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

File No.* SR - 2016 - * 089
Amendment No. (req. for Amendments *)

Filing by NASDAQ Stock Market

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

Initial * ☑ Amendment * ☐ Withdrawal ☐

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

Pilot ☐ Extension of Time Period for Commission Action * ☐ Date Expires *

Rule

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐ Exhibit 3 Sent As Paper Document ☐

Description

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

Proposed rule change to amend Chapter XV, entitled Options Pricing, at Section 2, which governs pricing for Exchange members using the NASDAQ Options Market.

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 * Jurij Last Name * Trypupenko
Title * Associate General Counsel
E-mail * Jurij.Trypupenko@nasdaq.com
Telephone * (301) 978-8132 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.

Date 06/14/2016
By Edward S. Knight
(Name *)

(Title *)
Executive Vice President and General Counsel

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.knight@nasdaq.com

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * 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 * 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, 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 Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange"), pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] 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]

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.

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.

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

2 17 CFR 240.19b-4.

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

(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(1), for executing and routing standardized equity and index options under the Penny Pilot Option[4] program. Specifically, the Exchange proposes in Section 2(1) two new incentives regarding Non-NOM Market Makers and NOM Market Makers Penny Pilot Options Fees for Removing Liquidity; and proposes to delete note 4, regarding Non- Penny Pilot Options Fee for Removing Liquidity. The proposed changes will allow the Exchange to continue to offer and expand incentives to NOM Participants to add more liquidity to NOM.

Change 1: Penny Pilot Options - Incentives to Earn Additional Discounts on Fee for Removing Liquidity

Note 2 to Section 2(1) applies to Non-NOM Market Makers[5]and NOM Market Makers[6] Penny Pilot Options Fees for Removing Liquidity. Currently, note 2 offers a

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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.

5 The term "Non-NOM Market Maker" 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.

6 The term "NOM Market Maker" is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good

$0.02 discount (reduction to $0.48 per contract fee) on the Penny Pilot Options Fee for Removing Liquidity.[7] Currently, note 2 offers that Participants[8] that add 1.30% of Customer,[9] Professional,[10] Firm,[11] Broker-Dealer,[12] or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option average daily volume or ADV contracts per day are assessed a $0.48 per contract Penny Pilot Options Fee for Removing Liquidity provided the Participant is (i) both the buyer and the seller or (ii) the Participant removes liquidity

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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.

7 The NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fees for Removing Liquidity are $0.50 per contract.

8 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". Participants on NOM are also known as "NOM Participants."

9 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 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)).

10 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.

11 The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at The Options Clearing Corporation.

12 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.

from another Participant under Common Ownership.[13] The Exchange proposes two additional ways to earn an enhanced discount on the NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fee for Removing Liquidity.

First, the Exchange proposes to amend note 2 to Section 2(1) to add a new incentive that would assess NOM Market Maker and Non-NOM Market Maker a $0.32 per contract fee applicable to executions less than 10,000 contracts provided the Participant adds 1.50% 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 and the Participant meets or exceeds the cap for the Nasdaq Stock Market Opening Cross[14], and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. The Exchange believes that this proposed change, which includes a new methodology to earn an incentive via meeting or exceeding the cap for the Nasdaq Stock Market Opening Cross, will incentivize bringing additional flow to the Exchange. This proposal offers an $0.18 per contract discount

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13 The term "Common Ownership" shall mean Participants under 75% common ownership or control. Common Ownership shall apply to all pricing in Chapter XV, Section 2 for which a volume threshold or volume percentage is required to obtain the pricing.

14 The term "Nasdaq Opening Cross" means the process for determining the price at which orders shall be executed at the open and for executing those orders. See Nasdaq Rule 4752(a)(2)(E)(5). Nasdaq firms that execute orders in the Nasdaq Opening Cross will be subject to fees for such executions up to a monthly maximum of $30,000, provided, however, that such firms add at least one million shares of liquidity, on average, per month. See Nasdaq Rule 7018(e)(2).

from the current Penny Pilot Options Fees for Removing Liquidity for NOM Market Maker and Non-NOM Market Makers.[15]

Second, the Exchange proposes to amend note 2 to Section 2(1) to add a new incentive that would assess NOM Market Maker and Non-NOM Market Maker a $0.32 per contract fee applicable to executions less than 10,000 contracts provided the Participant adds 1.75% 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 and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. This proposal offers an $0.18 per contract discount from the current Penny Pilot Options Fees for Removing Liquidity for NOM Market Maker and Non-NOM Market Makers.[16]

The amendments proposed herein to note 2 to Section 2(1) would, for executions less than 10,000 contracts, offer Participants two ways to earn an $0.18 per contract discount from the current Penny Pilot Options NOM Market Maker or Non-NOM Market Maker Fee for Removing Liquidity by delivering a greater amount of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity on NOM.[17]

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15 The Penny Pilot Options Fee for Removing Liquidity for NOM Market Maker and Non-NOM Market Makers is $0.50 per contract.

16 Id.

17 For all executions 10,000 contracts or greater, a $0.48 per contract fee will be applicable provided the Participant adds 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 and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under

Change 2: Non-Penny Pilot Options - Delete Note 4

Note 4 currently states that a 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 Exchange proposes to remove note 4 from the Non-Penny Pilot Options Fee for Removing Liquidity and at the same time proposes additional ways to earn an enhanced discount on the NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fee for Removing Liquidity. The Exchange is incentivizing Participants to bring Penny Pilot Options liquidity to the Exchange since Penny Pilot Options represent the most highly-traded options in the market.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[18] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[19] 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. Attracting order flow to the Exchange benefits all Participants who have the opportunity to interact with this order flow.

Common Ownership. This $0.48 fee represents a $0.02 per contract discount from the current Penny Pilot Options Fees for Removing Liquidity of $0.50 for NOM Market Maker and Non-NOM Market Makers and represents no change from the current Pricing Schedule.

18 15 U.S.C. 78f.

19 15 U.S.C. 78f(b)(4) and (5).

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."[20]

Likewise, in NetCoalition v. Securities and Exchange Commission[21] ("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.[22] 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."[23]

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

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

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

22 See id. at 534-535.

23 See id. at 537.

otherwise, in the execution of order flow from broker dealers'…."[24] 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.

Change 1: Penny Pilot Options - Incentives to Earn Additional Discounts on Fee for Removing Liquidity

The Exchange's proposal to amend note 2 to Section 2(1) to create two new incentives that would assess NOM Market Maker and Non-NOM Market Maker a $0.32 per contract fee applicable to executions less than 10,000 contracts. The first new incentive is if the Participant adds 1.50% 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 and the Participant meets or exceeds the cap for the Nasdaq Stock Market Opening Cross and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. The second new incentive is if the Participant adds 1.75% 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 and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. The new incentives are reasonable, equitable, and not unfairly discriminatory for the reasons that follow.

The Exchange believes that the new incentives will attract a greater amount of order flow on NOM by offering a discounted rate. Participants are provided additional

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[24] 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)).

opportunities to lower NOM Market Maker and Non-NOM Market Maker fees when removing Penny Pilot Options liquidity, thereby attracting order flow to the Exchange to the benefit of all other market participants. Participants may send either Penny or Non-Penny Pilot Options to qualify for the discount. All Participant order flow that adds liquidity to the order book, other than NOM Market Maker volume, will apply to the 1.50% or 1.75% threshold to qualify for the discount. The Exchange believes that it is not necessary to count NOM Market Maker volume toward the volume to qualify for the fee discount because that volume is counted toward the qualifiers for the NOM Market Maker rebates. The Exchange also believes, as discussed below, that the proposal is reasonable in light of what is offered on other exchanges and the Exchange's effort to bring Penny Pilot Options liquidity to the Exchange.

Providing the discount to NOM Market Makers is equitable and not unfairly discriminatory because NOM Market Makers obligations to the market and regulatory requirements, which normally do not apply to other market participants.[25] A NOM Market Maker has the obligation, for example, to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The proposed differentiation as between NOM Market Makers

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25 Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. See Chapter VII, Section 5.

and other market participants recognizes the differing contributions made to the trading environment on the Exchange by NOM Market Makers. For the above reasons, the Exchange believes that NOM Market Makers are entitled to discounted fees, provided they qualify for the discount. The Exchange believes it is equitable and not unfairly discriminatory to offer the fee discount to Non-NOM Market Makers because the Exchange is offering Participants flexibility in the manner in which they are submitting their orders. Non-NOM Market Makers have obligations on other exchanges to qualify as a market maker. Also, the Exchange believes that market makers not registered on NOM will be encouraged to send orders to NOM as an away market maker (Non-NOM Market Maker) with this incentive. Because the incentive is being offered to both market makers registered on NOM and those not registered on NOM, the Exchange believes that the proposal is equitable and not unfairly discriminatory because it encourages market makers to direct liquidity to NOM to the benefit of all Participants. This proposal recognizes the overall contributions made by market makers to a listed options market.

The Exchange's proposal to count all order flow (Penny and Non-Penny Pilot Options) toward the 1.50% and 1.75% requisites for volume, except for NOM Market Maker order flow, is reasonable, equitable, and not unfairly discriminatory because NOM Market Makers continue to be entitled to rebates today similar to Customers and Professionals. Customer volume is important because it continues to attract liquidity to the Exchange, which benefits all market participants. Further, with respect to Professional liquidity, the Exchange initially established Professional pricing in order to

"…bring additional revenue to the Exchange."[26] The Exchange noted in the Professional Filing that it believes "…that the increased revenue from the proposal would assist the Exchange to recoup fixed costs."[27] Further, the Exchange noted in that filing that it believes that establishing separate pricing for a Professional, which ranges between that of a Customer and market maker, accomplishes this objective.[28] The Exchange offers NOM Market Makers rebates in acknowledgment of the obligations these Participants bear in the market.[29]

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to continue to permit NOM Participants under Common Ownership to aggregate their volume for purposes of obtaining the fee discount because certain NOM Participants chose to segregate their businesses into different legal entities for purposes of conducting business. The Exchange believes that, in terms of Common Ownership, these NOM Participants should continue to be treated as one entity for purposes of qualifying for the discounted Fee for Removing Liquidity in Penny Pilot Options, as long as there is

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26 See Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR-NASDAQ-2011-066) ("Professional Filing"). In this filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.

27 See 76 FR 29014, 29015 (Professional Filing).

28 See 76 FR 29014 (Professional Filing). The Exchange also noted in the Professional Filing that it believes the role of the retail Customer in the marketplace is distinct from that of the Professional and the Exchange's fee proposal at that time accounted for this distinction by pricing each market participant according to their roles and obligations.

29 See e.g., Chapter VII (Market Participants), Section 5 (Obligations of Market Makers).

at least 75% Common Ownership or control among the NOM Participants. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to offer an $0.18 per contract discount of the Penny Pilot Option Fee for Removing Liquidity to Non-NOM Market Makers and NOM Market Makers for transactions in which the same NOM Participant or a NOM Participant under Common Ownership is the buyer and the seller. NOM Participants that chose to segregate their businesses into different legal entities should still be afforded the opportunity to receive the discount as if they were the same NOM Participant on both sides of the transaction.

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, the Exchange believes that NOM Participants would continue to aggressively pursue order flow in order to receive the benefit of the fee discount. NOM Participants would continue to only receive the incentive if they interact with their own order flow, recognizing Common Ownership where applicable. Offering the additional fee discount is reasonable, equitable and not unfairly discriminatory because Participants would be entitled to receive the fee discount only when the Participant is both the buyer and seller. By way of example, if a NOM Participant that is assigned the firm code[30] "ABC" by the Exchange posted an order utilizing its Customer order router, and the order was removed by an ABC NOM Market Maker order, the NOM Participant would receive the proposed $0.18 per contract fee discount for that trade,[31] which would be $0.16 more than the

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

31 The discount would be applicable to executions less than 10,000 contracts if: (a) the Participant adds 1.50% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny

current $0.02 per contract discount. The Exchange proposes to utilize the Exchange assigned firm code to determine which NOM Participant executed an order and to apply the fee discount to the Non-NOM Market Maker or NOM Market Maker Penny Pilot Option Fee for Removing Liquidity if the same NOM Participant was the buyer and the seller to a transaction.[32] This concept is not novel. Today NASDAQ PHLX LLC ("Phlx") assesses a Firm Floor Options Transaction Charge based on which side of the transaction the member represents as well whether the same member or its affiliates under Common Ownership was represented.[33] Also today, NASDAQ BX Options ("BX

Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month and the Participant meets or exceeds the cap for the Nasdaq Stock Market Opening Cross and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership; or (b) the Participant adds 1.75% 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 and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.

32 In this example, the same Participant that added and removed the order would be entitled to the fee discount because the NOM Participant was the buyer and seller (or removes liquidity from another Participant under Common Ownership) on the transaction.

33 The Firm Floor Options Transaction Charges will be waived for members executing facilitation orders pursuant to Phlx Rule 1064 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges will be waived for the buy side of a transaction if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account. In addition, the Broker-Dealer Floor Options Transaction Charge (including Cabinet Options Transaction Charges) will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer ("BD-Customer Facilitation"), if the member's BD-Customer Facilitation average daily volume (including both

Options") provides discounted Fees for Removing Liquidity for registered BX Options Market Makers, based on Tier positions for the BX Participant.[34] The Exchange believes that the note 2 proposal is reasonable in comparison to other exchanges and also because of its decision to deploy Penny Pilot Options incentives in a concentrated manner.

Today the Exchange offers a $0.02 discount ($0.48 vs. $0.50 per contract) in current note 2 of Chapter XV, Section 2(1) to Participants 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 when the Participant is (i) both the buyer and the seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. The Exchange is proposing to offer a deeper $0.18 discount ($0.32 vs. $0.50 per contract), for executions less than 10,000 contracts,[35] provided; (a.) the Participant adds 1.50% of Customer, Professional, Firm, Broker-Dealer or Non-NOM

FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month. See Phlx's Pricing Schedule.

34 The BX Options Select Symbols Fee to Remove Liquidity when BX Options Market Maker trading with a Customer ("BX Options Fee") is generally inversely proportional to the BX Select Symbols Options Tier Schedule, which requires additional liquidity with increased Tiers. The BX Options Fee is, for example, $0.42 in Tier 1 and Tier 2, $0.39 in Tier 3, and $0.25 in Tier 4. The following are BX Options Select Symbols: ASHR, DIA, DXJ, EEM, EFA, EWJ, EWT, EWW, EWY, EWZ, FAS, FAZ, FXE, FXI, FXP, GDX, GLD, HYG, IWM, IYR, KRE, OIH, QID, QLD, QQQ, RSX, SDS, SKF, SLV, SPY, SRS, SSO, TBT, TLT, TNA, TZA, UNG, URE, USO, UUP, UVXY, UYG, VXX, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XOP, XRT. See BX Options Pricing Schedule.

35 The intention of the new pricing discount is, as discussed, to attract customer orders to the Exchange. We reviewed the minimum and maximum execution size for year to date activity on the Exchange order book and determined the 10,000 contract threshold was equitable and reasonable as trades above this threshold are not typical of customer orders.

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 and the Participant meets or exceeds the cap for the Nasdaq Stock Market Opening Cross and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership; or (b.) the Participant adds 1.75% 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 and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. The Exchange believes that it is reasonable to offer this deeper discount when the Participant is both the buyer and the seller (or removes liquidity from another Participant under Common Ownership) because qualifying for the discount requires a NOM Participant to commit a substantially larger volume of liquidity on NOM. This significantly more substantial investment of order flow and liquidity into the market is beneficial to all market participants, who are free to interact with such order flow.

The Exchange believes the proposed discount where Participant adds 1.50% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options is reasonable, equitable, and not unfairly discriminatory. The Exchange believes that the proposed change is reasonable because the methodology used to qualify for the proposed discount includes the Participant meeting or exceeding the cap for the Nasdaq Stock Market Opening Cross. This concept is not novel as NOM currently uses the NASDAQ Stock Market Closing

Cross "MOC" and "LOC" % of total volume to determine the NOM Participants Customer and Professional tier position.[36] The Exchange believes that incentivizing Participants to bring added liquidity by meeting or exceeding the cap for the NASDAQ Stock Market Opening Cross will benefit all Participants by providing greater opportunity for price discovery and liquidity during the Opening Cross process.

Moreover, the condition to meet or exceed the cap for the Nasdaq Stock Market Opening Cross is reasonable, equitable and not unfairly discriminatory because it provides Participants that are not able to meet the Opening Cross requirement and therefore are not able to achieve the 1.75% tier an additional way in which to qualify for the NOM Market Maker and Non-NOM Market Maker $0.32 per contract fee. That is, a Participant unable to achieve the 1.75% tier can still achieve the 1.50% tier provided also that the Participant adds 1.50% 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 and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.

Like all of the changes proposed herein, this proposed change is equitable and not unfairly discriminatory because it will apply uniformly to all Participants.

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36 See, e.g., 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 to amend options pricing at NOM Chapter VX, Section 2).

Change 2: Non-Penny Pilot Options - Delete Note 4

In Change 2 the Exchange proposes to delete Note 4 which currently indicates the assessment for Non- Penny Pilot Options Fee for Removing Liquidity. The proposal is reasonable, equitable, and not unfairly discriminatory for the reasons that follow.

The removal of note 4 is reasonable because it is proposed commensurate with proposing two additional ways to earn an enhanced discount on the NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fee for Removing Liquidity in note 2. This is reasonable because in its Fee Schedule the Exchanges is encouraging bringing Penny Pilot Options liquidity to the Exchange. Since Penny Pilot Options represent the most highly-traded and liquid options on the Exchange it is reasonable for the exchange to make a concerted effort to bring Penny Pilot Options liquidity to the Exchange. Participants are provided additional opportunities to lower NOM Market Maker and Non-NOM Market Maker fees when removing Penny Pilot Options liquidity, thereby attracting order flow to the Exchange to the benefit of all other market participants. Participants may send either Penny or Non-Penny Pilot Options to qualify for the discount. All Participant order flow that adds liquidity to the order book, other than NOM Market Maker volume, will apply to the 1.50% or 1.75% threshold to qualify for the discount. Additional order flow on the Exchange promotes interaction with the added liquidity.

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to offer the discounted remove fee in note 2 applicable to Penny Pilot Options without having an alternate fee in note 4 applicable in Non-Penny Pilot Options because, as discussed, Penny Pilot Options are clearly the highest volume, most liquid options traded on the Exchange and the Exchange is promoting such liquidity. Moreover, in light of the Exchange's effort to focus on Penny Pilot Options liquidity on the Exchange, the proposal to discontinue note 4 regarding Non-Penny Pilot Options is equitable and not unfairly discriminatory because it will apply uniformly to all Participants.

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. 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 this instance, the proposed amendments to NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fees for Removing Liquidity seek to continue to incentivize Participants to send order flow to NOM. The Exchange does not believe this proposal to add two incentives imposes an undue burden on inter-market competition because the Exchange's execution services are completely voluntary and subject to extensive competition.

The Exchange's proposal to incentivize Participants by continuing to offer the opportunity to reduce the NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fees for Removing Liquidity and also offering additional incentives to lower these fees from $0.50 to $0.32 per contract, does not create an undue burden on intra-market competition for various reasons. NOM Market Makers have obligations to the market and regulatory requirements,[37] which, as discussed, normally do not apply to other market participants. Offering the fee discount to Non-NOM Market Makers provides Participants with flexibility in the manner in which they are submitting their orders. Non-NOM Market Makers have obligations on other exchanges to qualify as a market maker. Also, the Exchange believes that market makers not registered on NOM will be encouraged to send orders to NOM as an away market maker (Non-NOM Market Maker) with this incentive. Because the incentive is being offered to both market makers registered on NOM and those not registered on NOM, the Exchange believes that the proposal does not impose an undue burden on intra-market competition because it encourages market makers to direct liquidity to NOM to the benefit of all Participants.

Participants would be entitled to receive the fee discount when the Participant is both the buyer and seller (or removes liquidity from another Participant under Common Ownership) and therefore this qualifier does not create an undue burden on intra-market competition. NOM Participants are unaware at the time the order is entered of the identity of the contra-party, therefore, since contra-parties are anonymous, the Exchange believes that NOM Participants would aggressively pursue order flow in order to receive the benefit of the fee discount, to the benefit of all Participants.

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[37] <u>See</u> <u>supra</u> note 25.

The Exchange's proposal to continue to count all order flow toward the 1.50 % or 1.75% requisite volume discussed herein, except for NOM Market Maker order flow, does not impose an undue burden on intra-market competition. It is not necessary to count NOM Market Maker volume in qualifying for the fee discount as that volume is counted toward qualifying for NOM Market Maker rebates.

The Exchange believes that permitting NOM Participants with 75% Common Ownership to aggregate their volume for purposes of obtaining the fee discount does not create an undue burden on intra-market competition because certain NOM Participants chose to segregate their businesses into different legal entities for purposes of conducting business. NOM Participants that chose to segregate their businesses into different legal entities should still be afforded the opportunity to receive the discount as if they were the same NOM Participant on both sides of the transaction.

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,[38] the Exchange has designated this proposal as establishing or changing 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, which renders the proposed rule change effective upon filing.

[38] 15 U.S.C. 78s(b)(3)(A)(ii).

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 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-2016-089)

June __, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend 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 June 14, 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 and index options.[3]

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

2 17 CFR 240.19b-4.

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

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(1), for executing and routing standardized equity and index options under the Penny Pilot Option[4] program. Specifically, the Exchange proposes in Section 2(1) two new incentives regarding Non-NOM Market Makers and NOM Market Makers Penny Pilot Options Fees for Removing Liquidity; and proposes to delete note 4, regarding Non- Penny Pilot Options Fee for Removing Liquidity. The proposed changes

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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.

will allow the Exchange to continue to offer and expand incentives to NOM Participants to add more liquidity to NOM.

Change 1: Penny Pilot Options - Incentives to Earn Additional Discounts on Fee for Removing Liquidity

Note 2 to Section 2(1) applies to Non-NOM Market Makers[5]and NOM Market Makers[6] Penny Pilot Options Fees for Removing Liquidity. Currently, note 2 offers a $0.02 discount (reduction to $0.48 per contract fee) on the Penny Pilot Options Fee for Removing Liquidity.[7] Currently, note 2 offers that Participants[8] that add 1.30% of Customer,[9] Professional,[10] Firm,[11] Broker-Dealer,[12] or Non-NOM Market Maker

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5 The term "Non-NOM Market Maker" 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.

6 The term "NOM Market Maker" 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.

7 The NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fees for Removing Liquidity are $0.50 per contract.

8 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". Participants on NOM are also known as "NOM Participants."

9 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 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)).

10 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

liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option average daily volume or ADV contracts per day are assessed a $0.48 per contract Penny Pilot Options Fee for Removing Liquidity provided the Participant is (i) both the buyer and the seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.[13] The Exchange proposes two additional ways to earn an enhanced discount on the NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fee for Removing Liquidity.

First, the Exchange proposes to amend note 2 to Section 2(1) to add a new incentive that would assess NOM Market Maker and Non-NOM Market Maker a $0.32 per contract fee applicable to executions less than 10,000 contracts provided the Participant adds 1.50% 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 and the Participant meets or exceeds the cap for the Nasdaq Stock Market Opening Cross[14], and

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account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

11 The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at The Options Clearing Corporation.

12 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.

13 The term "Common Ownership" shall mean Participants under 75% common ownership or control. Common Ownership shall apply to all pricing in Chapter XV, Section 2 for which a volume threshold or volume percentage is required to obtain the pricing.

14 The term "Nasdaq Opening Cross" means the process for determining the price at which orders shall be executed at the open and for executing those orders. See Nasdaq Rule 4752(a)(2)(E)(5). Nasdaq firms that execute orders in the Nasdaq

the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. The Exchange believes that this proposed change, which includes a new methodology to earn an incentive via meeting or exceeding the cap for the Nasdaq Stock Market Opening Cross, will incentivize bringing additional flow to the Exchange. This proposal offers an $0.18 per contract discount from the current Penny Pilot Options Fees for Removing Liquidity for NOM Market Maker and Non-NOM Market Makers.[15]

Second, the Exchange proposes to amend note 2 to Section 2(1) to add a new incentive that would assess NOM Market Maker and Non-NOM Market Maker a $0.32 per contract fee applicable to executions less than 10,000 contracts provided the Participant adds 1.75% 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 and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. This proposal offers an $0.18 per contract discount from the current Penny Pilot Options Fees for Removing Liquidity for NOM Market Maker and Non-NOM Market Makers.[16]

Opening Cross will be subject to fees for such executions up to a monthly maximum of $30,000, provided, however, that such firms add at least one million shares of liquidity, on average, per month. See Nasdaq Rule 7018(e)(2).

15 The Penny Pilot Options Fee for Removing Liquidity for NOM Market Maker and Non-NOM Market Makers is $0.50 per contract.

16 Id.

The amendments proposed herein to note 2 to Section 2(1) would, for executions less than 10,000 contracts, offer Participants two ways to earn an $0.18 per contract discount from the current Penny Pilot Options NOM Market Maker or Non-NOM Market Maker Fee for Removing Liquidity by delivering a greater amount of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity on NOM.[17]

Change 2: Non-Penny Pilot Options - Delete Note 4

Note 4 currently states that a 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 Exchange proposes to remove note 4 from the Non-Penny Pilot Options Fee for Removing Liquidity and at the same time proposes additional ways to earn an enhanced discount on the NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fee for Removing Liquidity. The Exchange is incentivizing Participants to bring Penny Pilot Options liquidity to the Exchange since Penny Pilot Options represent the most highly-traded options in the market.

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[17] For all executions 10,000 contracts or greater, a $0.48 per contract fee will be applicable provided the Participant adds 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 and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. This $0.48 fee represents a $0.02 per contract discount from the current Penny Pilot Options Fees for Removing Liquidity of $0.50 for NOM Market Maker and Non-NOM Market Makers and represents no change from the current Pricing Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[18] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[19] 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. Attracting order flow to the Exchange benefits all Participants who have the opportunity to interact with this order flow.

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."[20]

Likewise, in NetCoalition v. Securities and Exchange Commission[21] ("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

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18 15 U.S.C. 78f.

19 15 U.S.C. 78f(b)(4) and (5).

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

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

Congress mandated a cost-based approach.[22] 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."[23]

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'…."[24] 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.

Change 1: Penny Pilot Options - Incentives to Earn Additional Discounts on Fee for Removing Liquidity

The Exchange's proposal to amend note 2 to Section 2(1) to create two new incentives that would assess NOM Market Maker and Non-NOM Market Maker a $0.32 per contract fee applicable to executions less than 10,000 contracts. The first new incentive is if the Participant adds 1.50% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot

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22 See id. at 534-535.

23 See id. at 537.

24 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)).

Options of total industry customer equity and ETF option ADV contracts per day in a month and the Participant meets or exceeds the cap for the Nasdaq Stock Market Opening Cross and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. The second new incentive is if the Participant adds 1.75% 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 and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. The new incentives are reasonable, equitable, and not unfairly discriminatory for the reasons that follow.

The Exchange believes that the new incentives will attract a greater amount of order flow on NOM by offering a discounted rate. Participants are provided additional opportunities to lower NOM Market Maker and Non-NOM Market Maker fees when removing Penny Pilot Options liquidity, thereby attracting order flow to the Exchange to the benefit of all other market participants. Participants may send either Penny or Non-Penny Pilot Options to qualify for the discount. All Participant order flow that adds liquidity to the order book, other than NOM Market Maker volume, will apply to the 1.50% or 1.75% threshold to qualify for the discount. The Exchange believes that it is not necessary to count NOM Market Maker volume toward the volume to qualify for the fee discount because that volume is counted toward the qualifiers for the NOM Market Maker rebates. The Exchange also believes, as discussed below, that the proposal is reasonable in light of what is offered on other exchanges and the Exchange’s effort to bring Penny Pilot Options liquidity to the Exchange.

Providing the discount to NOM Market Makers is equitable and not unfairly discriminatory because NOM Market Makers obligations to the market and regulatory requirements, which normally do not apply to other market participants.[25] A NOM Market Maker has the obligation, for example, to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The proposed differentiation as between NOM Market Makers and other market participants recognizes the differing contributions made to the trading environment on the Exchange by NOM Market Makers. For the above reasons, the Exchange believes that NOM Market Makers are entitled to discounted fees, provided they qualify for the discount. The Exchange believes it is equitable and not unfairly discriminatory to offer the fee discount to Non-NOM Market Makers because the Exchange is offering Participants flexibility in the manner in which they are submitting their orders. Non-NOM Market Makers have obligations on other exchanges to qualify as a market maker. Also, the Exchange believes that market makers not registered on NOM will be encouraged to send orders to NOM as an away market maker (Non-NOM Market Maker) with this incentive. Because the incentive is being offered to both market makers registered on NOM and those not registered on NOM, the Exchange believes that

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[25] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. See Chapter VII, Section 5.

the proposal is equitable and not unfairly discriminatory because it encourages market makers to direct liquidity to NOM to the benefit of all Participants. This proposal recognizes the overall contributions made by market makers to a listed options market.

The Exchange's proposal to count all order flow (Penny and Non-Penny Pilot Options) toward the 1.50% and 1.75% requisites for volume, except for NOM Market Maker order flow, is reasonable, equitable, and not unfairly discriminatory because NOM Market Makers continue to be entitled to rebates today similar to Customers and Professionals. Customer volume is important because it continues to attract liquidity to the Exchange, which benefits all market participants. Further, with respect to Professional liquidity, the Exchange initially established Professional pricing in order to "…bring additional revenue to the Exchange."[26] The Exchange noted in the Professional Filing that it believes "…that the increased revenue from the proposal would assist the Exchange to recoup fixed costs."[27] Further, the Exchange noted in that filing that it believes that establishing separate pricing for a Professional, which ranges between that of a Customer and market maker, accomplishes this objective.[28] The Exchange offers

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26 See Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR-NASDAQ-2011-066) ("Professional Filing"). In this filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.

27 See 76 FR 29014, 29015 (Professional Filing).

28 See 76 FR 29014 (Professional Filing). The Exchange also noted in the Professional Filing that it believes the role of the retail Customer in the marketplace is distinct from that of the Professional and the Exchange's fee proposal at that time accounted for this distinction by pricing each market participant according to their roles and obligations.

NOM Market Makers rebates in acknowledgment of the obligations these Participants bear in the market.[29]

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to continue to permit NOM Participants under Common Ownership to aggregate their volume for purposes of obtaining the fee discount because certain NOM Participants chose to segregate their businesses into different legal entities for purposes of conducting business. The Exchange believes that, in terms of Common Ownership, these NOM Participants should continue to be treated as one entity for purposes of qualifying for the discounted Fee for Removing Liquidity in Penny Pilot Options, as long as there is at least 75% Common Ownership or control among the NOM Participants. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to offer an $0.18 per contract discount of the Penny Pilot Option Fee for Removing Liquidity to Non-NOM Market Makers and NOM Market Makers for transactions in which the same NOM Participant or a NOM Participant under Common Ownership is the buyer and the seller. NOM Participants that chose to segregate their businesses into different legal entities should still be afforded the opportunity to receive the discount as if they were the same NOM Participant on both sides of the transaction.

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, the Exchange believes that NOM Participants would continue to aggressively pursue order flow in order to receive the benefit of the fee discount. NOM Participants would

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29 See e.g., Chapter VII (Market Participants), Section 5 (Obligations of Market Makers).

continue to only receive the incentive if they interact with their own order flow, recognizing Common Ownership where applicable. Offering the additional fee discount is reasonable, equitable and not unfairly discriminatory because Participants would be entitled to receive the fee discount only when the Participant is both the buyer and seller**.** By way of example, if a NOM Participant that is assigned the firm code[30] "ABC" by the Exchange posted an order utilizing its Customer order router, and the order was removed by an ABC NOM Market Maker order, the NOM Participant would receive the proposed $0.18 per contract fee discount for that trade,[31] which would be $0.16 more than the current $0.02 per contract discount. The Exchange proposes to utilize the Exchange assigned firm code to determine which NOM Participant executed an order and to apply the fee discount to the Non-NOM Market Maker or NOM Market Maker Penny Pilot Option Fee for Removing Liquidity if the same NOM Participant was the buyer and the seller to a transaction.[32] This concept is not novel. Today NASDAQ PHLX LLC

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

31 The discount would be applicable to executions less than 10,000 contracts if: (a) the Participant adds 1.50% 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 and the Participant meets or exceeds the cap for the Nasdaq Stock Market Opening Cross and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership; or (b) the Participant adds 1.75% 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 and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.

32 In this example, the same Participant that added and removed the order would be entitled to the fee discount because the NOM Participant was the buyer and seller

("Phlx") assesses a Firm Floor Options Transaction Charge based on which side of the transaction the member represents as well whether the same member or its affiliates under Common Ownership was represented.[33] Also today, NASDAQ BX Options ("BX Options") provides discounted Fees for Removing Liquidity for registered BX Options Market Makers, based on Tier positions for the BX Participant.[34] The Exchange believes that the note 2 proposal is reasonable in comparison to other exchanges and also because of its decision to deploy Penny Pilot Options incentives in a concentrated manner.

(or removes liquidity from another Participant under Common Ownership) on the transaction.

33 The Firm Floor Options Transaction Charges will be waived for members executing facilitation orders pursuant to Phlx Rule 1064 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges will be waived for the buy side of a transaction if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account. In addition, the Broker-Dealer Floor Options Transaction Charge (including Cabinet Options Transaction Charges) will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer ("BD-Customer Facilitation"), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month. See Phlx's Pricing Schedule.

34 The BX Options Select Symbols Fee to Remove Liquidity when BX Options Market Maker trading with a Customer ("BX Options Fee") is generally inversely proportional to the BX Select Symbols Options Tier Schedule, which requires additional liquidity with increased Tiers. The BX Options Fee is, for example, \$0.42 in Tier 1 and Tier 2, \$0.39 in Tier 3, and \$0.25 in Tier 4. The following are BX Options Select Symbols: ASHR, DIA, DXJ, EEM, EFA, EWJ, EWT, EWW, EWY, EWZ, FAS, FAZ, FXE, FXI, FXP, GDX, GLD, HYG, IWM, IYR, KRE, OIH, QID, QLD, QQQ, RSX, SDS, SKF, SLV, SPY, SRS, SSO, TBT, TLT, TNA, TZA, UNG, URE, USO, UUP, UVXY, UYG, VXX, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XOP, XRT. See BX Options Pricing Schedule.

Today the Exchange offers a $0.02 discount ($0.48 vs. $0.50 per contract) in current note 2 of Chapter XV, Section 2(1) to Participants 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 when the Participant is (i) both the buyer and the seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. The Exchange is proposing to offer a deeper $0.18 discount ($0.32 vs. $0.50 per contract), for executions less than 10,000 contracts,[35] provided; (a.) the Participant adds 1.50% 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 and the Participant meets or exceeds the cap for the Nasdaq Stock Market Opening Cross and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership; or (b.) the Participant adds 1.75% 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 and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. The Exchange believes that it is reasonable to offer this deeper discount when the Participant is both the buyer and the seller (or removes liquidity from

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35 The intention of the new pricing discount is, as discussed, to attract customer orders to the Exchange. We reviewed the minimum and maximum execution size for year to date activity on the Exchange order book and determined the 10,000 contract threshold was equitable and reasonable as trades above this threshold are not typical of customer orders.

another Participant under Common Ownership) because qualifying for the discount requires a NOM Participant to commit a substantially larger volume of liquidity on NOM. This significantly more substantial investment of order flow and liquidity into the market is beneficial to all market participants, who are free to interact with such order flow.

The Exchange believes the proposed discount where Participant adds 1.50% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options is reasonable, equitable, and not unfairly discriminatory. The Exchange believes that the proposed change is reasonable because the methodology used to qualify for the proposed discount includes the Participant meeting or exceeding the cap for the Nasdaq Stock Market Opening Cross. This concept is not novel as NOM currently uses the NASDAQ Stock Market Closing Cross “MOC” and “LOC” % of total volume to determine the NOM Participants Customer and Professional tier position.[36] The Exchange believes that incentivizing Participants to bring added liquidity by meeting or exceeding the cap for the NASDAQ Stock Market Opening Cross will benefit all Participants by providing greater opportunity for price discovery and liquidity during the Opening Cross process.

Moreover, the condition to meet or exceed the cap for the Nasdaq Stock Market Opening Cross is reasonable, equitable and not unfairly discriminatory because it provides Participants that are not able to meet the Opening Cross requirement and therefore are not able to achieve the 1.75% tier an additional way in which to qualify for

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[36] See, e.g., 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 to amend options pricing at NOM Chapter VX, Section 2).

the NOM Market Maker and Non-NOM Market Maker $0.32 per contract fee. That is, a Participant unable to achieve the 1.75% tier can still achieve the 1.50% tier provided also that the Participant adds 1.50% 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 and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.

Like all of the changes proposed herein, this proposed change is equitable and not unfairly discriminatory because it will apply uniformly to all Participants.

Change 2: Non-Penny Pilot Options - Delete Note 4

In Change 2 the Exchange proposes to delete Note 4 which currently indicates the assessment for Non- Penny Pilot Options Fee for Removing Liquidity. The proposal is reasonable, equitable, and not unfairly discriminatory for the reasons that follow.

The removal of note 4 is reasonable because it is proposed commensurate with proposing two additional ways to earn an enhanced discount on the NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fee for Removing Liquidity in note 2. This is reasonable because in its Fee Schedule the Exchanges is encouraging bringing Penny Pilot Options liquidity to the Exchange. Since Penny Pilot Options represent the most highly-traded and liquid options on the Exchange it is reasonable for the exchange to make a concerted effort to bring Penny Pilot Options liquidity to the Exchange. Participants are provided additional opportunities to lower NOM Market Maker and Non-NOM Market Maker fees when removing Penny Pilot Options liquidity, thereby attracting order flow to the Exchange to the benefit of all other market participants.

Participants may send either Penny or Non-Penny Pilot Options to qualify for the discount. All Participant order flow that adds liquidity to the order book, other than NOM Market Maker volume, will apply to the 1.50% or 1.75% threshold to qualify for the discount. Additional order flow on the Exchange promotes interaction with the added liquidity.

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to offer the discounted remove fee in note 2 applicable to Penny Pilot Options without having an alternate fee in note 4 applicable in Non-Penny Pilot Options because, as discussed, Penny Pilot Options are clearly the highest volume, most liquid options traded on the Exchange and the Exchange is promoting such liquidity. Moreover, in light of the Exchange's effort to focus on Penny Pilot Options liquidity on the Exchange, the proposal to discontinue note 4 regarding Non-Penny Pilot Options is equitable and not unfairly discriminatory because it will apply uniformly to all Participants.

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. 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 this instance, the proposed amendments to NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fees for Removing Liquidity seek to continue to incentivize Participants to send order flow to NOM. The Exchange does not believe this proposal to add two incentives imposes an undue burden on inter-market competition because the Exchange's execution services are completely voluntary and subject to extensive competition.

The Exchange's proposal to incentivize Participants by continuing to offer the opportunity to reduce the NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fees for Removing Liquidity and also offering additional incentives to lower these fees from $0.50 to $0.32 per contract, does not create an undue burden on intra-market competition for various reasons. NOM Market Makers have obligations to the market and regulatory requirements,[37] which, as discussed, normally do not apply to other market participants. Offering the fee discount to Non-NOM Market Makers provides Participants with flexibility in the manner in which they are submitting their orders. Non-NOM Market Makers have obligations on other exchanges to qualify as a market maker. Also, the Exchange believes that market makers not registered on NOM will be encouraged to send orders to NOM as an away market maker (Non-NOM Market Maker) with this incentive. Because the incentive is being offered to both market makers registered on NOM and those not registered on NOM, the Exchange believes that the

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[37] See supra note 25.

proposal does not impose an undue burden on intra-market competition because it encourages market makers to direct liquidity to NOM to the benefit of all Participants.

Participants would be entitled to receive the fee discount when the Participant is both the buyer and seller (or removes liquidity from another Participant under Common Ownership) and therefore this qualifier does not create an undue burden on intra-market competition. NOM Participants are unaware at the time the order is entered of the identity of the contra-party, therefore, since contra-parties are anonymous, the Exchange believes that NOM Participants would aggressively pursue order flow in order to receive the benefit of the fee discount, to the benefit of all Participants.

The Exchange's proposal to continue to count all order flow toward the 1.50 % or 1.75% requisite volume discussed herein, except for NOM Market Maker order flow, does not impose an undue burden on intra-market competition. It is not necessary to count NOM Market Maker volume in qualifying for the fee discount as that volume is counted toward qualifying for NOM Market Maker rebates.

The Exchange believes that permitting NOM Participants with 75% Common Ownership to aggregate their volume for purposes of obtaining the fee discount does not create an undue burden on intra-market competition because certain NOM Participants chose to segregate their businesses into different legal entities for purposes of conducting business. NOM Participants that chose to segregate their businesses into different legal entities should still be afforded the opportunity to receive the discount as if they were the same NOM Participant on both sides of the transaction.

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.[38]

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 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-2016-089 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.

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[38] 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-NASDAQ-2016-089. 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-2016-089 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.[39]

Robert W. Errett
Deputy Secretary

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39 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	Broker-Dealer
Penny Pilot Options:						
Rebate to Add Liquidity	*** d	*** d	$0.10	$0.10	#	$0.10
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

[1]A 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.

[2] Participants 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.

Participants that add 1.50% 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 and meet or exceed the cap for the NASDAQ Stock Market Opening Cross during the month will be subject to the following pricing applicable to executions less than 10,000 contracts: a $0.32 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.

Participants that add 1.75% 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 less than 10,000 contracts: a $0.32 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.

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

[4] [A 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.]Reserved

*** 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.

Monthly Volume		**Rebate to Add Liquidity**
Tier 1	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.10% of total industry customer equity and ETF option average daily volume ("ADV") contracts per day in a month	$0.20
Tier 2	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month	$0.25
Tier 3	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month	$0.42
Tier 4	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month	$0.43
Tier 5	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.40% to 0.75% of total industry customer equity and ETF option ADV contracts per day in a month	$0.45
Tier 6 [b]	Participant has Total Volume of 100,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer and/or Professional liquidity in Penny Pilot Options	$0.45
Tier 7 [b]	Participant has Total Volume of 150,000 or more contracts per day in a month, of which 50,000 or more contracts per day in a month must be Customer and/or Professional liquidity in Penny Pilot Options	$0.47
Tier 8	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above	$0.48 [c]

0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds: (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 30,000 or more contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS (defined below)

[a]Reserved.

[b]For purposes of Tiers 6 and 7, "Total Volume" shall be defined as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and/or Non-Penny Pilot Options which either adds or removes liquidity on NOM.

[c] Participants that: (1) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.15% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.02 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (2) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.30% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (3) (a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month, (b) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options above 0.15% of total industry customer equity and ETF option ADV contracts per day in a month, and (c) execute greater than 0.04% of Consolidated Volume ("CV") via Market-on-Close/Limit-on-Close ("MOC/LOC") volume within the NASDAQ Stock Market Closing Cross within a month will receive an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in a month. Consolidated Volume shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of an equity member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of

the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity.

[d] NOM Participants that qualify for MARS Payment Tiers 1, 2 or 3 will receive an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month, in addition to qualifying Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tiers 1-8. NOM Participants that qualify for a note "c" incentive will receive the greater of the note "c" or note "d" incentive.

The NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options will be paid as noted below.

Monthly Volume		**Rebate to Add Liquidity**
Tier 1	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.10% of total industry customer equity and ETF option average daily volume ("ADV") contracts per day in a month	$0.20
Tier 2	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.10% to 0.25% of total industry customer equity and ETF option ADV contracts per day in a month	$0.25
Tier 3	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.25% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month	$0.30 or $0.40 in the following symbols AAPL, QQQ, IWM, SPY and VXX
Tier 4	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot	$0.32 or $0.40 in

	Options of above 0.60% to 0.90% of total industry customer equity and ETF option ADV contracts per day in a month	the following symbols AAPL, QQQ, IWM, VXX and SPY
Tier 5	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of above 0.30% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options	$0.40
Tier 6	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options or Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.90% of total industry customer equity and ETF option ADV contracts per day in a month	$0.42

(2) – (6) No Change.

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