

Required fields are shown with yellow backgrounds and asterisks.

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

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<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) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

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

**Description**

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

A proposal to amend The Nasdaq Options Market LLCs Pricing Schedule at Options 7, Section 5 related to the Options Regulatory Fee.

**Contact Information**

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

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

**Signature**

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

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

(Title \*)

Date 07/02/2021	EVP and Chief Legal Counsel
By John Zecca	<div style="border: 1px solid black; width: 100%; height: 20px;"></div>
(Name *)	

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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

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

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

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

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

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

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Exhibit Sent As Paper Document

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

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

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend The Nasdaq Options Market LLC’s (“NOM”) Pricing Schedule at Options 7, Section 5 related to the Options Regulatory Fee or “ORF”.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on October 1, 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:

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

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

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

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

a. Purpose

Currently, NOM assesses an ORF of \$0.0020 per contract side as specified in NOM's Pricing Schedule at Options 7, Section 5. The Exchange proposes to waive its ORF from October 1, 2021 to January 31, 2022, and then recommence the ORF on February 1, 2022. By way of background, the options industry has experienced extremely high options trading volumes and volatility. The increased options volumes have impacted our ORF collection which, in turn, has caused the Exchange to continue to revisit its financial forecast to reflect the sustained elevated options volumes and volatility. As the Exchange continues to monitor the amount of revenue collected from the ORF to ensure that our ORF collection, in combination with other regulatory fees and fines, does not exceed regulatory costs, the Exchange has found it difficult to determine when volumes will return to more normal levels. In order to avoid iterative rule changes to amend its ORF, the Exchange proposes to instead waive its ORF from October 1, 2021 to January 31, 2022, to permit the Exchange to plan future forecasts without the need to account for any ORF collection during that timeframe. This proposal would ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, would not exceed the Exchange's total regulatory costs. NOM would recommence assessing its current ORF rate of \$0.0020 per contract side as of February 1, 2022. Of note, NOM purposes to continue to operate with the ORF fee waived in January 2022 to allow its Participants and other broker dealers time to align their systems for February 1, 2022, allowing for time after the holiday period which traditionally have year-end code freezes in place.

*Collection of ORF*

Currently, NOM assesses its ORF for each customer option transaction that is either: (1) executed by a Participant on NOM; or (2) cleared by a NOM Participant at The Options Clearing Corporation (“OCC”) in the customer range,<sup>3</sup> even if the transaction was executed by a non-member of NOM, regardless of the exchange on which the transaction occurs.<sup>4</sup> If the OCC clearing member is a NOM Participant, ORF is assessed and collected on all cleared customer contracts (after adjustment for CMTA<sup>5</sup>); and (2) if the OCC clearing member is not a NOM Participant, ORF is collected only on the cleared customer contracts executed at NOM, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.<sup>6</sup>

In the case where a Participant both executes a transaction and clears the transaction, the ORF is assessed to and collected from that Participant. In the case where a Participant executes a transaction and a different member clears the transaction, the ORF is assessed to and collected from the Participant who clears the transaction and not

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<sup>3</sup> Participants must record the appropriate account origin code on all orders at the time of entry in order. The Exchange represents that it has surveillances in place to verify that Participants mark orders with the correct account origin code.

<sup>4</sup> The Exchange uses reports from OCC when assessing and collecting the ORF.

<sup>5</sup> CMTA or Clearing Member Trade Assignment is a form of “give-up” whereby the position will be assigned to a specific clearing firm at OCC.

<sup>6</sup> By way of example, if Broker A, a NOM Participant, routes a customer order to CBOE and the transaction executes on CBOE and clears in Broker A’s OCC Clearing account, ORF will be collected by NOM from Broker A’s clearing account at OCC via direct debit. While this transaction was executed on a market other than NOM, it was cleared by a NOM Participant in the member’s OCC clearing account in the customer range, therefore there is a regulatory nexus between NOM and the transaction. If Broker A was not a NOM Participant, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on NOM nor was it cleared by a NOM Participant.

the Participant who executes the transaction. In the case where a non-member executes a transaction at an away market and a Participant clears the transaction, the ORF is assessed to and collected from the Participant who clears the transaction. In the case where a Participant executes a transaction on NOM and a non-member clears the transaction, the ORF is assessed to the Participant that executed the transaction on NOM and collected from the non-member who cleared the transaction. In the case where a Participant executes a transaction at an away market and a non-member clears the transaction, the ORF is not assessed to the Participant who executed the transaction or collected from the non-member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the Participant executing the trade at an away market.

*ORF Revenue and Monitoring of ORF*

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset ORF.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of member customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory

costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day to day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as Office of the General Counsel, technology, and internal audit. Indirect expenses are estimated to be approximately 42% of the total regulatory costs for 2021. Thus, direct expenses are estimated to be approximately 58% of total regulatory costs for 2021.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

#### Proposal

Based on the Exchange's most recent review, the Exchange is proposing to waive ORF from October 1, 2021 to January 31, 2022, in order to help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. NOM would recommence assessing its current ORF rate of \$0.0020 per contract side as of February 1, 2022. The Exchange issued an Options Trader Alert on July 2, 2021 indicating the proposed rate change for October 1, 2021.<sup>7</sup>

The proposed waiver is based on recent options volumes. Options volume in 2021 remains significantly high when that volume is compared to 2019 and 2020 options volume. For example, total options contract volume in November 2020 was 71% higher

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<sup>7</sup> See Options Trader Alert 2021-41.

than the total options contract volume in November 2019.<sup>8</sup> Below is industry data from OCC<sup>9</sup> which illustrates the significant increase in volume during the fourth quarter of 2020.

<b>Volume</b>	<b>October 2020</b>	<b>November 2020</b>	<b>December 2020</b>	<b>Q4 2020</b>
<b>Total</b>	633,365,184	673,660,858	753,568,354	2,060,594,396
<b>Customer</b>	587,707,301	630,297,252	708,037,956	1,926,042,509
<b>Total ADV</b>	28,789,326.55	33,683,042.90	34,253,107.00	32,196,787.44
<b>Customer ADV</b>	26,713,968.23	31,514,862.60	32,183,543.45	30,094,414.20

Below is industry data from OCC<sup>10</sup> which illustrates the significant increase in volume from January 2021 through March 2021. The options volume in the first quarter of 2021 was higher than the fourth quarter of 2020. Also, April and May 2021 volumes remain significantly high as compared to 2020 options volume in general.

<b>Volume</b>	<b>January 2021</b>	<b>February 2021</b>	<b>March 2021</b>	<b>April 2021</b>	<b>May 2021</b>
<b>Total</b>	838,339,790	823,412,827	898,653,388	711,388,828	718,368,993
<b>Customer</b>	784,399,878	782,113,450	837,247,059	667,208,963	659,913,862
<b>Total ADV</b>	44,123,146.84	43,337,517.20	39,071,886.40	33,875,658.50	35,918,449.70
<b>Customer ADV</b>	41,284,204.11	41,163,865.79	36,402,046.04	31,771,855.38	32,995,693.10

There can be no assurance that the Exchange's final costs for 2021 will not differ materially from these expectations and prior practice, nor can the Exchange predict with

<sup>8</sup> See data from OCC at: <https://www.businesswire.com/news/home/20201202005584/en/OCC-November-2020-Total-Volume-Up-71-Percent-From-a-Year-Ago>.

<sup>9</sup> See data from OCC at: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Volume-by-Account-Type>.

<sup>10</sup> Id.



certainty whether options volume will remain at the current level going forward. The Exchange notes however, that when combined with regulatory fees and fines, the revenue being generated utilizing the current ORF rate may result in revenue in excess of the Exchange's estimated regulatory costs for the year. Particularly, as noted above, the options market has seen a substantial increase in volume in 2021 as compared to 2020, due in large part to the continued extreme volatility in the marketplace as a result of the COVID-19 pandemic. This unprecedented spike in volatility resulted in significantly higher volume than was originally projected by the Exchange (thereby resulting in substantially higher ORF revenue than projected). The Exchange therefore proposes to waive ORF from October 1, 2021 to January 31, 2022 in order to ensure it does not exceed its regulatory costs for 2021.<sup>11</sup> Particularly, the Exchange believes that waiving ORF from October 1, 2021 to January 31, 2022 and taking into account all of the Exchange's other regulatory fees and fines would allow the Exchange to continue covering a material portion of its regulatory costs, while lessening the potential for generating excess revenue that may otherwise occur using the current rate.<sup>12</sup>

NOM would recommence assessing its current ORF rate of \$0.0018 per contract side as of February 1, 2022. Until October 1, 2021, the Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange

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<sup>11</sup> The Exchange will waive ORF in January 2022 to provide broker dealers additional time in the new year to code their systems as necessary for the February 1, 2022 commencement of ORF.

<sup>12</sup> The Exchange notes that its regulatory responsibilities with respect to member compliance with options sales practice rules have largely been allocated to FINRA under a 17d-2 agreement. The ORF is not designed to cover the cost of that options sales practice regulation.

would also continue monitoring the amount of revenue collected from the ORF when it recommences assessing ORF on February 1, 2022. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission and notifying<sup>13</sup> its Participants via an Options Trader Alert.<sup>14</sup>

b. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>15</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>16</sup>, which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>17</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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<sup>13</sup> The Exchange will provide Participants with such notice at least 30 calendar days prior to the effective date of the change.

<sup>14</sup> The Exchange notes that in connection with this proposal, it provided the Commission confidential details regarding the Exchange’s projected regulatory revenue, including projected revenue from ORF, along with a projected regulatory expenses.

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

<sup>16</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

The Exchange believes the proposed fee waiver is reasonable because customer transactions will be subject to no ORF from October 1, 2021 to January 31, 2022. Moreover, the proposed waiver is necessary in order for the Exchange to not collect revenue in excess of its anticipated regulatory costs, in combination with other regulatory fees and fines, which is consistent with the Exchange's practices.

The Exchange had designed the ORF to generate revenues that would be less than the amount of revenue collected from the ORF of the Exchange's regulatory costs to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs, which is consistent with the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. As discussed above, however, after review of its regulatory costs and regulatory revenues, which includes revenues from ORF and other regulatory fees and fines, the Exchange determined that absent a reduction in ORF, it may be collecting revenue in excess of its regulatory costs. Indeed, the Exchange notes that when taking into account the recent options volume, which included an increase in customer options transactions, it estimates the ORF may generate revenues that may cover more than the approximated Exchange's projected regulatory costs. As such, the Exchange believes it's reasonable and appropriate to waive ORF from October 1, 2021 to January 31, 2022 and recommence assessing ORF on February 1, 2022.

The Exchange also believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all Participants on all their transactions that clear in

the customer range at the OCC.<sup>18</sup> The Exchange believes the ORF ensures fairness by assessing higher fees to those Participants that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (e.g., staff expenses), as well as investigations into customer complaints and the terminations of registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., member proprietary transactions) of its regulatory program. Moreover, the Exchange notes that it has broad regulatory responsibilities with respect to activities of its Participants, irrespective of where their transactions take place. Many of the Exchange's surveillance programs for customer trading activity may require the Exchange to look at activity across all markets, such as reviews related to position limit violations and manipulation. Indeed, the Exchange cannot effectively review for such conduct without looking at and evaluating activity regardless of where it transpires. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related

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<sup>18</sup> If the OCC clearing member is a NOM Participant, ORF is assessed and collected on all cleared customer contracts (after adjustment for CMTA); and (2) if the OCC clearing member is not a NOM Participant, ORF is collected only on the cleared customer contracts executed at NOM, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.

issues. Through its participation in the Intermarket Surveillance Group (“ISG”)<sup>19</sup> the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange’s regulatory activities with respect to customer trading activity of its Participants.

4. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

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.

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<sup>19</sup> ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG’s information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>20</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2021-057)

July \_\_, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NOM's Options Regulatory Fee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 2, 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 LLC's ("NOM") Pricing Schedule at Options 7, Section 5 related to the Options Regulatory Fee or "ORF".

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on October 1, 2021.

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.

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

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



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

Currently, NOM assesses an ORF of \$0.0020 per contract side as specified in NOM's Pricing Schedule at Options 7, Section 5. The Exchange proposes to waive its ORF from October 1, 2021 to January 31, 2022, and then recommence the ORF on February 1, 2022. By way of background, the options industry has experienced extremely high options trading volumes and volatility. The increased options volumes have impacted our ORF collection which, in turn, has caused the Exchange to continue to revisit its financial forecast to reflect the sustained elevated options volumes and volatility. As the Exchange continues to monitor the amount of revenue collected from the ORF to ensure that our ORF collection, in combination with other regulatory fees and fines, does not exceed regulatory costs, the Exchange has found it difficult to determine when volumes will return to more normal levels. In order to avoid iterative rule changes to amend its ORF, the Exchange proposes to instead waive its ORF from October 1, 2021 to January 31, 2022, to permit the Exchange to plan future forecasts without the need to account for any ORF collection during that timeframe. This proposal would ensure that revenue collected from the ORF, in combination with other regulatory fees and fines,

would not exceed the Exchange's total regulatory costs. NOM would recommence assessing its current ORF rate of \$0.0020 per contract side as of February 1, 2022. Of note, NOM purposes to continue to operate with the ORF fee waived in January 2022 to allow its Participants and other broker dealers time to align their systems for February 1, 2022, allowing for time after the holiday period which traditionally have year-end code freezes in place.

*Collection of ORF*

Currently, NOM assesses its ORF for each customer option transaction that is either: (1) executed by a Participant on NOM; or (2) cleared by a NOM Participant at The Options Clearing Corporation ("OCC") in the customer range,<sup>3</sup> even if the transaction was executed by a non-member of NOM, regardless of the exchange on which the transaction occurs.<sup>4</sup> If the OCC clearing member is a NOM Participant, ORF is assessed and collected on all cleared customer contracts (after adjustment for CMTA<sup>5</sup>); and (2) if the OCC clearing member is not a NOM Participant, ORF is collected only on the cleared customer contracts executed at NOM, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.<sup>6</sup>

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<sup>3</sup> Participants must record the appropriate account origin code on all orders at the time of entry in order. The Exchange represents that it has surveillances in place to verify that Participants mark orders with the correct account origin code.

<sup>4</sup> The Exchange uses reports from OCC when assessing and collecting the ORF.

<sup>5</sup> CMTA or Clearing Member Trade Assignment is a form of "give-up" whereby the position will be assigned to a specific clearing firm at OCC.

<sup>6</sup> By way of example, if Broker A, a NOM Participant, routes a customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by NOM from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than NOM, it was cleared by a NOM Participant in the member's OCC

In the case where a Participant both executes a transaction and clears the transaction, the ORF is assessed to and collected from that Participant. In the case where a Participant executes a transaction and a different member clears the transaction, the ORF is assessed to and collected from the Participant who clears the transaction and not the Participant who executes the transaction. In the case where a non-member executes a transaction at an away market and a Participant clears the transaction, the ORF is assessed to and collected from the Participant who clears the transaction. In the case where a Participant executes a transaction on NOM and a non-member clears the transaction, the ORF is assessed to the Participant that executed the transaction on NOM and collected from the non-member who cleared the transaction. In the case where a Participant executes a transaction at an away market and a non-member clears the transaction, the ORF is not assessed to the Participant who executed the transaction or collected from the non-member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the Participant executing the trade at an away market.

*ORF Revenue and Monitoring of ORF*

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a

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clearing account in the customer range, therefore there is a regulatory nexus between NOM and the transaction. If Broker A was not a NOM Participant, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on NOM nor was it cleared by a NOM Participant.

regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset ORF.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of member customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day to day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as Office of the General Counsel, technology, and internal audit. Indirect expenses are estimated to be approximately 42% of the total regulatory costs for 2021. Thus, direct expenses are estimated to be approximately 58% of total regulatory costs for 2021.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

#### Proposal

Based on the Exchange's most recent review, the Exchange is proposing to waive ORF from October 1, 2021 to January 31, 2022, in order to help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. NOM would recommence assessing its current ORF rate of \$0.0020 per contract side as of February 1, 2022. The Exchange

issued an Options Trader Alert on July 2, 2021 indicating the proposed rate change for October 1, 2021.<sup>7</sup>

The proposed waiver is based on recent options volumes. Options volume in 2021 remains significantly high when that volume is compared to 2019 and 2020 options volume. For example, total options contract volume in November 2020 was 71% higher than the total options contract volume in November 2019.<sup>8</sup> Below is industry data from OCC<sup>9</sup> which illustrates the significant increase in volume during the fourth quarter of 2020.

<b>Volume</b>	<b>October 2020</b>	<b>November 2020</b>	<b>December 2020</b>	<b>Q4 2020</b>
<b>Total</b>	633,365,184	673,660,858	753,568,354	2,060,594,396
<b>Customer</b>	587,707,301	630,297,252	708,037,956	1,926,042,509
<b>Total ADV</b>	28,789,326.55	33,683,042.90	34,253,107.00	32,196,787.44
<b>Customer ADV</b>	26,713,968.23	31,514,862.60	32,183,543.45	30,094,414.20

Below is industry data from OCC<sup>10</sup> which illustrates the significant increase in volume from January 2021 through March 2021. The options volume in the first quarter of 2021 was higher than the fourth quarter of 2020. Also, April and May 2021 volumes remain significantly high as compared to 2020 options volume in general.

<sup>7</sup> See Options Trader Alert 2021-41.

<sup>8</sup> See data from OCC at: <https://www.businesswire.com/news/home/20201202005584/en/OCC-November-2020-Total-Volume-Up-71-Percent-From-a-Year-Ago>.

<sup>9</sup> See data from OCC at: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Volume-by-Account-Type>.

<sup>10</sup> Id.

<b>Volume</b>	<b>January 2021</b>	<b>February 2021</b>	<b>March 2021</b>	<b>April 2021</b>	<b>May 2021</b>
<b>Total</b>	838,339,790	823,412,827	898,653,388	711,388,828	718,368,993
<b>Customer</b>	784,399,878	782,113,450	837,247,059	667,208,963	659,913,862
<b>Total ADV</b>	44,123,146.84	43,337,517.20	39,071,886.40	33,875,658.50	35,918,449.70
<b>Customer ADV</b>	41,284,204.11	41,163,865.79	36,402,046.04	31,771,855.38	32,995,693.10

There can be no assurance that the Exchange's final costs for 2021 will not differ materially from these expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward. The Exchange notes however, that when combined with regulatory fees and fines, the revenue being generated utilizing the current ORF rate may result in revenue in excess of the Exchange's estimated regulatory costs for the year. Particularly, as noted above, the options market has seen a substantial increase in volume in 2021 as compared to 2020, due in large part to the continued extreme volatility in the marketplace as a result of the COVID-19 pandemic. This unprecedented spike in volatility resulted in significantly higher volume than was originally projected by the Exchange (thereby resulting in substantially higher ORF revenue than projected). The Exchange therefore proposes to waive ORF from October 1, 2021 to January 31, 2022 in order to ensure it does not exceed its regulatory costs for 2021.<sup>11</sup> Particularly, the Exchange believes that waiving ORF from October 1, 2021 to January 31, 2022 and taking into account all of the Exchange's other regulatory fees and fines would allow the Exchange to continue

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<sup>11</sup> The Exchange will waive ORF in January 2022 to provide broker dealers additional time in the new year to code their systems as necessary for the February 1, 2022 commencement of ORF.

covering a material portion of its regulatory costs, while lessening the potential for generating excess revenue that may otherwise occur using the current rate.<sup>12</sup>

NOM would recommence assessing its current ORF rate of \$0.0018 per contract side as of February 1, 2022. Until October 1, 2021, the Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange would also continue monitoring the amount of revenue collected from the ORF when it recommences assessing ORF on February 1, 2022. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission and notifying<sup>13</sup> its Participants via an Options Trader Alert.<sup>14</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>15</sup>

Specifically, the Exchange believes the proposed rule change is consistent with Section

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<sup>12</sup> The Exchange notes that its regulatory responsibilities with respect to member compliance with options sales practice rules have largely been allocated to FINRA under a 17d-2 agreement. The ORF is not designed to cover the cost of that options sales practice regulation.

<sup>13</sup> The Exchange will provide Participants with such notice at least 30 calendar days prior to the effective date of the change.

<sup>14</sup> The Exchange notes that in connection with this proposal, it provided the Commission confidential details regarding the Exchange’s projected regulatory revenue, including projected revenue from ORF, along with a projected regulatory expenses.

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

6(b)(4) of the Act<sup>16</sup>, which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>17</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee waiver is reasonable because customer transactions will be subject to no ORF from October 1, 2021 to January 31, 2022. Moreover, the proposed waiver is necessary in order for the Exchange to not collect revenue in excess of its anticipated regulatory costs, in combination with other regulatory fees and fines, which is consistent with the Exchange's practices.

The Exchange had designed the ORF to generate revenues that would be less than the amount of revenue collected from the ORF of the Exchange's regulatory costs to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs, which is consistent with the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. As discussed above, however, after review of its regulatory costs and regulatory revenues, which includes revenues from ORF and other regulatory fees and fines, the Exchange determined that absent a reduction in ORF, it may be collecting revenue in excess of its regulatory costs. Indeed, the Exchange notes that when taking into account the recent options volume, which included an increase in customer options transactions, it estimates the ORF may generate revenues that may cover more than the approximated

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<sup>16</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> 15 U.S.C. 78f(b)(5).



Exchange's projected regulatory costs. As such, the Exchange believes it's reasonable and appropriate to waive ORF from October 1, 2021 to January 31, 2022 and recommence assessing ORF on February 1, 2022.

The Exchange also believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all Participants on all their transactions that clear in the customer range at the OCC.<sup>18</sup> The Exchange believes the ORF ensures fairness by assessing higher fees to those Participants that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (e.g., staff expenses), as well as investigations into customer complaints and the terminations of registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., member proprietary transactions) of its regulatory program. Moreover, the Exchange notes that it has broad regulatory responsibilities with respect to activities of its Participants, irrespective of where their transactions take place. Many of the Exchange's surveillance programs for customer trading activity may require the Exchange to look at activity across all markets, such as

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<sup>18</sup> If the OCC clearing member is a NOM Participant, ORF is assessed and collected on all cleared customer contracts (after adjustment for CMTA); and (2) if the OCC clearing member is not a NOM Participant, ORF is collected only on the cleared customer contracts executed at NOM, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.

reviews related to position limit violations and manipulation. Indeed, the Exchange cannot effectively review for such conduct without looking at and evaluating activity regardless of where it transpires. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (“ISG”)<sup>19</sup> the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange’s regulatory activities with respect to customer trading activity of its Participants.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected

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<sup>19</sup> ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG’s information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>20</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>21</sup>

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 necessary or appropriate in the public interest, for the protection of investors, or 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.

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>21</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2021-057 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-2021-057. 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-2021-057 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>22</sup> 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**

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**Section 5 Nasdaq Options Regulatory Fee**

NOM [Participants] will [be assessed an] waive the Options Regulatory Fee of \$0.0020 per contract side from October 1, 2021 to January 31, 2022. NOM will recommence assessing an Options Regulatory Fee of \$0.0020 per contract side as of February 1, 2022.

The Options Regulatory Fee (“ORF”) is assessed by NOM to each NOM Participant for options transactions cleared by OCC in the Customer range where: (1) the execution occurs on NOM or (2) the execution occurs on another exchange and is cleared by a NOM Participant. The ORF is collected by OCC on behalf of NOM from (1) NOM clearing members for all Customer transactions they clear or (2) non-members for all Customer transactions they clear that were executed on NOM. NOM uses reports from OCC when assessing and collecting ORF. The Exchange will notify Participants via an Options Trader Alert of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change.

NOM Participants who do not transact an equities business on The Nasdaq Stock Market LLC in a calendar year will receive a refund of the fees specified in Equity 7, Section 30(b) upon written notification to the Exchange along with documentation evidencing that no equities business was conducted on The Nasdaq Stock Market for that calendar year. The Exchange will accept refund requests up until sixty (60) days after the end of the calendar year.

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