

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="62"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2021"/> - * <input type="text" value="021"/> Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by The Nasdaq Stock Market LLC
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"/>
Pilot <input type="checkbox"/>			Rule		
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 checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>
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Description

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

A proposal to amend The Nasdaq Options Markets Pricing Schedule at Options 7, Section 1, General Provisions, and Options 7, Section 2, Nasdaq Options Market Fees and Rebates

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 * Last Name *
 Title *
 E-mail *
 Telephone * 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 By

(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 EFFS 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”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend The Nasdaq Options Market’s (“NOM”) Pricing Schedule at Options 7, Section 1, General Provisions, and Options 7, Section 2, Nasdaq Options Market—Fees and Rebates.

The Exchange originally filed the proposed pricing changes on April 1, 2021 (SR-NASDAQ-2021-016). On April 9, 2021, the Exchange withdrew SR-NASDAQ-2021-016 and filed SR-NASDAQ-2021-019. The Exchange is withdrawing SR-NASDAQ-2021-019 and filing this rule change on April 13, 2021.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on November 5, 2020. 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:

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange proposes to amend NOM's Pricing Schedule at Options 7, Section 1, General Provisions. The Exchange proposes to relocate certain rule text concerning equity tier calculations from current Options 7, Section 2(4) to Options 7, Section 1 and add a new defined term to Options 7, Section 1. The Exchange proposes to amend Options 7, Section 2(1) to add rule text to make clear the applicable pricing and also amend the Tier 3 NOM Market Maker Rebate to Add Liquidity in Penny Symbols. The Exchange proposes to amend Options 7, Section 2(2) to amend a title. Finally, the Exchange proposes to amend Options 7, Section 2(3) regarding Nasdaq BX Inc.'s ("BX") Routing Fees. Each change shall be described below.

Options 7, Section 1

The Exchange proposes to define the term "Non-Customer" within Options 7, Section 1. The Exchange proposes to provide, "The term "Non-Customer" applies to transactions for the accounts of NOM Market Makers, Non-NOM Market Makers, Firms, Professionals, Broker-Dealers and JBOs." This defined term will bring greater clarity to NOM's Options 7 Rules. The term "Non-Customer" is currently utilized within the fees for routing at Options 7, Section 2(3). The addition of this defined term does not amend the manner in which the Exchange currently applies the term with respect to its Routing

Fees. The term “Customer”³ is currently defined and this term applies to Participants that are not customers. This change would be non-substantive.

Options 7, Section 2

Currently, the below rule text is located within Options 7, Section 2(4).

(a) For purposes of determining equity tier calculations under this section, any day that the market is not open for the entire trading day will be excluded from such calculation.

(b) Removal of Days for Purposes of Options Pricing Tiers:

(i)

(A) Any day that the Exchange announces in advance that it will not be open for trading will be excluded from the options tier calculations set forth in its Pricing Schedule; and (B) any day with a scheduled early market close ("Scheduled Early Close") may be excluded from the options tier calculations only pursuant to paragraph (iii) below.

(ii) The Exchange may exclude the following days ("Unanticipated Events") from the options tier calculations only pursuant to paragraph (iii) below, specifically any day that: (A) the market is not open for the entire trading day, (B) the Exchange instructs Participants in writing to route their orders to other markets, (C) the Exchange is inaccessible to Participants during the 30-minute period before the opening of trade due to an Exchange system disruption, or (D) the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours.

(iii) If a day is to be excluded as a result of paragraph (i)(B) or (ii) above, the Exchange will exclude the day from any Participant's monthly options tier calculations as follows:

(A) the Exchange may exclude from the ADV calculation any Scheduled Early Close or Unanticipated Event; and

³ The term “Customer” or (“C”) applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Options 1, Section 1(a)(47)).

(B) the Exchange may exclude from any other applicable options tier calculation provided for in its Pricing Schedule (together with (ii)(A), "Tier Calculations") any Scheduled Early Close or Unanticipated Event, provided, in each case, that the Exchange will only remove the day for Participants that would have a lower Tier Calculation with the day included.

This rule text describes the equity tier calculations when excluding certain days. The Exchange is relocating this rule text, without change, to Options 7, Section 1, General Provisions. The Exchange believes that this information is better suited to Section 1 along with other general information because the rule applies to Options 7 pricing.

The Exchange proposes to amend the qualification for the Tier 3 Rebate to Add Liquidity in Penny Symbols. Fees and Rebates for Execution of Contracts on The Nasdaq Options Market are as follows:

³ The NOM Market Maker Rebate to Add Liquidity in Penny Symbols will be paid per the highest tier achieved below.

Monthly Volume

- | | |
|---------------|--|
| Tier 1 | Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of up to 0.10% of total industry customer equity and ETF option average daily volume ("ADV") contracts per day in a month |
| Tier 2 | Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month |
| Tier 3 | Participant: (a) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month; or (b)(1) transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.70% or more of Consolidated Volume ("CV") which adds liquidity in the same month on The Nasdaq Stock Market, (2) transacts in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.18% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, and (3) executes greater than 0.01% of CV via Market-on- |

Monthly Volume

- Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross in the same month
- Tier 4** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month
- Tier 5** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month and transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.40% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market
- Tier 6** Participant: (a)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.95% of total industry customer equity and ETF option ADV contracts per day in a month, (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 30,000 or more contracts per day in a month must be removing liquidity, and (3) adds Firm, Broker-Dealer and Non-NOM Market Maker liquidity in Non-Penny Symbols of 10,000 or more contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.50% of total industry customer equity and ETF option ADV contracts per day in a month, and (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 15,000 or more contracts per day in a month must be removing liquidity

* “Total Volume” shall be defined as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Symbols and/or Non-Penny Symbols which either adds or removes liquidity on NOM.

NOM proposes to amend the qualification for the Tier 3 Market Maker Rebate to

Add Liquidity in Penny Symbols to require:

Participant: (a) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month: or (b)(1) transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.80% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock

Market, (2) transacts in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.15% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, and (3) executes greater than 0.01% of CV via Market-on- Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross in the same month.

This proposal would amend the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(1) by requiring Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.80% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market, an increase from 0.70%. Also, this proposal would amend the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(2) by requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.15% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, a decrease from 0.18%. The final portion of the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(3)⁴ is not being amended. Although the first component of the qualification requiring Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs is being increased and the second component requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs is being decreased, the Exchange

⁴ Part (b)(3) of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols requires that Market Makers execute greater than 0.01% of CV via Market-on- Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross in the same month.

believes that these amendments may incentivize additional Market Makers to transact greater volume on The Nasdaq Stock Market in order to qualify for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols. The Exchange believes that Tier 3 continues to incentivize Participants to direct additional order flow to NOM and The Nasdaq Stock Market.

NOM is not proposing to amend the corresponding Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols.

The Exchange proposes to amend Options 7, Section 2(1) to add rule text after the title of Section 2(1), Fees and Rebates for Execution of Contracts on The Nasdaq Options Market. Specifically, the Exchange proposes to add the following note:

Orders executed in the Opening Cross per Options 3, Section 8 are not subject to Options 7, Section 2(1) pricing, instead, these orders are subject to the pricing within Options 7, Section 2(2).

This note “*” will explain at the beginning of Options 7, Section 2(1) the pricing applicable to the transaction fees within Section 2(1). The Exchange believes the addition of this rule text will bring clarity to the Section 2 pricing and make clear that the transaction fees within Options 7, Section 2(1) apply intra-day. This new note “*” does not represent a substantive change. The proposed new note “*” is intended to serve as a guidepost to Participants referring to the NOM Pricing Schedule.

Currently, the Exchange’s Opening Cross pricing is contained within Options 7, Section 2(2). The Exchange proposes to add a citation to the title of Options 7, Section 2(2) to the Opening Cross rule. Options 7, Section 2(2) would state, “Opening Cross per Options 3, Section 8.”

Current Options 7, Section 2(3) provides the Fees for routing contracts to markets other than NOM. The Exchange proposes to amend the BX Routing Fees.

Currently, Non-Customers⁵ are assessed a \$0.99 per contract to any options exchange. Customers⁶ are currently assessed a Routing Fee to Phlx of \$0.13 per contract (“Fixed Fee”) in addition to the actual transaction fee assessed. Customers are also currently assessed a Routing Fee to BX of \$0.13 per contract. In addition, as it relates to all other options exchanges, Customers are currently assessed a Routing Fee of \$0.23 per contract (“Fixed Fee”) in addition to the actual transaction fee assessed. If the away market pays a rebate, the Routing Fee is \$0.13 per contract.

The Exchange now proposes to amend the BX Routing Fee to include the actual transaction fee assessed in addition to the “Fixed Fee” of \$0.13 per contract. The proposed changes will align BX’s Routing Fee with the current Phlx Routing Fee.

The Exchange is proposing to recoup the actual transaction fee (in addition to the Fixed Fee) that is incurred by the Exchange in connection with routing orders, on behalf of its Participants, to BX. Previously, the Exchange retained the rebates paid by BX to recover the costs associated with providing its routing services, did not assess the actual transaction fees charged by BX for Customer orders, and only assessed such orders the \$0.13 per contract Fixed Fee. This is because when orders are routed to BX, such orders

⁵ As proposed within Options 7, Section 1, the term “Non-Customer” applies to transactions for the accounts of NOM Market Makers, Non-NOM Market Makers, Firms, Professionals, Broker-Dealers and JBOs.

⁶ The term “Customer” or (“C”) applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(a)(47)).

are considered as removing liquidity on BX, and BX previously assessed rebates to Customer orders for removing liquidity. In particular, prior to the Recent Rule Change,⁷ Customer orders executed on BX received Penny Symbol Rebates to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker, Customer or Firm that ranged from \$0.00 to \$0.35 per contract,⁸ depending on the volume tier achieved. Customers also previously received Non-Penny Rebates to Remove Liquidity of \$0.80 per contract, regardless of tier and contra-party. As part of the Recent Rule Change, the aforementioned rebates were removed from the BX Pricing Schedule and replaced with a maker/taker fee structure where market participants are assessed a rebate or fee for adding liquidity to the market, or charged a fee for removing liquidity from the market.⁹

With this recent change in the structure of BX's Pricing Schedule, the Exchange proposes to align the Routing Fees to BX with the current Routing Fees to Phlx. With this proposal, the Exchange will no longer retain rebates paid by BX as BX no longer provides rebates for Customer orders removing liquidity on BX and instead charges a taker fee for such orders. The Exchange will continue to assess the \$0.13 per contract

⁷ See Securities Exchange Act Release No. 91473 (April 5, 2021), 86 FR 18562 (April 9, 2021) (SR-BX-2021-009) ("Recent Rule Change").

⁸ Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month would receive no Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month would receive a \$0.25 per contract Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month will receive a \$0.35 per contract Penny Symbol Rebate to Remove Liquidity in Tier 3.

⁹ See note 3 above.

Fixed Fee for routing Customer orders to BX, and will propose to also charge the actual transaction fee assessed by BX.

Technical Amendments

The Exchange proposes to amend Options 7, Section 2(3) to lowercase “PHLX” and add a space that was missing within the Routing Fees to Phlx. The Exchange also proposes to amend the name of the Exchange from “BX Options” to “BX” and add the words “per contract” within the Routing Fee to all other options exchanges. This amendment is not a substantive change, rather it is a clarification.

Finally, the Exchange proposes to renumber Options 7, Section 2(6), Market Access and Routing Subsidy (“MARS”), to Options 7, Section 2(4). The Exchange notes that the Pricing Schedule did not contain a Section 2(5).

Applicability to and Impact on Participants¹⁰

With respect to the NOM Market Maker Tier 3 rebate within Options 7, Section 2(1), the Exchange believes that amending the second part of the qualification¹¹ will

¹⁰ On May 21, 2019, the SEC Division of Trading and Markets (the “Division”) issued fee filing guidance titled “Staff Guidance on SRO Rule Filings Relating to Fees” (“Guidance”). Within the Guidance, the Division noted, among other things, that the purpose discussion should address “how the fee may apply differently (e.g., additional cost vs. additional discount) to different types of market participants (e.g., market makers, institutional brokers, retail brokers, vendors, etc.) and different sizes of market participants.” See Guidance (available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>). The Guidance also suggests that the purpose discussion should include numerical examples. Where possible, the Exchange is including numerical examples. In addition, the Exchange is providing data to the Commission in support of its arguments herein. The Guidance covers all aspects of a fee filing, which the Exchange has addressed throughout this filing.

¹¹ With this proposal, the Exchange is amending the second part of the tier qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(1) by requiring Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.80% or more of

attract greater volume to both NOM and The Nasdaq Stock Market.¹² Any NOM Market Maker may obtain the Tier 3 rebate provided the qualifications are met. Furthermore, NOM Market Maker Tier 3 provides two ways to achieve the NOM Tier 3 rebate of \$0.30 per contract.¹³

Market Makers have certain obligations¹⁴ on NOM, unlike other market participants. Market Maker are a source of liquidity. The proposed amendments are generally designed to attract additional order flow to the Exchange by incentivizing NOM Market Makers. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by market makers. An increase in the activity of these market participants in turn facilitates tighter spreads. These incentives are intended to benefit all NOM market participants who will be able to

Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market, an increase from 0.70%. Also, the Exchange is proposing to amend the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(2) by requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.15% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, a decrease from 0.18%.

¹² All NOM Participants are required to become members of The Nasdaq Stock Market pursuant to General 3 Membership and Access rules.

¹³ NOM Participants may also add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month to achieve the Tier 3 rebate. See Options 7, Section 2(1). Also, Participants who achieve the Tier 3 rebate will receive \$0.40 per contract to add liquidity in the following symbols: AAPL, SPY, QQQ, IWM, and VXX. See Options 7, Section 2(1)

¹⁴ See Options 2, Section 5. Also, transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. See also Options 2, Section 4.

interact with additional liquidity which this incentive attracts to the Exchange.

Today, no NOM Market Maker has earned the Tier 3 NOM Market Maker Rebate to Add Liquidity in Penny Symbols a Market Maker based on the second part of the qualification in the last two months. The Exchange notes that other NOM Market Makers could have qualified for this Tier 3 rebate, although they have qualified for different NOM Market Maker Rebate to Add Liquidity in Penny Symbols. NOM Market Maker Rebate to Add Liquidity in Penny Symbols are paid per the highest tier achieved, so if a NOM Market Maker qualifies for Tiers 4-6, that NOM Market Maker would receive the highest rebate they qualify for even if they qualified for Tier 3. With this proposal, the Exchange seeks to attract additional NOM Market Maker order flow in Penny Symbols from Participants that currently qualify for NOM Market Maker Rebate to Add Liquidity in Penny Symbols Tiers 1 and 2.

With respect to the amendments to NOM's Routing Fees to BX, the Exchange notes that the proposed Routing Fee would apply to all NOM Participants uniformly.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁶ 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 proposal is also consistent with Section 11A of the Act relating to the establishment

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4) and (5).

of the national market system for securities. Moreover, the Exchange believes that its proposal complies with Commission guidance on SRO fee filings that the Commission Staff issued on May 21, 2019.¹⁷

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[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’”¹⁸

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

¹⁷ See Guidance, supra note 7. Although the Exchange believes that this filing complies with the Guidance, the Exchange does not concede that the standards set forth in the Guidance are consistent with the Exchange Act and reserves its right to challenge those standards through administrative and judicial review, as appropriate.

¹⁸ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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.”¹⁹

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.²⁰

Options 7, Section 1

The Exchange’s proposal to define the term “Non-Customer” within Options 7, Section 1 is reasonable, equitable and not unfairly discriminatory as the amendment will bring greater clarity to NOM’s Options 7 Rules. The term “Non-Customer” is currently utilized within the fees for routing at Options 7, Section 2(3). The addition of this defined term does not amend the manner in which the Exchange currently applies the term with respect to its routing fees. The term “Customer”²¹ is currently defined and this

¹⁹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

²⁰ The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it as a result of this rule change.

²¹ The term “Customer” or (“C”) applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing

term applies to Participants that are not customers. This change would be non-substantive.

The Exchange's proposal to relocate the rule text relating to tier calculations from Options 7, Section 2(4), without change, to Options 7, Section 1, General Provisions is reasonable, equitable and not unfairly discriminatory. The Exchange believes that this information is better suited to Section 1 along with other general information because the rule applies to Options 7 pricing and all Participants transacting on BX.

Options 7, Section 2

The Exchange's proposal to amend the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols is reasonable. Amending the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(1), by requiring Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.80% or more of Consolidated Volume ("CV") which adds liquidity in the same month on The Nasdaq Stock Market, is an increase from 0.70%. Amending the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(2), by requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.15% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, is a decrease from 0.18%.²² Although the first component of

Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(a)(47)).

²² Part (b)(3) of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols requires that Market Makers execute greater than 0.01% of CV via Market-on-Close/Limit-on-Close ("MOC/LOC") volume within The Nasdaq Stock Market Closing Cross in the same month is not being amended.

the part (b) qualification requiring Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs is being increased and the second component of the part (b) qualification requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs is being decreased, the Exchange believes that these amendments may incentivize additional Market Makers to qualify for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols by transact greater volume on The Nasdaq Stock Market. The Tier 3 qualification requires Market Makers to qualify for either Part (a) or (b) of the qualification. The Exchange believes that the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols will continue to incentivize Market Makers to direct additional order flow to NOM and The Nasdaq Stock Market and, in turn, market participants will benefit from the opportunity to interact with such order flow. The Exchange notes that this proposal is designed as a means to improve market quality by providing Participants with an incentive to increase their provision of liquidity on the Exchange's equity and options markets. Further, any NOM Market Maker may obtain the Tier 3 rebate provided the qualifications are met. NOM Market Maker Tier 3 provides two ways to achieve the NOM Tier 3 rebate of \$0.30 per contract.²³ These incentives are intended to benefit all NOM market participants who will be able to interact with additional liquidity which this incentive

²³ NOM Participants may also add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month to achieve the Tier 3 rebate. See Options 7, Section 2(1). Also, Participants who achieve the Tier 3 rebate will receive \$0.40 per contract to add liquidity in the following symbols: AAPL, SPY, QQQ, IWM, and VXX. See Options 7, Section 2(1).

attracts to the Exchange. Market Makers have certain obligations²⁴ on NOM, unlike other market participants. Market Maker are a source of liquidity. The proposed amendments are generally designed to attract additional order flow to the Exchange by incentivizing NOM Market Makers. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by market makers. An increase in the activity of these market participants in turn facilitates tighter spreads.

The Exchange's proposal to amend the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols is equitable and not unfairly discriminatory as the Exchange will uniformly pay the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols to any qualifying Market Maker. NOM Market Makers add value through continuous quoting and the commitment of capital.²⁵ Because NOM Market Makers have these obligations to the market and regulatory requirements that normally do not apply to other market participants, the Exchange believes that offering these rebates to only NOM Market Makers is equitable and not unfairly discriminatory in light of their obligations. Finally, encouraging NOM Market Makers to add greater liquidity benefits all market participants, on both NOM and The Nasdaq Stock Market, in the quality of order interaction.

²⁴ See Options 2, Section 5. Also, transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. See also Options 2, Section 4.

²⁵ See Options 2, Sections 4 and 5.

The Exchange's proposal to amend Options 7, Section 2(1) to add rule text after the title of Section 2(1), Fees and Rebates for Execution of Contracts on The Nasdaq Options Market, which explains the pricing applicable to the transaction fees within Section 2(1) is reasonable, equitable and not unfairly discriminatory. The Exchange believes the addition of this rule text will bring clarity to the Options 7, Section 2 pricing by making clear that the transaction fees within Options 7, Section 2(1) apply intra-day. This new note "*" does not represent a substantive change. The proposed new note "*" is intended to serve as a guidepost to Participants referring to the NOM Pricing Schedule.

The Exchange's proposal to add a citation to the title of Options 7, Section 2(2) to the Opening Cross rule is reasonable, equitable and not unfairly discriminatory. This amendment will add clarity to the rule text.

The Exchange's proposal to amend the BX Customer Routing Fee within Options 7, Section 2(3) to start charging the actual transaction fee assessed by BX in addition to the current \$0.13 per contract Fixed Fee is reasonable. As a general matter, the Exchange notes that use of the Exchange's routing services is completely voluntary. In the alternative, member organizations may submit orders to the Exchange as ineligible for routing or "DNR" to avoid Routing Fees.²⁶ Furthermore, the Exchange operates in a highly competitive market in which market participants can readily select between various providers of routing services with different pricing. In this instance, proposing to assess the actual transaction fee, in addition to the current Fixed Fee of \$0.13 per contract, is reasonable in light of the Recent Rule Change described above where BX no longer provides rebates to Customer orders that are routed to and executed on BX, and

²⁶ See Options 5, Section 4(a)(iii)(A).

instead charges them a taker fee.²⁷ As proposed, the Exchange would recoup the actual transaction cost it incurs when routing Customer orders to BX in lieu of collecting any rebate paid by BX. Today, the Exchange similarly assesses orders routed to Phlx a Fixed Fee of \$0.13 per contract plus the actual transaction fee. As such, the proposal would align the BX Routing Fee with the Phlx Routing Fee.

The Exchange's proposal to amend the BX Customer Routing Fee within Options 7, Section 2(3) is equitable and not unfairly discriminatory because the Exchange would uniformly assess the same transaction fee assessed by BX for the Customer order routed to BX plus a Fixed Fee of \$0.13 per contract.

The Exchange's proposal to amend Options 7, Section 2(3) to lowercase "PHLX," add a space that was missing within the Routing Fees to Phlx, amend the name "BX Options" to "BX," and add the words "per contract" within the Routing Fee to all other options exchanges and the proposal to renumber Options 7, Section 2(6), Market Access and Routing Subsidy ("MARS"), to Options 7, Section 2(4)²⁸ are reasonable, equitable and not unfairly discriminatory. These non-substantive amendments will bring greater clarity to the Rulebook.

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.

²⁷ See note 7 above.

²⁸ The Exchange notes that the Pricing Schedule did not contain a Section 2(5).

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 options 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. The Exchange believes that the proposed changes will enable the Exchange to recover the costs it incurs to route orders to away markets, particularly BX, while also passing along savings realized by leveraging Nasdaq's infrastructure and scale to market participants when those orders are routed to Nasdaq-affiliated options markets, as further discussed above.

The Exchange also does not believe its proposal will impose an undue burden on intra-market competition.

Options 7, Section 1

The Exchange's proposal to define the term "Non-Customer" within Options 7, Section 1 does not impose an undue burden on competition as the amendment will bring greater clarity to NOM's Options 7 Rules.

The Exchange's proposal to relocate the rule text from Options 7, Section 2(4), without change, to Options 7, Section 1, General Provisions does not impose an undue burden on competition. The Exchange believes that this information is better suited to

Section 1 along with other general information because the rule applies to Options 7 pricing and all Participants transacting on BX.

The Exchange's proposal to amend the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols does not impose an undue burden on competition as the Exchange will uniformly pay the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols to any qualifying Market Maker. NOM Market Makers add value through continuous quoting and the commitment of capital.²⁹ Because NOM Market Makers have these obligations to the market and regulatory requirements that normally do not apply to other market participants, the Exchange believes that offering these rebates to only NOM Market Makers is equitable and not unfairly discriminatory in light of their obligations. Finally, encouraging NOM Market Makers to add greater liquidity benefits all market participants, on both NOM and The Nasdaq Stock Market, in the quality of order interaction.

Options 7, Section 2

The Exchange's proposal to amend Options 7, Section 2(1) to add rule text after the title of Section 2(1), Fees and Rebates for Execution of Contracts on The Nasdaq Options Market, which explains the pricing applicable to the transaction fees within Section 2(1) does not impose an undue burden on competition. The Exchange believes the addition of this rule text will bring clarity to the Section 2 pricing, which is applicable to all Participants.

The Exchange's proposal to add a citation to the title of Options 7, Section 2(2) to the Opening Cross rule does not impose an undue burden on competition. This

²⁹ See Options 2, Sections 4 and 5.

amendment will add clarity to the rule text.

The Exchange's proposal to amend the BX Customer Routing Fee within Options 7, Section 2(3) does not impose an undue burden on competition. In this instance, the Exchange is proposing to charge Customer orders that are routed to BX the actual transaction fee assessed by BX in addition to the current Fixed Fee of \$0.13 per contract in light of the fee changes under the Recent Rule Change described above where BX no longer provides rebates to Customer orders that are routed to and executed on BX, and instead charges them a taker fee.³⁰ The proposed changes reflect the need to recover the Exchange's costs associated with providing its routing services. Furthermore, as noted above, the use of the Exchange's routing services is completely voluntary and optional, and the Exchange operates in a highly competitive market in which market participants can readily select between various providers of routing services with different pricing. As such, it is likely that the Exchange will lose market share as a result of the changes proposed herein if they are unattractive to market participants.

The Exchange also does not believe its proposal will impose an undue burden on intra-market competition. As discussed above, the Exchange would uniformly assess the same transaction fee assessed by BX for the Customer order routed to BX plus a Fixed Fee of \$0.13 per contract. Under this proposal, Non-Customer orders would continue to be assessed the \$0.99 per contract routing fee and not be assessed the actual BX transaction fee. The Exchange does not believe its pricing proposal will place any market participant at a relative disadvantage compared to other market participants because the

³⁰ See note 7 above.

proposed routing fee for Customer orders will actually narrow the difference between the routing fees assessed to Customer and Non-Customer orders routed to BX.

The Exchange's proposal to amend Options 7, Section 2(3) to lowercase "PHLX," add a space that was missing within the Routing Fees to Phlx, amend the name "BX Options" to "BX," and add the words "per contract" within the Routing Fee to all other options exchanges and the proposal to renumber Options 7, Section 2(6), Market Access and Routing Subsidy ("MARS"), to Options 7, Section 2(4) do not impose an undue burden on competition. These non-substantive amendments will bring greater clarity to the Rulebook.

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,³¹ 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 Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2021-021)

April __, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend The Nasdaq Options Market's Pricing Schedule at Options 7, Section 1, General Provisions, and Options 7, Section 2, Nasdaq Options Market—Fees and Rebates.

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 April 13, 2021, 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 Nasdaq Options Market's (“NOM”) Pricing Schedule at Options 7, Section 1, General Provisions, and Options 7, Section 2, Nasdaq Options Market—Fees and Rebates.

The Exchange originally filed the proposed pricing changes on April 1, 2021 (SR-NASDAQ-2021-016). On April 9, 2021, the Exchange withdrew SR-NASDAQ-2021-016 and filed SR-NASDAQ-2021-019. The Exchange is withdrawing SR-NASDAQ-2021-019 and filing this rule change on April 13, 2021.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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 NOM's Pricing Schedule at Options 7, Section 1, General Provisions. The Exchange proposes to relocate certain rule text concerning equity tier calculations from current Options 7, Section 2(4) to Options 7, Section 1 and add a new defined term to Options 7, Section 1. The Exchange proposes to amend Options 7, Section 2(1) to add rule text to make clear the applicable pricing and also amend the Tier 3 NOM Market Maker Rebate to Add Liquidity in Penny Symbols. The Exchange proposes to amend Options 7, Section 2(2) to amend a title. Finally, the Exchange proposes to amend Options 7, Section 2(3) regarding Nasdaq BX Inc.'s ("BX") Routing Fees. Each change shall be described below.

Options 7, Section 1

The Exchange proposes to define the term "Non-Customer" within Options 7, Section 1. The Exchange proposes to provide, "The term "Non-Customer" applies to

transactions for the accounts of NOM Market Makers, Non-NOM Market Makers, Firms, Professionals, Broker-Dealers and JBOs.” This defined term will bring greater clarity to NOM’s Options 7 Rules. The term “Non-Customer” is currently utilized within the fees for routing at Options 7, Section 2(3). The addition of this defined term does not amend the manner in which the Exchange currently applies the term with respect to its Routing Fees. The term “Customer”³ is currently defined and this term applies to Participants that are not customers. This change would be non-substantive.

Options 7, Section 2

Currently, the below rule text is located within Options 7, Section 2(4).

(a) For purposes of determining equity tier calculations under this section, any day that the market is not open for the entire trading day will be excluded from such calculation.

(b) Removal of Days for Purposes of Options Pricing Tiers:

(i)

(A) Any day that the Exchange announces in advance that it will not be open for trading will be excluded from the options tier calculations set forth in its Pricing Schedule; and **(B)** any day with a scheduled early market close ("Scheduled Early Close") may be excluded from the options tier calculations only pursuant to paragraph (iii) below.

³ The term “Customer” or (“C”) applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Options 1, Section 1(a)(47)).

(ii) The Exchange may exclude the following days ("Unanticipated Events") from the options tier calculations only pursuant to paragraph (iii) below, specifically any day that: **(A)** the market is not open for the entire trading day, **(B)** the Exchange instructs Participants in writing to route their orders to other markets, **(C)** the Exchange is inaccessible to Participants during the 30-minute period before the opening of trade due to an Exchange system disruption, or **(D)** the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours.

(iii) If a day is to be excluded as a result of paragraph (i)(B) or (ii) above, the Exchange will exclude the day from any Participant's monthly options tier calculations as follows:

(A) the Exchange may exclude from the ADV calculation any Scheduled Early Close or Unanticipated Event; and

(B) the Exchange may exclude from any other applicable options tier calculation provided for in its Pricing Schedule (together with (ii)(A), "Tier Calculations") any Scheduled Early Close or Unanticipated Event. provided, in each case, that the Exchange will only remove the day for Participants that would have a lower Tier Calculation with the day included.

This rule text describes the equity tier calculations when excluding certain days. The Exchange is relocating this rule text, without change, to Options 7, Section 1, General

Provisions. The Exchange believes that this information is better suited to Section 1 along with other general information because the rule applies to Options 7 pricing.

The Exchange proposes to amend the qualification for the Tier 3 Rebate to Add Liquidity in Penny Symbols. Fees and Rebates for Execution of Contracts on The Nasdaq Options Market are as follows:

³The NOM Market Maker Rebate to Add Liquidity in Penny Symbols will be paid per the highest tier achieved below.

Monthly Volume

- Tier 1** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of up to 0.10% of total industry customer equity and ETF option average daily volume (“ADV”) contracts per day in a month
- Tier 2** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month
- Tier 3** Participant: (a) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month: or (b)(1) transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.70% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on

Monthly Volume

The Nasdaq Stock Market, (2) transacts in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.18% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, and (3) executes greater than 0.01% of CV via Market-on-Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross in the same month

Tier 4 Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month

Tier 5 Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month and transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.40% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market

Tier 6 Participant: (a)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.95% of

Monthly Volume

total industry customer equity and ETF option ADV contracts per day in a month, (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 30,000 or more contracts per day in a month must be removing liquidity, and (3) adds Firm, Broker-Dealer and Non-NOM Market Maker liquidity in Non-Penny Symbols of 10,000 or more contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.50% of total industry customer equity and ETF option ADV contracts per day in a month, and (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 15,000 or more contracts per day in a month must be removing liquidity

*“Total Volume” shall be defined as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Symbols and/or Non-Penny Symbols which either adds or removes liquidity on NOM.

NOM proposes to amend the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols to require:

Participant: (a) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month: or (b)(1) transacts in all securities through one or more of its Nasdaq Market

Center MPIDs that represent 0.80% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market, (2) transacts in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.15% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, and (3) executes greater than 0.01% of CV via Market-on- Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross in the same month.

This proposal would amend the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(1) by requiring Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.80% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market, an increase from 0.70%. Also, this proposal would amend the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(2) by requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.15% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, a decrease from 0.18%. The final portion of the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(3)⁴ is not being amended. Although the first component of the

⁴ Part (b)(3) of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols requires that Market Makers execute greater than

qualification requiring Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs is being increased and the second component requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs is being decreased, the Exchange believes that these amendments may incentivize additional Market Makers to transact greater volume on The Nasdaq Stock Market in order to qualify for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols. The Exchange believes that Tier 3 continues to incentivize Participants to direct additional order flow to NOM and The Nasdaq Stock Market.

NOM is not proposing to amend the corresponding Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols.

The Exchange proposes to amend Options 7, Section 2(1) to add rule text after the title of Section 2(1), Fees and Rebates for Execution of Contracts on The Nasdaq Options Market. Specifically, the Exchange proposes to add the following note:

Orders executed in the Opening Cross per Options 3, Section 8 are not subject to Options 7, Section 2(1) pricing, instead, these orders are subject to the pricing within Options 7, Section 2(2).

This note “*” will explain at the beginning of Options 7, Section 2(1) the pricing applicable to the transaction fees within Section 2(1). The Exchange believes the addition of this rule text will bring clarity to the Section 2 pricing and make clear that the transaction fees within Options 7, Section 2(1) apply intra-day. This new note “*” does not represent a substantive change. The proposed new note “*” is intended to serve as a

0.01% of CV via Market-on- Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross in the same month.

guidepost to Participants referring to the NOM Pricing Schedule.

Currently, the Exchange's Opening Cross pricing is contained within Options 7, Section 2(2). The Exchange proposes to add a citation to the title of Options 7, Section 2(2) to the Opening Cross rule. Options 7, Section 2(2) would state, "Opening Cross per Options 3, Section 8."

Current Options 7, Section 2(3) provides the Fees for routing contracts to markets other than NOM. The Exchange proposes to amend the BX Routing Fees.

Currently, Non-Customers⁵ are assessed a \$0.99 per contract to any options exchange. Customers⁶ are currently assessed a Routing Fee to Phlx of \$0.13 per contract ("Fixed Fee") in addition to the actual transaction fee assessed. Customers are also currently assessed a Routing Fee to BX of \$0.13 per contract. In addition, as it relates to all other options exchanges, Customers are currently assessed a Routing Fee of \$0.23 per contract ("Fixed Fee") in addition to the actual transaction fee assessed. If the away market pays a rebate, the Routing Fee is \$0.13 per contract.

The Exchange now proposes to amend the BX Routing Fee to include the actual transaction fee assessed in addition to the "Fixed Fee" of \$0.13 per contract. The proposed changes will align BX's Routing Fee with the current Phlx Routing Fee.

⁵ As proposed within Options 7, Section 1, the term "Non-Customer" applies to transactions for the accounts of NOM Market Makers, Non-NOM Market Makers, Firms, Professionals, Broker-Dealers and JBOs.

⁶ The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(a)(47)).

The Exchange is proposing to recoup the actual transaction fee (in addition to the Fixed Fee) that is incurred by the Exchange in connection with routing orders, on behalf of its Participants, to BX. Previously, the Exchange retained the rebates paid by BX to recover the costs associated with providing its routing services, did not assess the actual transaction fees charged by BX for Customer orders, and only assessed such orders the \$0.13 per contract Fixed Fee. This is because when orders are routed to BX, such orders are considered as removing liquidity on BX, and BX previously assessed rebates to Customer orders for removing liquidity. In particular, prior to the Recent Rule Change,⁷ Customer orders executed on BX received Penny Symbol Rebates to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker, Customer or Firm that ranged from \$0.00 to \$0.35 per contract,⁸ depending on the volume tier achieved. Customers also previously received Non-Penny Rebates to Remove Liquidity of \$0.80 per contract, regardless of tier and contra-party. As part of the Recent Rule Change, the aforementioned rebates were removed from the BX Pricing Schedule and replaced with a maker/taker fee structure where market participants are

⁷ See Securities Exchange Act Release No. 91473 (April 5, 2021), 86 FR 18562 (April 9, 2021) (SR-BX-2021-009) (“Recent Rule Change”).

⁸ Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month would receive no Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month would receive a \$0.25 per contract Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month will receive a \$0.35 per contract Penny Symbol Rebate to Remove Liquidity in Tier 3.

assessed a rebate or fee for adding liquidity to the market, or charged a fee for removing liquidity from the market.⁹

With this recent change in the structure of BX's Pricing Schedule, the Exchange proposes to align the Routing Fees to BX with the current Routing Fees to Phlx. With this proposal, the Exchange will no longer retain rebates paid by BX as BX no longer provides rebates for Customer orders removing liquidity on BX and instead charges a taker fee for such orders. The Exchange will continue to assess the \$0.13 per contract Fixed Fee for routing Customer orders to BX, and will propose to also charge the actual transaction fee assessed by BX.

Technical Amendments

The Exchange proposes to amend Options 7, Section 2(3) to lowercase "PHLX" and add a space that was missing within the Routing Fees to Phlx. The Exchange also proposes to amend the name of the Exchange from "BX Options" to "BX" and add the words "per contract" within the Routing Fee to all other options exchanges. This amendment is not a substantive change, rather it is a clarification.

Finally, the Exchange proposes to renumber Options 7, Section 2(6), Market Access and Routing Subsidy ("MARS"), to Options 7, Section 2(4). The Exchange notes that the Pricing Schedule did not contain a Section 2(5).

⁹ See note 3 above.

Applicability to and Impact on Participants¹⁰

With respect to the NOM Market Maker Tier 3 rebate within Options 7, Section 2(1), the Exchange believes that amending the second part of the qualification¹¹ will attract greater volume to both NOM and The Nasdaq Stock Market.¹² Any NOM Market Maker may obtain the Tier 3 rebate provided the qualifications are met. Furthermore, NOM Market Maker Tier 3 provides two ways to achieve the NOM Tier 3 rebate of \$0.30 per contract.¹³

¹⁰ On May 21, 2019, the SEC Division of Trading and Markets (the “Division”) issued fee filing guidance titled “Staff Guidance on SRO Rule Filings Relating to Fees” (“Guidance”). Within the Guidance, the Division noted, among other things, that the purpose discussion should address “how the fee may apply differently (e.g., additional cost vs. additional discount) to different types of market participants (e.g., market makers, institutional brokers, retail brokers, vendors, etc.) and different sizes of market participants.” See Guidance (available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>). The Guidance also suggests that the purpose discussion should include numerical examples. Where possible, the Exchange is including numerical examples. In addition, the Exchange is providing data to the Commission in support of its arguments herein. The Guidance covers all aspects of a fee filing, which the Exchange has addressed throughout this filing.

¹¹ With this proposal, the Exchange is amending the second part of the tier qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(1) by requiring Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.80% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market, an increase from 0.70%. Also, the Exchange is proposing to amend the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(2) by requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.15% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, a decrease from 0.18%.

¹² All NOM Participants are required to become members of The Nasdaq Stock Market pursuant to General 3 Membership and Access rules.

¹³ NOM Participants may also add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month to achieve the Tier 3

Market Makers have certain obligations¹⁴ on NOM, unlike other market participants. Market Maker are a source of liquidity. The proposed amendments are generally designed to attract additional order flow to the Exchange by incentivizing NOM Market Makers. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by market makers. An increase in the activity of these market participants in turn facilitates tighter spreads. These incentives are intended to benefit all NOM market participants who will be able to interact with additional liquidity which this incentive attracts to the Exchange.

Today, no NOM Market Maker has earned the Tier 3 NOM Market Maker Rebate to Add Liquidity in Penny Symbols a Market Maker based on the second part of the qualification in the last two months. The Exchange notes that other NOM Market Makers could have qualified for this Tier 3 rebate, although they have qualified for different NOM Market Maker Rebate to Add Liquidity in Penny Symbols. NOM Market Maker Rebate to Add Liquidity in Penny Symbols are paid per the highest tier achieved, so if a NOM Market Maker qualifies for Tiers 4-6, that NOM Market Maker would receive the highest rebate they qualify for even if they qualified for Tier 3. With this proposal, the Exchange seeks to attract additional NOM Market Maker order flow in Penny Symbols from Participants that currently qualify for NOM Market Maker Rebate

rebate. See Options 7, Section 2(1). Also, Participants who achieve the Tier 3 rebate will receive \$0.40 per contract to add liquidity in the following symbols: AAPL, SPY, QQQ, IWM, and VXX. See Options 7, Section 2(1)

¹⁴ See Options 2, Section 5. Also, transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. See also Options 2, Section 4.

to Add Liquidity in Penny Symbols Tiers 1 and 2.

With respect to the amendments to NOM's Routing Fees to BX, the Exchange notes that the proposed Routing Fee would apply to all NOM Participants uniformly.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁶ 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 proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities. Moreover, the Exchange believes that its proposal complies with Commission guidance on SRO fee filings that the Commission Staff issued on May 21, 2019.¹⁷

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4) and (5).

¹⁷ See Guidance, supra note 7. Although the Exchange believes that this filing complies with the Guidance, the Exchange does not concede that the standards set forth in the Guidance are consistent with the Exchange Act and reserves its right to challenge those standards through administrative and judicial review, as appropriate.

Commission, the D.C. Circuit stated as follows: “[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’”¹⁸

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.”¹⁹

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such,

¹⁸ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹⁹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.²⁰

Options 7, Section 1

The Exchange's proposal to define the term "Non-Customer" within Options 7, Section 1 is reasonable, equitable and not unfairly discriminatory as the amendment will bring greater clarity to NOM's Options 7 Rules. The term "Non-Customer" is currently utilized within the fees for routing at Options 7, Section 2(3). The addition of this defined term does not amend the manner in which the Exchange currently applies the term with respect to its routing fees. The term "Customer"²¹ is currently defined and this term applies to Participants that are not customers. This change would be non-substantive.

The Exchange's proposal to relocate the rule text relating to tier calculations from Options 7, Section 2(4), without change, to Options 7, Section 1, General Provisions is reasonable, equitable and not unfairly discriminatory. The Exchange believes that this information is better suited to Section 1 along with other general information because the rule applies to Options 7 pricing and all Participants transacting on BX.

Options 7, Section 2

The Exchange's proposal to amend the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols is reasonable. Amending the second part of

²⁰ The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it as a result of this rule change.

²¹ The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(a)(47)).

the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(1), by requiring Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.80% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market, is an increase from 0.70%. Amending the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(2), by requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.15% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, is a decrease from 0.18%.²² Although the first component of the part (b) qualification requiring Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs is being increased and the second component of the part (b) qualification requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs is being decreased, the Exchange believes that these amendments may incentivize additional Market Makers to qualify for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols by transact greater volume on The Nasdaq Stock Market. The Tier 3 qualification requires Market Makers to qualify for either Part (a) or (b) of the qualification. The Exchange believes that the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols will continue to incentivize Market Makers to direct additional order flow to NOM and The Nasdaq Stock Market and, in turn, market participants will benefit from the opportunity to interact with such order flow. The Exchange notes that this proposal is designed as a

²² Part (b)(3) of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols requires that Market Makers execute greater than 0.01% of CV via Market-on- Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross in the same month is not being amended.

means to improve market quality by providing Participants with an incentive to increase their provision of liquidity on the Exchange's equity and options markets. Further, any NOM Market Maker may obtain the Tier 3 rebate provided the qualifications are met. NOM Market Maker Tier 3 provides two ways to achieve the NOM Tier 3 rebate of \$0.30 per contract.²³ These incentives are intended to benefit all NOM market participants who will be able to interact with additional liquidity which this incentive attracts to the Exchange. Market Makers have certain obligations²⁴ on NOM, unlike other market participants. Market Maker are a source of liquidity. The proposed amendments are generally designed to attract additional order flow to the Exchange by incentivizing NOM Market Makers. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by market makers. An increase in the activity of these market participants in turn facilitates tighter spreads.

The Exchange's proposal to amend the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols is equitable and not unfairly discriminatory as the Exchange will uniformly pay the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols to any qualifying Market Maker. NOM Market Makers add value

²³ NOM Participants may also add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month to achieve the Tier 3 rebate. See Options 7, Section 2(1). Also, Participants who achieve the Tier 3 rebate will receive \$0.40 per contract to add liquidity in the following symbols: AAPL, SPY, QQQ, IWM, and VXX. See Options 7, Section 2(1).

²⁴ See Options 2, Section 5. Also, transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. See also Options 2, Section 4.

through continuous quoting and the commitment of capital.²⁵ Because NOM Market Makers have these obligations to the market and regulatory requirements that normally do not apply to other market participants, the Exchange believes that offering these rebates to only NOM Market Makers is equitable and not unfairly discriminatory in light of their obligations. Finally, encouraging NOM Market Makers to add greater liquidity benefits all market participants, on both NOM and The Nasdaq Stock Market, in the quality of order interaction.

The Exchange's proposal to amend Options 7, Section 2(1) to add rule text after the title of Section 2(1), Fees and Rebates for Execution of Contracts on The Nasdaq Options Market, which explains the pricing applicable to the transaction fees within Section 2(1) is reasonable, equitable and not unfairly discriminatory. The Exchange believes the addition of this rule text will bring clarity to the Options 7, Section 2 pricing by making clear that the transaction fees within Options 7, Section 2(1) apply intra-day. This new note "*" does not represent a substantive change. The proposed new note "*" is intended to serve as a guidepost to Participants referring to the NOM Pricing Schedule.

The Exchange's proposal to add a citation to the title of Options 7, Section 2(2) to the Opening Cross rule is reasonable, equitable and not unfairly discriminatory. This amendment will add clarity to the rule text.

The Exchange's proposal to amend the BX Customer Routing Fee within Options 7, Section 2(3) to start charging the actual transaction fee assessed by BX in addition to the current \$0.13 per contract Fixed Fee is reasonable. As a general matter, the Exchange notes that use of the Exchange's routing services is completely voluntary. In the

²⁵ See Options 2, Sections 4 and 5.

alternative, member organizations may submit orders to the Exchange as ineligible for routing or “DNR” to avoid Routing Fees.²⁶ Furthermore, the Exchange operates in a highly competitive market in which market participants can readily select between various providers of routing services with different pricing. In this instance, proposing to assess the actual transaction fee, in addition to the current Fixed Fee of \$0.13 per contract, is reasonable in light of the Recent Rule Change described above where BX no longer provides rebates to Customer orders that are routed to and executed on BX, and instead charges them a taker fee.²⁷ As proposed, the Exchange would recoup the actual transaction cost it incurs when routing Customer orders to BX in lieu of collecting any rebate paid by BX. Today, the Exchange similarly assesses orders routed to Phlx a Fixed Fee of \$0.13 per contract plus the actual transaction fee. As such, the proposal would align the BX Routing Fee with the Phlx Routing Fee.

The Exchange’s proposal to amend the BX Customer Routing Fee within Options 7, Section 2(3) is equitable and not unfairly discriminatory because the Exchange would uniformly assess the same transaction fee assessed by BX for the Customer order routed to BX plus a Fixed Fee of \$0.13 per contract.

The Exchange’s proposal to amend Options 7, Section 2(3) to lowercase “PHLX,” add a space that was missing within the Routing Fees to Phlx, amend the name “BX Options” to “BX,” and add the words “per contract” within the Routing Fee to all other options exchanges and the proposal to renumber Options 7, Section 2(6), Market Access

²⁶ See Options 5, Section 4(a)(iii)(A).

²⁷ See note 7 above.

and Routing Subsidy (“MARS”), to Options 7, Section 2(4)²⁸ are reasonable, equitable and not unfairly discriminatory. These non-substantive amendments will bring greater clarity to the Rulebook.

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 options 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. The Exchange believes that the proposed changes will enable the Exchange to recover the costs it incurs to route orders to away markets, particularly BX, while also passing along savings realized by leveraging Nasdaq’s infrastructure and scale to market participants when those orders are routed to Nasdaq-affiliated options markets, as further discussed above.

The Exchange also does not believe its proposal will impose an undue burden on intra-market competition.

²⁸ The Exchange notes that the Pricing Schedule did not contain a Section 2(5).

Options 7, Section 1

The Exchange's proposal to define the term "Non-Customer" within Options 7, Section 1 does not impose an undue burden on competition as the amendment will bring greater clarity to NOM's Options 7 Rules.

The Exchange's proposal to relocate the rule text from Options 7, Section 2(4), without change, to Options 7, Section 1, General Provisions does not impose an undue burden on competition. The Exchange believes that this information is better suited to Section 1 along with other general information because the rule applies to Options 7 pricing and all Participants transacting on BX.

The Exchange's proposal to amend the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols does not impose an undue burden on competition as the Exchange will uniformly pay the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols to any qualifying Market Maker. NOM Market Makers add value through continuous quoting and the commitment of capital.²⁹ Because NOM Market Makers have these obligations to the market and regulatory requirements that normally do not apply to other market participants, the Exchange believes that offering these rebates to only NOM Market Makers is equitable and not unfairly discriminatory in light of their obligations. Finally, encouraging NOM Market Makers to add greater liquidity benefits all market participants, on both NOM and The Nasdaq Stock Market, in the quality of order interaction.

Options 7, Section 2

The Exchange's proposal to amend Options 7, Section 2(1) to add rule text after

²⁹ See Options 2, Sections 4 and 5.

the title of Section 2(1), Fees and Rebates for Execution of Contracts on The Nasdaq Options Market, which explains the pricing applicable to the transaction fees within Section 2(1) does not impose an undue burden on competition. The Exchange believes the addition of this rule text will bring clarity to the Section 2 pricing, which is applicable to all Participants.

The Exchange's proposal to add a citation to the title of Options 7, Section 2(2) to the Opening Cross rule does not impose an undue burden on competition. This amendment will add clarity to the rule text.

The Exchange's proposal to amend the BX Customer Routing Fee within Options 7, Section 2(3) does not impose an undue burden on competition. In this instance, the Exchange is proposing to charge Customer orders that are routed to BX the actual transaction fee assessed by BX in addition to the current Fixed Fee of \$0.13 per contract in light of the fee changes under the Recent Rule Change described above where BX no longer provides rebates to Customer orders that are routed to and executed on BX, and instead charges them a taker fee.³⁰ The proposed changes reflect the need to recover the Exchange's costs associated with providing its routing services. Furthermore, as noted above, the use of the Exchange's routing services is completely voluntary and optional, and the Exchange operates in a highly competitive market in which market participants can readily select between various providers of routing services with different pricing. As such, it is likely that the Exchange will lose market share as a result of the changes proposed herein if they are unattractive to market participants.

³⁰ See note 7 above.

The Exchange also does not believe its proposal will impose an undue burden on intra-market competition. As discussed above, the Exchange would uniformly assess the same transaction fee assessed by BX for the Customer order routed to BX plus a Fixed Fee of \$0.13 per contract. Under this proposal, Non-Customer orders would continue to be assessed the \$0.99 per contract routing fee and not be assessed the actual BX transaction fee. The Exchange does not believe its pricing proposal will place any market participant at a relative disadvantage compared to other market participants because the proposed routing fee for Customer orders will actually narrow the difference between the routing fees assessed to Customer and Non-Customer orders routed to BX.

The Exchange's proposal to amend Options 7, Section 2(3) to lowercase "PHLX," add a space that was missing within the Routing Fees to Phlx, amend the name "BX Options" to "BX," and add the words "per contract" within the Routing Fee to all other options exchanges and the proposal to renumber Options 7, Section 2(6), Market Access and Routing Subsidy ("MARS"), to Options 7, Section 2(4) do not impose an undue burden on competition. These non-substantive amendments will bring greater clarity to the Rulebook.

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.³¹

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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

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-2021-021 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2021-021. 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-2021-021 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.³²

J. Matthew DeLesDernier
Assistant Secretary

³² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

The Nasdaq Stock Market LLC Rules

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Options Rules

* * * * *

Options 7 Pricing Schedule**Section 1 General Provisions**

The Nasdaq Options Market Participants may be subject to the Charges for Membership, Services and Equipment in the Equity 7 Series, General 8, Sections 1-2, as well as the fees in this Options 7. For purposes of assessing fees and paying rebates, the following references should serve as guidance.

The term "**Customer**" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(a)(47)).

The term "**NOM Market Maker**" or ("M") is a Participant that has registered as a Market Maker on NOM pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

The term "**Non-Customer**" applies to transactions for the accounts of NOM Market Makers, Non-NOM Market Makers, Firms, Professionals, Broker-Dealers and JBOs.

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.

* * * * *

For purposes of determining equity tier calculations under this section, any day that the market is not open for the entire trading day will be excluded from such calculation.

(a) Removal of Days for Purposes of Options Pricing Tiers:**(i)**

(A) Any day that the Exchange announces in advance that it will not be open for trading will be excluded from the options tier calculations set forth in its Pricing

Schedule; and (B) any day with a scheduled early market close ("Scheduled Early Close") may be excluded from the options tier calculations only pursuant to paragraph (iii) below.

(ii) The Exchange may exclude the following days ("Unanticipated Events") from the options tier calculations only pursuant to paragraph (iii) below, specifically any day that: (A) the market is not open for the entire trading day, (B) the Exchange instructs Participants in writing to route their orders to other markets, (C) the Exchange is inaccessible to Participants during the 30-minute period before the opening of trade due to an Exchange system disruption, or (D) the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours.

(iii) If a day is to be excluded as a result of paragraph (i)(B) or (ii) above, the Exchange will exclude the day from any Participant's monthly options tier calculations as follows:

(A) the Exchange may exclude from the ADV calculation any Scheduled Early Close or Unanticipated Event; and

(B) the Exchange may exclude from any other applicable options tier calculation provided for in its Pricing Schedule (together with (ii)(A), "Tier Calculations") any Scheduled Early Close or Unanticipated Event.

provided, in each case, that the Exchange will only remove the day for Participants that would have a lower Tier Calculation with the day included.

Collection of Exchange Fees and Other Claims-Nasdaq Options Market

Each NOM member, and all applicants for registration, shall be required to provide a clearing account number for an account at the National Securities Clearing Corporation ("NSCC") for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange or other charges related to General 2, Section 2. If a member disputes an invoice, the Exchange will not include the disputed amount in the debit if the member has disputed the amount in writing to the Exchange's designated staff by the 15th of the month, or the following business day if the 15th is not a business day, and the amount in dispute is at least \$10,000 or greater.

Section 2 Nasdaq Options Market—Fees and Rebates

The following charges shall apply to the use of the order execution and routing services of The Nasdaq Options Market for all securities.

(1) Fees and Rebates for Execution of Contracts on The Nasdaq Options Market*

Rebates to Add Liquidity in Penny Symbols

	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5	Tier 6
Customer ^{1,8,9,10}	(\$0.20)	(\$0.25)	(\$0.42)	(\$0.43)	(\$0.45)	(\$0.48) ⁷
Professional ^{1,9,10}	(\$0.20)	(\$0.25)	(\$0.42)	(\$0.43)	(\$0.45)	(\$0.48)
Broker-Dealer	(\$0.10)	(\$0.10)	(\$0.10)	(\$0.10)	(\$0.10)	(\$0.10)
Firm	(\$0.10)	(\$0.10)	(\$0.10)	(\$0.10)	(\$0.10)	(\$0.10)
Non-NOM Market Maker	(\$0.10)	(\$0.10)	(\$0.10)	(\$0.10)	(\$0.10)	(\$0.10)
NOM Market Maker ³	(\$0.20)	(\$0.25)	(\$0.30) ⁴	(\$0.32) ⁴	(\$0.44) ¹¹	(\$0.48)

Fees and Rebates to Add Liquidity in Non-Penny Symbols

Customer ^{9,10,12}	(\$0.80)
Professional ^{9,10,12}	(\$0.80)
Broker-Dealer	\$0.45
Firm	\$0.45
Non-NOM Market Maker	\$0.45
NOM Market Maker ^{5,6}	\$0.35/(\$0.30)

Fees to Remove Liquidity in Penny and Non-Penny Symbols

	Penny Symbols	Non-Penny Symbols
Customer	\$0.48	\$0.85
Professional	\$0.48	\$0.85
Broker-Dealer	\$0.50	\$1.10
Firm	\$0.50	\$1.10
Non-NOM Market Maker ²	\$0.50	\$1.10
NOM Market Maker ²	\$0.50	\$1.10

*Orders executed in the Opening Cross per Options 3, Section 8 are not subject to Options 7, Section 2(1) pricing, instead, these orders are subject to the pricing within Options 7, Section 2(2).

¹ The Customer and Professional Rebate to Add Liquidity in Penny Symbols will be paid per the highest tier achieved below. To determine the applicable percentage of total industry customer equity and ETF option average daily volume, unless otherwise stated, the Participant's Penny Symbol and Non-Penny Symbol Customer and/or Professional volume that adds liquidity will be included.

Monthly Volume

- Tier 1** Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols of up to 0.10% of total industry customer equity and ETF option average daily volume (“ADV”) contracts per day in a month
- Tier 2** Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month
- Tier 3** Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month
- Tier 4** Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month
- Tier 5** Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.40% to 0.80% of total industry customer equity and ETF option ADV contracts per day in a month
- Tier 6** Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.80% or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds: (1) Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.20% or more of total industry customer equity and ETF option ADV contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS (defined below)

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

Participants that add 1.50% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of total industry customer equity and ETF option ADV contracts per day in a month and meet or exceed the cap for The Nasdaq Stock Market Opening Cross during the month will be subject to the following pricing applicable to executions less than 10,000 contracts: a \$0.32 per contract Penny Symbols Fee for Removing Liquidity when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.

Participants that add 1.75% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of total industry customer equity and ETF option ADV contracts per day in a month will be subject to the following pricing applicable to executions less than 10,000 contracts: a \$0.32 per contract Penny Symbols Fee for Removing Liquidity when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.

³ The NOM Market Maker Rebate to Add Liquidity in Penny Symbols will be paid per the highest tier achieved below.

Monthly Volume

- Tier 1** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of up to 0.10% of total industry customer equity and ETF option average daily volume (“ADV”) contracts per day in a month
- Tier 2** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month
- Tier 3** Participant: (a) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month: or (b)(1) transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.[70]80% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market, (2) transacts in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.[18]15% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, and (3) executes greater than 0.01% of CV via Market-on- Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross in the same month
- Tier 4** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month
- Tier 5** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month

and transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.40% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market

Tier 6 Participant: (a)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.95% of total industry customer equity and ETF option ADV contracts per day in a month, (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 30,000 or more contracts per day in a month must be removing liquidity, and (3) adds Firm, Broker-Dealer and Non-NOM Market Maker liquidity in Non-Penny Symbols of 10,000 or more contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.50% of total industry customer equity and ETF option ADV contracts per day in a month, and (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 15,000 or more contracts per day in a month must be removing liquidity

* “Total Volume” shall be defined as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Symbols and/or Non-Penny Symbols which either adds or removes liquidity on NOM.

⁴ Participants who achieve the NOM Market Maker Tier 3 or Tier 4 Rebate to Add Liquidity will receive \$0.40 per contract to add liquidity in the following symbols: AAPL, SPY, QQQ, IWM, and VXX.

⁵ The NOM Market Maker Fee for Adding Liquidity in Non-Penny Symbols will apply unless Participants meet the volume thresholds set forth in this note. Participants that add NOM Market Maker liquidity in Non-Penny Symbols of 10,000 to 14,999 ADV contracts per day in a month will be assessed a \$0.00 per contract Non-Penny Options Fee for Adding Liquidity in that month. Participants that add NOM Market Maker liquidity in Non-Penny Symbols of 15,000 or more ADV contracts per day in a month will receive the Non-Penny Rebate to Add Liquidity for that month instead of paying the Non-Penny Fee for Adding Liquidity.

⁶ Participants that qualify for the Tier 6 NOM Market Maker Rebate to Add Liquidity in Penny Symbols will receive a \$0.86 per contract NOM Market Maker Rebate to Add Liquidity in Non-Penny Symbols. Participants that qualify for Tier 7 or higher in the MARS Payment Schedule in Section (6) will receive an additional \$0.02 per contract NOM Market Maker Rebate to Add Liquidity in Non-Penny Symbols, in addition to receiving a \$0.86 per contract NOM Market Maker Rebate to Add Liquidity in Non-Penny Symbols. Participants that qualify for note “5” and note “6” incentives will receive the greater of the note “5” or note “6” incentive, but not both.

⁷ Participants that: (1) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols of 1.15% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional \$0.02 per contract Penny Symbol Customer Rebate to Add Liquidity for each

transaction which adds liquidity in Penny Symbol in that month; or (2) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols of 1.30% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional \$0.05 per contract Penny Symbol Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Symbols in that month; or (3) (a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker- Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month, (b) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Symbols above 0.12% of total industry customer equity and ETF option ADV contracts per day in a month, and (c) execute greater than 0.04% of Consolidated Volume (“CV”) via Market-on-Close/Limit-on- Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross within a month will receive an additional \$0.05 per contract Penny Symbol Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Symbols in a month. Consolidated Volume shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of an equity member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member’s trading activity.

⁸ NOM Participants that qualify for any MARS Payment Tier in Section (6) will receive: (1) an additional \$0.05 per contract Penny Symbol Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Symbols in that month, in addition to qualifying Customer Rebate to Add Liquidity Tier 1, or (2) an additional \$0.04 per contract Penny Symbol Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Symbols in that month, in addition to qualifying Penny Symbol Customer Rebate to Add Liquidity Tiers 2-6. NOM Participants that qualify for note “7” and note “8” incentives will receive the greater of the note “7” or note “8” incentive, but not both.

⁹ NOM Participants that transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 3.00% or more of Consolidated Volume in the same month on The Nasdaq Stock Market will receive a \$0.50 per contract Rebate to Add Liquidity in Penny Symbols as Customer, a \$0.48 per contract rebate as Professional, a \$1.00 per contract Rebate to Add Liquidity in Non-Penny Symbols as Customer, and a \$0.90 per contract Rebate to Add liquidity in Non-Penny Symbols as Professional. Participants that qualify for this rebate would not be eligible for any other rebates in Tiers 1-6 or other rebate incentives on NOM for Customer and Professional order flow in Options 7, Section 2(1).

¹⁰ NOM Participants that (a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 1.20% of total industry customer equity and ETF option ADV contracts per day in a month, (b) execute greater than 0.04% of Consolidated Volume (“CV”) via Market-on-Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross within a month, and (c) add greater than 1.5 million shares per day of non-displayed volume within The Nasdaq Stock

Market within a month will receive a \$0.55 per contract Rebate to Add Liquidity in Penny Symbols as Customer, a \$0.48 per contract Rebate to Add Liquidity in Penny Symbols as Professional, and a \$1.05 per contract Rebate to Add Liquidity in Non-Penny Symbols as Customer, and a \$0.90 per contract Rebate to Add Liquidity in Non-Penny Symbols as Professional. Participants that qualify for this rebate would not be eligible for any other rebates in Tiers 1-6 or other rebate incentives on NOM for Customer and Professional order flow in Options 7, Section 2(1).

¹¹ NOM Participants that qualify for the Tier 5 NOM Market Maker Rebate to Add Liquidity in Penny Symbols and add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.50% of total industry customer equity and ETF option ADV contracts per day in a month, will receive a \$0.46 per contract rebate to add liquidity in Penny Symbols as Market Maker in lieu of the Tier 5 rebate.

¹² A Participant that qualifies for Customer or Professional Penny Symbol Rebate to Add Liquidity Tiers 2, 3, 4, or 5 in a month will receive an additional \$0.10 per contract Non-Penny Symbol Rebate to Add Liquidity for each transaction which adds liquidity in Non-Penny Symbols in that month. A Participant that qualifies for Customer or Professional Penny Symbol Rebate to Add Liquidity Tier 6 in a month will receive an additional \$0.20 per contract Non-Penny Symbol Rebate to Add Liquidity as Customer and an additional \$0.10 per contract Non-Penny Symbol Rebate to Add Liquidity as Professional for such transactions which add liquidity in Non-Penny Symbols in that month.

(2) Opening Cross per Options 3, Section 8

All orders executed in the Opening Cross:

Customer orders will receive the Rebate to Add Liquidity during the Exchange's Opening Cross, unless the contra-side is also a Customer. Broker-Dealers, Professionals, Firms, Non-NOM Market Makers and NOM Market Makers will be assessed the Fee for Removing Liquidity during the Exchange's Opening Cross.

(3) Fees for routing contracts to markets other than The Nasdaq Options Market shall be assessed as follows:

Non-Customer	• \$0.99 per contract to any options exchange.
Customer	• Routing Fees to Phlx[HLX]: \$0.13 per contract fee ("Fixed Fee") in addition to the actual transaction fee assessed.
	• Routing Fees to BX [Options]: <u>\$0.13 per contract fee ("Fixed Fee") in addition to the actual transaction fee assessed.</u>
	• Routing Fees to all other options exchanges: \$0.23 per contract fee ("Fixed Fee") in addition to the actual

transaction fee assessed. If the away market pays a rebate, the Routing Fee will be \$0.13 per contract.

[(4)

(a) For purposes of determining equity tier calculations under this section, any day that the market is not open for the entire trading day will be excluded from such calculation.

(b) Removal of Days for Purposes of Options Pricing Tiers:

(i)

(A) Any day that the Exchange announces in advance that it will not be open for trading will be excluded from the options tier calculations set forth in its Pricing Schedule; and (B) any day with a scheduled early market close ("Scheduled Early Close") may be excluded from the options tier calculations only pursuant to paragraph (iii) below.

(ii) The Exchange may exclude the following days ("Unanticipated Events") from the options tier calculations only pursuant to paragraph (iii) below, specifically any day that: (A) the market is not open for the entire trading day, (B) the Exchange instructs Participants in writing to route their orders to other markets, (C) the Exchange is inaccessible to Participants during the 30-minute period before the opening of trade due to an Exchange system disruption, or (D) the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours.

(iii) If a day is to be excluded as a result of paragraph (i)(B) or (ii) above, the Exchange will exclude the day from any Participant's monthly options tier calculations as follows:

(A) the Exchange may exclude from the ADV calculation any Scheduled Early Close or Unanticipated Event; and

(B) the Exchange may exclude from any other applicable options tier calculation provided for in its Pricing Schedule (together with (ii)(A), "Tier Calculations") any Scheduled Early Close or Unanticipated Event.

provided, in each case, that the Exchange will only remove the day for Participants that would have a lower Tier Calculation with the day included.]

[(6)4] **Market Access and Routing Subsidy ("MARS")**

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