

Required fields are shown with yellow backgrounds and asterisks.

Filing by NASDAQ Stock Market  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

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

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

Proposal to amend Exchange Specialized Quote Feed Port Fees.

**Contact Information**

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

First Name \* Angela      Last Name \* Dunn  
 Title \* Associate General Counsel  
 E-mail \* Angela.Dunn@nasdaq.com  
 Telephone \* (215) 496-5692      Fax

**Signature**

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

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

(Title \*)

Date 09/23/2016      Executive Vice President and General Counsel  
 By Edward S. Knight      edward.knight@nasdaq.com  
 (Name \*)

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

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

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Chapter XV, entitled “Options Pricing,” at Section 3, entitled “NASDAQ Options Market – Access Services.” Chapter XV governs pricing for Exchange members using the NASDAQ Options Market LLC (“NOM”), the Exchange’s facility for executing and routing standardized equity and index options. The Exchange proposes to amend Specialized Quote Feed (“SQF”) Port<sup>3</sup> Fees.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on October 3, 2016.

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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> SQF ports are ports that receive inbound quotes at any time within that month. The SQF Port allows a NOM Market Maker to access information such as execution reports and other relevant data through a single feed. For example, this data would show which symbols are trading on NOM and the current state of an options symbol (i.e., open for trading, trading, halted or closed). Auction notifications and execution reports are also available. NOM Market Makers rely on data available through the SQF Port to provide them the necessary information to perform market making activities.

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 (the “Board”) on August 15, 2016. 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:

Angela Saccomandi Dunn  
Associate General Counsel  
Nasdaq, Inc.  
215-496-5692

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

a. Purpose

The Exchange proposes to amend the SQF Port Fees in Chapter XV, Section 5 of the NOM Rules while the Exchange transitions to state-of-the-art hardware and software architecture to achieve a more efficient and more robust infrastructure to support the growing needs of our Options Participants (“NOM Refresh”). In connection with the NOM Refresh, NOM Market Makers will be required to make changes to connect to the new NOM System via their SQF Ports, among other changes. The number of SQF Ports required by NOM Market Makers may be reduced, since a single connection may be utilized to quote across all symbols. The Exchange anticipates that NOM Market Makers will benefit from the efficiency of the service that will be available to them as a result of the NOM Refresh. While NOM Market Makers will be required to make network and other technical changes in order to connect to NOM via SQF, the Exchange believes that costs will decline overall as a result of the more efficient connectivity offered by the NOM Refresh.

The Exchange intends to provide NOM Market Makers with new SQF ports for connectivity and functionality testing so that NOM Market Makers may migrate from the old to the new SQF Ports over a reasonable period of time. The Exchange proposes to amend the current SQF Port pricing of \$750 per port, per month for purposes of the NOM Refresh. During the months of October and November 2016 (“NOM Refresh Period”), NOM Market Makers will be subject to a Fixed SQF Port Fee. The Fixed SQF Port Fee will be the amount that was paid by the NOM Market Maker for SQF Ports for the month of August 2016. NOM Market Makers will not be assessed an SQF Port Fee for their use of the new version of the SQF Ports to connect to the new environment during the NOM Refresh Period.<sup>4</sup> The current SQF Port Fee of \$750 will no longer be assessed to current NOM Market Makers. Only new SQF Ports would be utilized as of December 1, 2016; the current ports will be eliminated after the NOM Refresh is complete.

If a NOM Participant applies to be a new NOM Market Maker after October 1, 2016 and requests an SQF Port during the time period from October 1, 2016 through November 30, 2016, the new NOM Market Maker would be assessed \$750.00 per port, per month.

The Exchange intends to file a separate rule change to propose new SQF Ports Fees for December 2016.

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<sup>4</sup> For example if a NOM Market Maker obtained 1 new SQF Port to test during the NOM Refresh Period, the NOM Market Maker would not be assessed a new SQF Port Fee for that port, but would only pay the Fixed SQF Port Fee during the two months.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>6</sup> 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>7</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>8</sup> (“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.<sup>9</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’

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<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>7</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>8</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>9</sup> See NetCoalition, at 534 - 535.

play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>10</sup>

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’ . . .”<sup>11</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes it is reasonable to allow NOM Market Makers to utilize new SQF Ports at no cost during the NOM Refresh Period to transition their current SQF Ports to the new SQF Ports that will be offered as a result of the NOM Refresh. In order to ease the transition from the current ports to new ports, NOM Market Makers would be given an extended period to test functionality and connectivity and resolve any issues that may arise during the testing phase with the new SQF Ports. Therefore, pursuant to this proposal, new SQF Ports will be offered at no cost to those NOM Market Makers that currently pay \$750 per SQF Port, per month.

The Exchange believes it is equitable and not unfairly discriminatory to allow NOM Market Makers to utilize new SQF Ports at no cost because the Exchange is permitting all current NOM Market Makers, who will be paying the SQF Port Fixed Fee,

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<sup>10</sup> Id. at 537.

<sup>11</sup> Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

the opportunity to utilize the new SQF Ports at no costs.

The Exchange's proposal to transition to a Fixed SQF Port Fee during the NOM Refresh Period (October and November 2016) is reasonable because NOM Market Makers will be able to continue to utilize their existing SQF Ports during the NOM Refresh Period to continue to conduct their business at a fixed cost. The Exchange believes that this will allow NOM Market Makers to have flexibility when testing the new SQF Ports as they will not be limited in number by cost.

The Exchange believes that assessing a Fixed SQF Port Fee utilizing the August 2016 billing is reasonable because the Exchange desires to offer NOM Market Makers who currently have SQF Ports some certainty with respect to their costs through the NOM Refresh. The Exchange believes that utilizing the month of August 2016 as the Fixed SQF Port Fee is reasonable because it should reflect an accurate representation of the number of ports typically utilized by that particular NOM Market Maker for SQF Ports. The month of August is typically not an active trading month and should be representative of the typical pattern of usage for the NOM Market Maker. Also, these NOM Market Makers would not be assessed any fees to utilize as many new SQF Ports as they require to test in the new system.

The Exchange believes that assessing a Fixed SQF Port Fee utilizing the August 2016 billing is equitable and not unfairly discriminatory because the Exchange will assess all current users of SQF Ports a Fixed SQF Port Fee based on the same criteria.

The Exchange believes that assessing new NOM Market Makers that do not have any SQF Ports and became NOM Market Makers after October 1, 2016, the current SQF Port fee of \$750, per port, per month from October 1, 2016 through November 30, 2016



is reasonable because these NOM Market Makers would not be required to maintain two sets of ports during the transition.<sup>12</sup> Existing NOM Market Makers will be required to maintain old as well as new SQF ports during portions of the migration. These NOM Market Makers would be able to commence utilizing the new SQF ports for testing. As previously explained, the technology refresh will increase the efficiency with which members can connect to the NOM System. As a result of the refresh, members would not be required to utilize the same number of ports as they do today to connect to the NOM System and therefore this should reduce the number of SQF ports required and lower costs.

The Exchange believes that assessing new NOM Market Makers that do not have any SQF Ports and became NOM Market Makers after October 1, 2016, the current SQF Port fee of \$750, per port, per month from October 1, 2016 through November 30, 2016 is equitable and not unfairly discriminatory because new NOM Market Makers would not be paying a Fixed SQF Port Fee for their current SQF Ports. All current NOM Market Makers would be paying a Fixed SQF Port Fee to utilize SQF Ports.

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

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<sup>12</sup> Currently, all NOM Market Makers are utilizing SQF Ports. If a NOM Participant applied to become a NOM Market Maker from October 1, 2016 through November 30, 2016, they could still obtain the current SQF Ports. After December 1, 2016, only the new SQF Ports would be offered to all NOM Market Makers.

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 changes to the SQF Port Fee do not impose a burden on competition because if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

In terms of intra-market competition, offering NOM Market Makers the opportunity to utilize certain SQF Ports during the NOM Refresh Period at no cost does not impose an undue burden on competition. NOM Market Makers would be able to readily test ports at no additional cost and without limit. The Exchange is permitting all current NOM Market Makers, who will be paying the SQF Port Fixed Fee, the opportunity to utilize the new SQF Ports at no costs.

The assessment of a Fixed SQF Port Fee does not impose an undue burden on competition because utilizing the month of August 2016 as the Fixed SQF Port Fee is an accurate representation of the number of ports typically utilized by that particular NOM

Market Maker for SQF Ports. The month of August is typically not an active trading month and should be representative of the typical pattern of usage for the NOM Market Maker. All current users of SQF Ports will be assessed a Fixed SQF Port Fee based on the same criteria.

The Exchange believes that assessing new NOM Market Makers that do not have any SQF Ports and become NOM Market Makers after October 1, 2016, the current SQF Port fee of \$750, per port, per month from October 1, 2016 through November 30, 2016 does not impose an undue burden on competition because new NOM Market Makers would not be paying a Fixed SQF Port Fee for their current SQF Ports. All current NOM Market Makers would be paying a Fixed SQF Port Fee to utilize SQF Ports.

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,<sup>13</sup> 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.

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

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

Not applicable.

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 Change for publication in the Federal Register.
5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2016-133)

October \_\_, 2016

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to amend Specialized Quote Feed Port Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 23, 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 3, entitled “NASDAQ Options Market – Access Services.” Chapter XV governs pricing for Exchange members using the NASDAQ Options Market LLC (“NOM”), the Exchange’s facility for executing and routing standardized equity and index options. The Exchange proposes to amend Specialized Quote Feed (“SQF”) Port<sup>3</sup> Fees.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> SQF ports are ports that receive inbound quotes at any time within that month. The SQF Port allows a NOM Market Maker to access information such as execution reports and other relevant data through a single feed. For example, this data would show which symbols are trading on NOM and the current state of an options symbol (i.e., open for trading, trading, halted or closed). Auction

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on October 3, 2016.

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 to amend the SQF Port Fees in Chapter XV, Section 5 of the NOM Rules while the Exchange transitions to state-of-the-art hardware and software architecture to achieve a more efficient and more robust infrastructure to support the growing needs of our Options Participants ("NOM Refresh"). In connection with the NOM Refresh, NOM Market Makers will be required to make changes to connect to the new NOM System via their SQF Ports, among other changes. The number of SQF Ports required by NOM Market Makers may be reduced, since a single connection may be

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notifications and execution reports are also available. NOM Market Makers rely on data available through the SQF Port to provide them the necessary information to perform market making activities.

utilized to quote across all symbols. The Exchange anticipates that NOM Market Makers will benefit from the efficiency of the service that will be available to them as a result of the NOM Refresh. While NOM Market Makers will be required to make network and other technical changes in order to connect to NOM via SQF, the Exchange believes that costs will decline overall as a result of the more efficient connectivity offered by the NOM Refresh.

The Exchange intends to provide NOM Market Makers with new SQF ports for connectivity and functionality testing so that NOM Market Makers may migrate from the old to the new SQF Ports over a reasonable period of time. The Exchange proposes to amend the current SQF Port pricing of \$750 per port, per month for purposes of the NOM Refresh. During the months of October and November 2016 (“NOM Refresh Period”), NOM Market Makers will be subject to a Fixed SQF Port Fee. The Fixed SQF Port Fee will be the amount that was paid by the NOM Market Maker for SQF Ports for the month of August 2016. NOM Market Makers will not be assessed an SQF Port Fee for their use of the new version of the SQF Ports to connect to the new environment during the NOM Refresh Period.<sup>4</sup> The current SQF Port Fee of \$750 will no longer be assessed to current NOM Market Makers. Only new SQF Ports would be utilized as of December 1, 2016; the current ports will be eliminated after the NOM Refresh is complete.

If a NOM Participant applies to be a new NOM Market Maker after October 1, 2016 and requests an SQF Port during the time period from October 1, 2016 through

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<sup>4</sup> For example if a NOM Market Maker obtained 1 new SQF Port to test during the NOM Refresh Period, the NOM Market Maker would not be assessed a new SQF Port Fee for that port, but would only pay the Fixed SQF Port Fee during the two months.

November 30, 2016, the new NOM Market Maker would be assessed \$750.00 per port, per month.

The Exchange intends to file a separate rule change to propose new SQF Ports Fees for December 2016.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>6</sup> 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>7</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>8</sup> (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based

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<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>7</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>8</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).



approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>9</sup> 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.”<sup>10</sup>

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’ . . .”<sup>11</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes it is reasonable to allow NOM Market Makers to utilize new SQF Ports at no cost during the NOM Refresh Period to transition their current SQF Ports to the new SQF Ports that will be offered as a result of the NOM Refresh. In order to ease the transition from the current ports to new ports, NOM Market Makers would be given an extended period to test functionality and connectivity and resolve any issues that may arise during the testing phase with the new SQF Ports. Therefore, pursuant to this

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<sup>9</sup> See NetCoalition, at 534 - 535.

<sup>10</sup> Id. at 537.

<sup>11</sup> Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

proposal, new SQF Ports will be offered at no cost to those NOM Market Makers that currently pay \$750 per SQF Port, per month.

The Exchange believes it is equitable and not unfairly discriminatory to allow NOM Market Makers to utilize new SQF Ports at no cost because the Exchange is permitting all current NOM Market Makers, who will be paying the SQF Port Fixed Fee, the opportunity to utilize the new SQF Ports at no costs.

The Exchange's proposal to transition to a Fixed SQF Port Fee during the NOM Refresh Period (October and November 2016) is reasonable because NOM Market Makers will be able to continue to utilize their existing SQF Ports during the NOM Refresh Period to continue to conduct their business at a fixed cost. The Exchange believes that this will allow NOM Market Makers to have flexibility when testing the new SQF Ports as they will not be limited in number by cost.

The Exchange believes that assessing a Fixed SQF Port Fee utilizing the August 2016 billing is reasonable because the Exchange desires to offer NOM Market Makers who currently have SQF Ports some certainty with respect to their costs through the NOM Refresh. The Exchange believes that utilizing the month of August 2016 as the Fixed SQF Port Fee is reasonable because it should reflect an accurate representation of the number of ports typically utilized by that particular NOM Market Maker for SQF Ports. The month of August is typically not an active trading month and should be representative of the typical pattern of usage for the NOM Market Maker. Also, these NOM Market Makers would not be assessed any fees to utilize as many new SQF Ports as they require to test in the new system.

The Exchange believes that assessing a Fixed SQF Port Fee utilizing the August

2016 billing is equitable and not unfairly discriminatory because the Exchange will assess all current users of SQF Ports a Fixed SQF Port Fee based on the same criteria.

The Exchange believes that assessing new NOM Market Makers that do not have any SQF Ports and became NOM Market Makers after October 1, 2016, the current SQF Port fee of \$750, per port, per month from October 1, 2016 through November 30, 2016 is reasonable because these NOM Market Makers would not be required to maintain two sets of ports during the transition.<sup>12</sup> Existing NOM Market Makers will be required to maintain old as well as new SQF ports during portions of the migration. These NOM Market Makers would be able to commence utilizing the new SQF ports for testing. As previously explained, the technology refresh will increase the efficiency with which members can connect to the NOM System. As a result of the refresh, members would not be required to utilize the same number of ports as they do today to connect to the NOM System and therefore this should reduce the number of SQF ports required and lower costs.

The Exchange believes that assessing new NOM Market Makers that do not have any SQF Ports and became NOM Market Makers after October 1, 2016, the current SQF Port fee of \$750, per port, per month from October 1, 2016 through November 30, 2016 is equitable and not unfairly discriminatory because new NOM Market Makers would not be paying a Fixed SQF Port Fee for their current SQF Ports. All current NOM Market Makers would be paying a Fixed SQF Port Fee to utilize SQF Ports.

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<sup>12</sup> Currently, all NOM Market Makers are utilizing SQF Ports. If a NOM Participant applied to become a NOM Market Maker from October 1, 2016 through November 30, 2016, they could still obtain the current SQF Ports. After December 1, 2016, only the new SQF Ports would be offered to all NOM Market Makers.

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 changes to the SQF Port Fee do not impose a burden on competition because if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

In terms of intra-market competition, offering NOM Market Makers the opportunity to utilize certain SQF Ports during the NOM Refresh Period at no cost does not impose an undue burden on competition. NOM Market Makers would be able to readily test ports at no additional cost and without limit. The Exchange is permitting all current NOM Market Makers, who will be paying the SQF Port Fixed Fee, the

opportunity to utilize the new SQF Ports at no costs.

The assessment of a Fixed SQF Port Fee does not impose an undue burden on competition because utilizing the month of August 2016 as the Fixed SQF Port Fee is an accurate representation of the number of ports typically utilized by that particular NOM Market Maker for SQF Ports. The month of August is typically not an active trading month and should be representative of the typical pattern of usage for the NOM Market Maker. All current users of SQF Ports will be assessed a Fixed SQF Port Fee based on the same criteria.

The Exchange believes that assessing new NOM Market Makers that do not have any SQF Ports and become NOM Market Makers after October 1, 2016, the current SQF Port fee of \$750, per port, per month from October 1, 2016 through November 30, 2016 does not impose an undue burden on competition because new NOM Market Makers would not be paying a Fixed SQF Port Fee for their current SQF Ports. All current NOM Market Makers would be paying a Fixed SQF Port Fee to utilize SQF Ports.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2016-133 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2016-133. 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-2016-133 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.<sup>13</sup>

Robert W. Errett  
Deputy Secretary

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<sup>13</sup> 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. 3 NASDAQ Options Market - Access Services**

**The following charges are assessed by Nasdaq for connectivity to the NASDAQ Options Market:**

## (a) TradeInfo

• Members not subscribing to the Nasdaq Workstation using TradeInfo will be charged a fee of \$95 per user per month.

## (b) Port Fees, per port, per month, per mnemonic as follows:

Order Entry Port Fee	\$650.00
CTI Port Fee	\$650.00
OTTO Port Fee	\$750.00
ITTO Port Fee <sup>1</sup>	\$650.00
BONO Port Fee <sup>1</sup>	\$650.00
Order Entry DROP Port Fee	\$650.00
OTTO DROP Port Fee	\$650.00

Port Fees, per port, per month as follows:

SQF Port Fee	[\$750.00]
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During the months of October and November 2016 (“NOM Refresh Period”), NOM Market Makers will be subject to a Fixed SQF Port Fee. The Fixed SQF Port Fee will be the amount that was paid by the NOM Market Maker for SQF Ports for the month of August 2016. NOM Market Makers will not be assessed an SQF Port Fee for their use of the new version of the SQF Ports to connect to the new environment during the NOM Refresh Period. New NOM Market Makers that request SQF Ports after October 1, 2016 would be assessed \$750 per port, per month between October 1, 2016 and November 30, 2016.

<sup>1</sup>ITTO and BONO Port fees will be assessed to non-NOM Participants and NOM Participants.



**OTTO Port Transition Fee Waiver:** NOM Participants will not be assessed an SQF Port Fee in the month in which the NOM Participant has cancelled an OTTO Port and transitioned to an SQF Port. In order to receive the waiver, the Participant is required to provide the Exchange with written notification of the transition.

(c) Remote ITCH to Trade Options (ITTO) Wave Ports

The following ITTO Wave Port fees are subject to a 30-day testing period during which the recurring monthly fees are waived, and a one-year minimum purchase period that begins at the conclusion of the 30-day testing period:

<b>Location</b>	<b>Installation Fee</b>	<b>Recurring Monthly Fee</b>
Secaucus	\$2,500	\$7,500
Mahwah	\$5,000	\$10,000

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