Required fields are shown with yellow backgrounds and asterisks.

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

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

File No.* SR - 2016 - * 149

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 Exchange transaction fees at Chapter XV, Section 2, entitled NASDAQ Options Market - Fees and Rebates, which governs pricing for Nasdaq Participants 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 * Angela Last Name * Dunn
Title * Principal Associate General Counsel
E-mail * Angela.Dunn@nasdaq.com
Telephone * (215) 496-5602 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 10/31/2016

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

The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Exchange's transaction fees at Chapter XV, Section 2 entitled "NASDAQ Options Market – Fees and Rebates," which governs pricing for Nasdaq Participants using the NASDAQ Options Market ("NOM"), Nasdaq's facility for executing and routing standardized equity and index options. The Exchange proposes to amend its subsidy program, the Market Access and Routing Subsidy or "MARS," for NOM Participants that provide certain order routing functionalities[3] to other NOM Participants and/or use such functionalities themselves.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on November 1, 2016.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1, and the proposed rule text is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

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

2 17 CFR 240.19b-4.

3 The order routing functionalities permit a NOM Participant to provide access and connectivity to other Participants as well as utilize such access for themselves. The Exchange notes that one NOM Participant is eligible for payments under MARS, while another NOM Participant might potentially be liable for transaction charges associated with the execution of the order, because those orders were delivered to the Exchange through a NOM Participant's connection to the Exchange and that Participant qualified for the MARS Payment.

2. Procedures of the Self-Regulatory Organization

The Exchange staff approved this rule filing pursuant to delegated authority on August 15, 2016. This action constitutes the requisite approval under the Exchange's Certificate of Formation, Operating Agreement and Constitution.

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

Angela Saccomandi Dunn
Principal 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

NOM proposes to amend the MARS subsidy program which pays a subsidy to NOM Participants that provide certain order routing functionalities to other NOM Participants and/or use such functionalities themselves. Generally, under MARS, the Exchange pays participating NOM Participants to subsidize their costs of providing routing services to route orders to NOM. The Exchange believes that MARS will continue to attract higher volumes of electronic equity and ETF options volume to the Exchange from non-NOM Participants as well as NOM Participants.

The Exchange proposes to amend Chapter XV, Section 2(6) to: (1) provide another method to qualify for MARS System Eligibility; (2) expand the MARS Payment tiers; and (3) make clarifying changes to the rule text.

Amendment to MARS System Eligibility

Today, to qualify for MARS, a NOM Participant's routing system (hereinafter "System") is required to meet certain criteria. Specifically the Participant's System is required to: (1) enable the electronic routing of orders to all of the U.S. options exchanges, including NOM; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with NOM's API to access current NOM match engine functionality. The NOM Participant's System would also need to cause NOM to be one of the top three default destination exchanges for individually executed marketable orders if NOM is at the national best bid or offer ("NBBO"), regardless of size or time, but allow any user to manually override NOM as the default destination on an order-by-order basis.

The Exchange requires NOM Participants desiring to participate in MARS[4] to complete a form, in a manner prescribed by the Exchange, and reaffirm their information on a quarterly basis to the Exchange. Any NOM Participant is permitted to apply for MARS, provided the above-referenced requirements are met, including a robust and reliable System. The Participant is solely responsible for implementing and operating its System.

The Exchange proposes to amend the requirements for MARS System Eligibility to continue to require the Participant's System to cause NOM to be the one of the top three default destination exchanges for individually executed marketable orders if NOM is at the national best bid or offer ("NBBO"), regardless of size or time. In the alternative, the Exchange proposes to permit a Participant to be eligible if the

4 For example, a NOM Participant that desires to qualify for MARS in November must complete the form and submit it to the Exchange no later than the last business day of November. Such form will require the NOM Participant to identify the NOM Participant seeking the MARS Payment and must list, among other things, the connections utilized by the NOM Participant to provide Exchange access to other NOM Participants and/or itself. MARS Payments would be made one month in arrears (i.e., a MARS Payment earned for activity in November would be paid to the qualifying NOM Participant in December), as is the case with all other transactional payments and assessments made by the Exchange.

Participant's System causes NOM to be the one of the top three default destination exchanges for orders that establish a new NBBO on NOM's Order Book. The NOM Participant may become eligible for MARS System Eligibility by complying with one of the two options proposed herein.

With respect to the new language, an example would be if the national best bid was 10 and national best offer was 20 and a NOM Participant bid 15 and that quote established a new NBBO on NOM's Order Book, that activity would also be considered eligible. The Exchange believes that this alternative method to qualify for MARS System Eligibility will further incentivize NOM Participants to provide liquidity at the NBBO on NOM to qualify for MARS.

Amendment to MARS Payment

Today, NOM Participants that have System Eligibility and have routed the requisite number of Eligible Contracts daily in a month (Average Daily Volume), which were executed on NOM, are entitled to a MARS Payment. For the purpose of qualifying for the MARS Payment, Eligible Contracts may include Firm,[5] Non-NOM Market Maker,[6] Broker-Dealer[7] or Joint Back Office or "JBO"[8] equity option orders that add

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

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

7 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.

8 The term "Joint Back Office" or "JBO" applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer

liquidity and are electronically delivered and executed.[9]

Today, the Exchange pays the following MARS Payments according to Average Daily Volume ("ADV")[10] submitted on NOM:

Tiers	**Average Daily Volume ("ADV")**	**MARS Payment**
1	2,500	$0.07
2	5,000	$0.09
3	10,000	$0.11

Also, NOM Participants that qualify for Customer and Professional Penny Pilot Options Rebate to Add Liquidity Tier 8 in Chapter XV, Section 2(1) will receive $0.09 per contract in addition to any MARS Payment tier on MARS Eligible Contracts the NOM Participant qualifies for in a given month. The specified MARS Payment is paid on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System and meet the requisite Eligible Contracts ADV. No payment will be made with respect to orders that are routed to NOM, but not executed.

The Exchange proposes to add a new Tier 4 with an ADV of 20,000 contracts and pay a MARS Payment of $0.15 per contract. The Exchange also proposes to rename the aforementioned tier 4 payment along with the current tier 1 through 3 payments as

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as of September 1, 2014. A JBO participant is a Participant that maintains a JBO arrangement with a clearing broker-dealer ("JBO Broker") subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed in Chapter XIII, Section 5.

9 Eligible Contracts do not include Mini-Option orders. Mini Options are further specified in Chapter XV, Section 2(4).

10 Average Daily Volume is all Eligible Contracts daily in a month aggregating Penny and Non-Penny Pilot Options.

MARS Payment (Penny). The three existing payment tiers, along with the aforementioned new tier 4 payment tier of $0.15 per contract would be paid for Penny Pilot Options transactions that qualify for the MARS Payment tier program.

Additionally, the Exchange proposes 4 new tiers for Non-Penny Pilot Options transactions as follows: The 4 new tiers for MARS Payment (Non-Penny) shall be: Tier 1 with an ADV of 2,500 contracts would pay $0.15 per contract, tier 2 with an ADV of 5,000 contracts would pay $0.20 per contract, tier 3 with an ADV of 10,000 would pay $0.30 per contract and tier 4 with an ADV of 20,000 contracts would pay $0.50 per contract. The Exchange would continue to pay an additional $0.09 per contract in addition to any MARS Payment tier on MARS Eligible Contracts in a given month on the Non-Penny Pilot Options transactions, provided the NOM Participant qualified for the Customer and Professional Penny Pilot Options Rebate to Add Liquidity Tier 8 in Chapter XV, Section 2(1). The Exchange believes that MARS will continue to attract higher volumes of electronic equity and ETF options volume to the Exchange from non-NOM Participants as well as NOM Participants. This amendment may attract additional Non-Penny Pilot Options volume.

Clarifying Amendments

Today, a Participant will not be entitled to receive any other revenue from the Exchange for the use of its System, specifically with respect to orders routed to NOM. The Exchange believes that the MARS Payment will subsidize the costs of NOM Participants in providing the routing services. The Exchange proposes to make clear that Participant will not be entitled to receive any other revenue for the use of its System from the Exchange. The Exchange believes this new rule text provides clarity. The Exchange also proposes to add a missing period into the rule text.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Participants and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[13]

Likewise, in NetCoalition v. Securities and Exchange Commission[14] ("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.[15] As the court emphasized, the Commission

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11 15 U.S.C. 78f(b).

12 15 U.S.C. 78f(b)(4) and (5).

13 Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

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

15 See NetCoalition, at 534 - 535.

"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."[16]

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'…."[17] 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.

Amendment to MARS System Eligibility

The Exchange's proposal to amend the requirements for MARS System Eligibility to continue to permit in the alternative for a Participant to be eligible if the Participant's System causes NOM to be the one of the top three default destination exchanges for orders that establish a new NBBO on NOM's Order Book is reasonable because the amendment will continue to incentivize NOM Participants to quote at the NBBO on NOM to qualify for MARS. The Exchange believes that requiring NOM Participants to maintain their Systems according to the various requirements set forth by the Exchange in order to qualify for MARS is reasonable because the Exchange seeks to encourage market participants to send higher volumes of orders to NOM, which will

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16 Id. at 537.

17 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)).

contribute to the Exchange's depth of book as well as to the top of book liquidity. MARS is designed to enhance the competitiveness of the Exchange, particularly with respect to those exchanges that offer their own front-end order entry system or one they subsidize in some manner.[18] The Exchange also notes that the Chicago Board of Options Exchange, Inc. ("CBOE") currently offers a similar Order Routing Subsidy ("ORS"), which, similar to the current proposal, allows CBOE Participants to enter into subsidy arrangements with CBOE Trading Permit Holders ("TPHs") that provide certain order routing functionalities to other CBOE TPHs and/or use such functionalities themselves.[19]

The Exchange's proposal to amend the requirements for MARS System Eligibility to further permit, in the alternative, for a Participant to be eligible if the Participant's System causes NOM to be the one of the top three default destination exchanges for orders that establish a new NBBO on NOM's Order Book is equitable and not unfairly discriminatory because these requirements will uniformly apply to all Participants desiring to qualify for MARS.

Amendments to MARS Eligible Contracts

The Exchange's proposal to add a new Tier 4 with an ADV of 20,000 contracts and pay a MARS Payment of $0.15 per contract and designate all remaining pricing as Penny Pilot Options transactions pricing and adopt new pricing for Non-Penny Pilot

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18 See, e.g., supra note 10; Securities Exchange Act Release No. 34-54121 (July 10, 2006), 71 FR 40566 (July 17, 2006) (SR-ISE-2006-31) (describing PrecISE, which is a front-end, order entry application for trading options utilized by International Securities Exchange LLC).

19 See CBOE's Fees Schedule. CBOE's program permits both CBOE Participants and CBOE non-Participants to be eligible for a rebate. CBOE Participants are eligible to receive exchange transaction fees on transactions that earn a non-CBOE Participant a subsidy payment.

Options volume is reasonable because the amendments will attract higher volumes of electronic equity and ETF options volume to the Exchange, which will benefit all NOM Participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. The expanded MARS Payments should enhance the competitiveness of the Exchange, particularly with respect to those exchanges that offer their own front-end order entry system or one they subsidize in some manner. The amendment to add Tier 4 will incentivize NOM Participants to achieve an even higher Penny Pilot Options rebate, provided the NOM Participant is eligible for MARS. Further, the tier structure will allow NOM Participants to price their services at a level that will enable them to attract order flow from market participants who would otherwise utilize an existing front-end order entry mechanism offered by the Exchange's competitors instead of incurring the cost in time and money to develop their own internal systems to be able to deliver orders directly to the Exchange's System.

The Exchange's proposal to add a new Tier 4 with an ADV of 20,000 contracts and pay a MARS Payment of $0.15 per contract and designate all remaining pricing as Penny Pilot Options transactions pricing and adopt new pricing for Non-Penny Pilot Options volume is equitable and not unfairly discriminatory because the Exchange will uniformly pay all NOM Participants the rebates specified in the proposed MARS Payment tiers provided the NOM Participant has executed the requisite number of Eligible Contracts. Moreover, the Exchange believes that the proposed MARS Payments offered by the Exchange are equitable and not unfairly discriminatory because any qualifying NOM Participant that offers market access and connectivity to the Exchange and/or utilize such functionality themselves may earn the MARS Payment for all Eligible Contracts.

The Exchange's proposal to adopt new Non-Penny Pilot Options MARS Payments tiers with higher rebates as compared to the Penny Pilot Options MARS Payment tiers is reasonable because the amendments will attract higher volumes of electronic equity and ETF options volume to the Exchange, which will benefit all NOM Participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. The expanded MARS Payments should enhance the competitiveness of the Exchange, particularly with respect to those exchanges that offer their own front-end order entry system or one they subsidize in some manner. Today the Exchange bifurcates Penny and Non-Penny Options pricing. The Exchange pays higher Non-Penny Pilot Options rebates as compared to Penny Pilot Options rebates.[20] Penny Pilot Options are more liquid and traditionally are assessed lower fees and paid lower rebates. The Exchange believes it is reasonable to pay higher rebates for Non-Penny Pilot Options which are assessed higher transaction fees on the Exchange.[21]

The Exchange's proposal to adopt new Non-Penny Pilot Options MARS Payments tiers with higher rebates as compared to the Penny Pilot Options MARS Payment tiers is equitable and not unfairly discriminatory because the Exchange will uniformly pay all NOM Participants the MARS Payments specified in the proposed MARS Payment tiers for Penny and Non-Penny Pilot Options provided the NOM Participant has executed the requisite number of Eligible Contracts.

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20 See NOM Rules at Chapter XV, Section 2(1).

21 Id.

Clarifying Amendments

The Exchange's proposal to amend the rule text to make clear that a Participant will not be entitled to receive any other revenue for the use of its System from the Exchange and add a missing period into the rule text is reasonable, equitable and not unfairly discriminatory because it will clarify existing rule text for all NOM Participants.

3. 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 sum, 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.

Amendment to MARS System Eligibility

The Exchange's proposal to amend the requirements for MARS System

Eligibility to further permit, in the alternative, for a Participant to be eligible if the Participant's System causes NOM to be the one of the top three default destination exchanges for orders that establish a new NBBO on NOM's Order Book does not impose an undue burden on intra-market competition because these requirements will uniformly apply to all Participants desiring to qualify for MARS.

Amendments to MARS Eligible Contracts

The Exchange's proposal to add a new Tier 4 with an ADV of 20,000 contracts and pay a MARS Payment of $0.15 per contract and designate this, along with all remaining pricing as Penny Pilot Options transactions pricing and adopt new pricing for Non-Penny Pilot Options volume does not impose an undue burden on intra-market competition because the Exchange will uniformly pay all NOM Participants the rebates specified in the proposed MARS Payment tiers provided the NOM Participant has executed the requisite number of Eligible Contracts. Moreover, the Exchange believes that the proposed MARS Payments offered by the Exchange are equitable and not unfairly discriminatory because any qualifying NOM Participant that offers market access and connectivity to the Exchange and/or utilizes such functionality themselves may earn the MARS Payment for all Eligible Contracts.

The Exchange's proposal to adopt new Non-Penny Pilot Options MARS Payments tiers with higher rebates as compared to the Penny Pilot Options MARS Payment tiers does not impose an undue burden on intra-market competition because the Exchange will uniformly pay all NOM Participants the MARS Payments specified in the proposed MARS Payment tiers for Penny and Non-Penny Pilot Options provided the NOM Participant has executed the requisite number of Eligible Contracts.

Clarifying Amendments

The Exchange's proposal to amend the rule text to make clear that a Participant will not be entitled to receive any other revenue for the use of its System from the Exchange and add a missing period into the rule text does not impose an undue burden on intra-market competition because it will clarify existing rule text for all NOM Participants.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Participants, Participants, or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[22] Nasdaq 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 Participant of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

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 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-2016-149)

November __, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Market Access and Routing Subsidy Program

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 October 31, 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 the Exchange's transaction fees at Chapter XV, Section 2 entitled "NASDAQ Options Market – Fees and Rebates," which governs pricing for Nasdaq Participants using the NASDAQ Options Market ("NOM"), Nasdaq's facility for executing and routing standardized equity and index options. The Exchange proposes to amend its subsidy program, the Market Access and Routing Subsidy or

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

2 17 CFR 240.19b-4.

"MARS," for NOM Participants that provide certain order routing functionalities[3] to other NOM Participants and/or use such functionalities themselves.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on November 1, 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

NOM proposes to amend the MARS subsidy program which pays a subsidy to NOM Participants that provide certain order routing functionalities to other NOM Participants and/or use such functionalities themselves. Generally, under MARS, the

[3] The order routing functionalities permit a NOM Participant to provide access and connectivity to other Participants as well as utilize such access for themselves. The Exchange notes that one NOM Participant is eligible for payments under MARS, while another NOM Participant might potentially be liable for transaction charges associated with the execution of the order, because those orders were delivered to the Exchange through a NOM Participant's connection to the Exchange and that Participant qualified for the MARS Payment.

Exchange pays participating NOM Participants to subsidize their costs of providing routing services to route orders to NOM. The Exchange believes that MARS will continue to attract higher volumes of electronic equity and ETF options volume to the Exchange from non-NOM Participants as well as NOM Participants.

The Exchange proposes to amend Chapter XV, Section 2(6) to: (1) provide another method to qualify for MARS System Eligibility; (2) expand the MARS Payment tiers; and (3) make clarifying changes to the rule text.

Amendment to MARS System Eligibility

Today, to qualify for MARS, a NOM Participant's routing system (hereinafter "System") is required to meet certain criteria. Specifically the Participant's System is required to: (1) enable the electronic routing of orders to all of the U.S. options exchanges, including NOM; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with NOM's API to access current NOM match engine functionality. The NOM Participant's System would also need to cause NOM to be one of the top three default destination exchanges for individually executed marketable orders if NOM is at the national best bid or offer ("NBBO"), regardless of size or time, but allow any user to manually override NOM as the default destination on an order-by-order basis.

The Exchange requires NOM Participants desiring to participate in MARS[4] to

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[4] For example, a NOM Participant that desires to qualify for MARS in November must complete the form and submit it to the Exchange no later than the last business day of November. Such form will require the NOM Participant to identify the NOM Participant seeking the MARS Payment and must list, among other things, the connections utilized by the NOM Participant to provide Exchange access to other NOM Participants and/or itself. MARS Payments would be made one month in arrears (i.e., a MARS Payment earned for activity in November would be paid to the qualifying NOM Participant in December), as is

complete a form, in a manner prescribed by the Exchange, and reaffirm their information on a quarterly basis to the Exchange. Any NOM Participant is permitted to apply for MARS, provided the above-referenced requirements are met, including a robust and reliable System. The Participant is solely responsible for implementing and operating its System.

The Exchange proposes to amend the requirements for MARS System Eligibility to continue to require the Participant's System to cause NOM to be the one of the top three default destination exchanges for individually executed marketable orders if NOM is at the national best bid or offer ("NBBO"), regardless of size or time. In the alternative, the Exchange proposes to permit a Participant to be eligible if the Participant's System causes NOM to be the one of the top three default destination exchanges for orders that establish a new NBBO on NOM's Order Book. The NOM Participant may become eligible for MARS System Eligibility by complying with one of the two options proposed herein.

With respect to the new language, an example would be if the national best bid was 10 and national best offer was 20 and a NOM Participant bid 15 and that quote established a new NBBO on NOM's Order Book, that activity would also be considered eligible. The Exchange believes that this alternative method to qualify for MARS System Eligibility will further incentivize NOM Participants to provide liquidity at the NBBO on NOM to qualify for MARS.

<u>Amendment to MARS Payment</u>

Today, NOM Participants that have System Eligibility and have routed the

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the case with all other transactional payments and assessments made by the Exchange.

requisite number of Eligible Contracts daily in a month (Average Daily Volume), which were executed on NOM, are entitled to a MARS Payment. For the purpose of qualifying for the MARS Payment, Eligible Contracts may include Firm,[5] Non-NOM Market Maker,[6] Broker-Dealer[7] or Joint Back Office or "JBO"[8] equity option orders that add liquidity and are electronically delivered and executed.[9]

Today, the Exchange pays the following MARS Payments according to Average Daily Volume ("ADV")[10] submitted on NOM:

Tiers	**Average Daily Volume ("ADV")**	**MARS Payment**
1	2,500	$0.07
2	5,000	$0.09
3	10,000	$0.11

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

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

7 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.

8 The term "Joint Back Office" or "JBO" applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer as of September 1, 2014. A JBO participant is a Participant that maintains a JBO arrangement with a clearing broker-dealer ("JBO Broker") subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed in Chapter XIII, Section 5.

9 Eligible Contracts do not include Mini-Option orders. Mini Options are further specified in Chapter XV, Section 2(4).

10 Average Daily Volume is all Eligible Contracts daily in a month aggregating Penny and Non-Penny Pilot Options.

Also, NOM Participants that qualify for Customer and Professional Penny Pilot Options Rebate to Add Liquidity Tier 8 in Chapter XV, Section 2(1) will receive $0.09 per contract in addition to any MARS Payment tier on MARS Eligible Contracts the NOM Participant qualifies for in a given month. The specified MARS Payment is paid on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System and meet the requisite Eligible Contracts ADV. No payment will be made with respect to orders that are routed to NOM, but not executed.

The Exchange proposes to add a new Tier 4 with an ADV of 20,000 contracts and pay a MARS Payment of $0.15 per contract. The Exchange also proposes to rename the aforementioned tier 4 payment along with the current tier 1 through 3 payments as MARS Payment (Penny). The three existing payment tiers, along with the aforementioned new tier 4 payment tier of $0.15 per contract would be paid for Penny Pilot Options transactions that qualify for the MARS Payment tier program.

Additionally, the Exchange proposes 4 new tiers for Non-Penny Pilot Options transactions as follows: The 4 new tiers for MARS Payment (Non-Penny) shall be: Tier 1 with an ADV of 2,500 contracts would pay $0.15 per contract, tier 2 with an ADV of 5,000 contracts would pay $0.20 per contract, tier 3 with an ADV of 10,000 would pay $0.30 per contract and tier 4 with an ADV of 20,000 contracts would pay $0.50 per contract. The Exchange would continue to pay an additional $0.09 per contract in addition to any MARS Payment tier on MARS Eligible Contracts in a given month on the Non-Penny Pilot Options transactions, provided the NOM Participant qualified for the Customer and Professional Penny Pilot Options Rebate to Add Liquidity Tier 8 in

Chapter XV, Section 2(1). The Exchange believes that MARS will continue to attract higher volumes of electronic equity and ETF options volume to the Exchange from non-NOM Participants as well as NOM Participants. This amendment may attract additional Non-Penny Pilot Options volume.

Clarifying Amendments

Today, a Participant will not be entitled to receive any other revenue from the Exchange for the use of its System, specifically with respect to orders routed to NOM. The Exchange believes that the MARS Payment will subsidize the costs of NOM Participants in providing the routing services. The Exchange proposes to make clear that Participant will not be entitled to receive any other revenue for the use of its System from the Exchange. The Exchange believes this new rule text provides clarity. The Exchange also proposes to add a missing period into the rule text.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Participants and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in

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11 15 U.S.C. 78f(b).

12 15 U.S.C. 78f(b)(4) and (5).

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."[13]

Likewise, in NetCoalition v. Securities and Exchange Commission[14] ("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.[15] 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."[16]

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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13 Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

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

15 See NetCoalition, at 534 - 535.

16 Id. at 537.

otherwise, in the execution of order flow from broker dealers'…."[17] 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.

Amendment to MARS System Eligibility

The Exchange's proposal to amend the requirements for MARS System Eligibility to continue to permit in the alternative for a Participant to be eligible if the Participant's System causes NOM to be the one of the top three default destination exchanges for orders that establish a new NBBO on NOM's Order Book is reasonable because the amendment will continue to incentivize NOM Participants to quote at the NBBO on NOM to qualify for MARS. The Exchange believes that requiring NOM Participants to maintain their Systems according to the various requirements set forth by the Exchange in order to qualify for MARS is reasonable because the Exchange seeks to encourage market participants to send higher volumes of orders to NOM, which will contribute to the Exchange's depth of book as well as to the top of book liquidity. MARS is designed to enhance the competitiveness of the Exchange, particularly with respect to those exchanges that offer their own front-end order entry system or one they subsidize in some manner.[18] The Exchange also notes that the Chicago Board of Options Exchange, Inc. ("CBOE") currently offers a similar Order Routing Subsidy ("ORS"), which, similar to the current proposal, allows CBOE Participants to enter into subsidy arrangements

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17 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)).

18 See, e.g., supra note 10; Securities Exchange Act Release No. 34-54121 (July 10, 2006), 71 FR 40566 (July 17, 2006) (SR-ISE-2006-31) (describing PrecISE, which is a front-end, order entry application for trading options utilized by International Securities Exchange LLC).

with CBOE Trading Permit Holders ("TPHs") that provide certain order routing functionalities to other CBOE TPHs and/or use such functionalities themselves.[19]

The Exchange's proposal to amend the requirements for MARS System Eligibility to further permit, in the alternative, for a Participant to be eligible if the Participant's System causes NOM to be the one of the top three default destination exchanges for orders that establish a new NBBO on NOM's Order Book is equitable and not unfairly discriminatory because these requirements will uniformly apply to all Participants desiring to qualify for MARS.

Amendments to MARS Eligible Contracts

The Exchange's proposal to add a new Tier 4 with an ADV of 20,000 contracts and pay a MARS Payment of $0.15 per contract and designate all remaining pricing as Penny Pilot Options transactions pricing and adopt new pricing for Non-Penny Pilot Options volume is reasonable because the amendments will attract higher volumes of electronic equity and ETF options volume to the Exchange, which will benefit all NOM Participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. The expanded MARS Payments should enhance the competitiveness of the Exchange, particularly with respect to those exchanges that offer their own front-end order entry system or one they subsidize in some manner. The amendment to add Tier 4 will incentivize NOM Participants to achieve an even higher Penny Pilot Options rebate, provided the NOM Participant is eligible for MARS. Further, the tier structure will allow NOM Participants to price their services at a level

19 See CBOE's Fees Schedule. CBOE's program permits both CBOE Participants and CBOE non-Participants to be eligible for a rebate. CBOE Participants are eligible to receive exchange transaction fees on transactions that earn a non-CBOE Participant a subsidy payment.

that will enable them to attract order flow from market participants who would otherwise utilize an existing front-end order entry mechanism offered by the Exchange's competitors instead of incurring the cost in time and money to develop their own internal systems to be able to deliver orders directly to the Exchange's System.

The Exchange's proposal to add a new Tier 4 with an ADV of 20,000 contracts and pay a MARS Payment of $0.15 per contract and designate all remaining pricing as Penny Pilot Options transactions pricing and adopt new pricing for Non-Penny Pilot Options volume is equitable and not unfairly discriminatory because the Exchange will uniformly pay all NOM Participants the rebates specified in the proposed MARS Payment tiers provided the NOM Participant has executed the requisite number of Eligible Contracts. Moreover, the Exchange believes that the proposed MARS Payments offered by the Exchange are equitable and not unfairly discriminatory because any qualifying NOM Participant that offers market access and connectivity to the Exchange and/or utilize such functionality themselves may earn the MARS Payment for all Eligible Contracts.

The Exchange's proposal to adopt new Non-Penny Pilot Options MARS Payments tiers with higher rebates as compared to the Penny Pilot Options MARS Payment tiers is reasonable because the amendments will attract higher volumes of electronic equity and ETF options volume to the Exchange, which will benefit all NOM Participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. The expanded MARS Payments should enhance the competitiveness of the Exchange, particularly with respect to those exchanges that offer their own front-end order entry system or one they subsidize in some manner.

Today the Exchange bifurcates Penny and Non-Penny Options pricing. The Exchange pays higher Non-Penny Pilot Options rebates as compared to Penny Pilot Options rebates.[20] Penny Pilot Options are more liquid and traditionally are assessed lower fees and paid lower rebates. The Exchange believes it is reasonable to pay higher rebates for Non-Penny Pilot Options which are assessed higher transaction fees on the Exchange.[21]

The Exchange's proposal to adopt new Non-Penny Pilot Options MARS Payments tiers with higher rebates as compared to the Penny Pilot Options MARS Payment tiers is equitable and not unfairly discriminatory because the Exchange will uniformly pay all NOM Participants the MARS Payments specified in the proposed MARS Payment tiers for Penny and Non-Penny Pilot Options provided the NOM Participant has executed the requisite number of Eligible Contracts.

Clarifying Amendments

The Exchange's proposal to amend the rule text to make clear that a Participant will not be entitled to receive any other revenue for the use of its System from the Exchange and add a missing period into the rule text is reasonable, equitable and not unfairly discriminatory because it will clarify existing rule text for all NOM 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

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20 See NOM Rules at Chapter XV, Section 2(1).

21 Id.

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 sum, 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.

Amendment to MARS System Eligibility

The Exchange's proposal to amend the requirements for MARS System Eligibility to further permit, in the alternative, for a Participant to be eligible if the Participant's System causes NOM to be the one of the top three default destination exchanges for orders that establish a new NBBO on NOM's Order Book does not impose an undue burden on intra-market competition because these requirements will uniformly apply to all Participants desiring to qualify for MARS.

Amendments to MARS Eligible Contracts

The Exchange's proposal to add a new Tier 4 with an ADV of 20,000 contracts and pay a MARS Payment of $0.15 per contract and designate this, along with all remaining pricing as Penny Pilot Options transactions pricing and adopt new pricing for Non-Penny Pilot Options volume does not impose an undue burden on intra-market competition because the Exchange will uniformly pay all NOM Participants the rebates specified in the proposed MARS Payment tiers provided the NOM Participant has executed the requisite number of Eligible Contracts. Moreover, the Exchange believes that the proposed MARS Payments offered by the Exchange are equitable and not unfairly discriminatory because any qualifying NOM Participant that offers market access and connectivity to the Exchange and/or utilizes such functionality themselves may earn the MARS Payment for all Eligible Contracts.

The Exchange's proposal to adopt new Non-Penny Pilot Options MARS Payments tiers with higher rebates as compared to the Penny Pilot Options MARS Payment tiers does not impose an undue burden on intra-market competition because the Exchange will uniformly pay all NOM Participants the MARS Payments specified in the proposed MARS Payment tiers for Penny and Non-Penny Pilot Options provided the NOM Participant has executed the requisite number of Eligible Contracts.

Clarifying Amendments

The Exchange's proposal to amend the rule text to make clear that a Participant will not be entitled to receive any other revenue for the use of its System from the Exchange and add a missing period into the rule text does not impose an undue burden on intra-market competition because it will clarify existing rule text for all NOM Participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If 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-2016-149 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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22 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-NASDAQ-2016-149. 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-2016-149 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Robert W. Errett
Deputy Secretary

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[23] 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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Options Rules

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Chapter XV Options Pricing

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Sec. 2 NASDAQ Options Market—Fees and Rebates
The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

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(1) – (5) No change.

(6) Market Access and Routing Subsidy ("MARS")

MARS System Eligibility

> To qualify for MARS, the Participant's routing system ("System") would be required to: (1) enable the electronic routing of orders to all of the U.S. options exchanges, including NOM; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with NOM's API to access current NOM match engine functionality. Further, the Participant's System would also need to cause NOM to be the one of the top three default destination exchanges for <u>(a) </u>individually executed marketable orders if NOM is at the national best bid or offer ("NBBO"), regardless of size or time <u>or (b) orders that establish a new NBBO on NOM's Order Book</u>, but allow any user to manually override NOM as a default destination on an order-by-order basis. Any NOM Participant would be permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described above and satisfies NOM that it appears to be robust and reliable. The Participant remains solely responsible for implementing and operating its System.

MARS Eligible Contracts

MARS Payment would be made to NOM Participants that have System Eligibility and have routed the requisite number of Eligible Contracts daily in a month (“Average Daily Volume”), which were executed on NOM. For the purpose of qualifying for the MARS Payment, Eligible Contracts may include Firm, Non-NOM Market Maker, Broker-Dealer, or Joint Back Office or “JBO” equity option orders that add liquidity and are electronically delivered and executed. Eligible Contracts do not include Mini Option orders.

MARS Payment

NOM Participants that have System Eligibility and have executed the requisite number of Eligible Contracts in a month will be paid the following rebates:

Tiers	**Average Daily Volume (“ADV”)**	**MARS Payment (Penny)**	**MARS Payment (Non-Penny)**
1	2,500	$0.07 *	$0.15*
2	5,000	$0.09 *	$0.20*
3	10,000	$0.11 *	$0.30*
4	20,000	$0.15*	$0.50*

The specified MARS Payment will be paid on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System and meet the requisite Eligible Contracts ADV. No payment will be made with respect to orders that are routed to NOM, but not executed.

A Participant will not be entitled to receive any other revenue from the Exchange for the use of its System specifically with respect to orders routed to NOM.

*NOM Participants that qualify for Customer and Professional Penny Pilot Options Rebate to Add Liquidity Tier 8 will receive $0.09 per contract in addition to any MARS Payment tier on MARS Eligible Contracts the NOM Participant qualifies for in a given month.

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