure that Customer and Professional are harmonized and treated the same, as proposed.

As noted, liquidity attracts other market participants. Customer and Professional liquidity benefits all market participants by providing more trading opportunities, which attract Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The proposed changes enhance the competitiveness of the Exchange by continuing to incentivize bringing flow to the Exchange.

²¹ See, e.g., fee and rebate schedules of other options exchanges, including, but not limited to, NASDAQ BX, Inc. (“BX Options”), NASDAQ PHLX LLC (“Phlx”), and Chicago Board Options Exchange (“CBOE”).

The Exchange does not believe that the two housekeeping changes have any impact on the reasonable and equitable and not unfairly discriminatory nature of the proposal.

The Exchange desires to continue to incentivize members and member organizations, through the Exchange's rebate and proposed reduced fee structure, to select the Exchange as a venue for bringing liquidity and trading by offering competitive pricing. Such competitive, differentiated pricing exists today on other options exchanges. The Exchange's goal is creating and increasing incentives to attract orders to the Exchange that will, in turn, benefit all market participants through increased liquidity at the Exchange.

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. Specifically, the Exchange does not believe that its proposal to make changes to its Fee for Removing Liquidity where a Customer or Professional removes liquidity in SPY Options, as per proposed note 3, will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-

competitive because the Exchange is simply continuing its fees and rebates for Penny Pilot Options, and enhancing its fee structure in order to remain competitive in the current environment.

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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In terms of intra-market competition, the Exchange notes that price differentiation among different market participants operating on the Exchange (e.g., Customer and Professional as opposed to others) is reasonable. Customer and Professional activity, for example, enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Moreover, in this instance, the proposed changes to reduce the Fee for Removing Liquidity where Customer or Professional removes liquidity in SPY Options does not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result.

Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain order executions.

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.²²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If

²² 15 U.S.C. 78s(b)(3)(A)(ii).

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-2016-070 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2016-070. 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-2016-070 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.²³

Robert W. Errett
Deputy Secretary

²³ 17 C.F.R. 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

NASDAQ Stock Market Rules**Options 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	Broker- Dealer
Penny Pilot Options:						
Rebate to	*** d	*** d	\$0.10	\$0.10	#	\$0.10
Add Liquidity						
Fee for Removing Liquidity	\$0.50 ³	\$0.50 ³	\$0.50	\$0.50 ²	\$0.50 ²	\$0.50
Non-Penny Pilot Options:						
Fee for Adding Liquidity	N/A	N/A	\$0.45	\$0.45	\$0.35	\$0.45
Fee for Removing Liquidity	\$0.85	\$0.85	\$1.10	\$1.10	\$1.10 ⁴	\$1.10
Rebate to Add Liquidity	\$0.80 ¹	\$0.80 ¹	N/A	N/A	N/A	N/A

¹A Participant that qualifies for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 2, 3, 4, 5 or 6 in a month will receive an additional \$0.10 per contract Non-Penny Pilot Options Rebate to Add Liquidity for each transaction which adds liquidity in Non-Penny Pilot Options in that month. A Participant that qualifies for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 7 or 8 in a month will receive an additional \$0.20 per contract Non-Penny Pilot Options Rebate to Add Liquidity for each transaction which adds liquidity in Non-Penny Pilot Options in that month.

²Participants that add 1.30% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month will be subject to the following pricing applicable to executions: a \$0.48 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and the seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.

³[Reserved.]A Customer or Professional that removes liquidity in SPY Options will be assessed a fee of \$0.47 per contract.

⁴A Participant that qualifies for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 2, 3, 4, 5, 6, 7 or 8 in a month will be assessed a Non- Penny Pilot Options Fee for Removing Liquidity of \$1.08 per contract in that month.

*** The Customer and Professional Rebate to Add Liquidity in Penny Pilot Options will be paid as noted below. To determine the applicable percentage of total industry customer equity and ETF option average daily volume, unless otherwise stated, the Participant's Penny Pilot and Non-Penny Pilot Customer and/or Professional volume that adds liquidity will be included.

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