

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 23

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

File No.* SR - 2012 - * 033

Amendment No. (req. for Amendments *)

Proposed Rule Change by NASDAQ Stock Market

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
---	--------------------------------------	-------------------------------------	---	---	--

Rule

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

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

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

Relating to Fees and Rebates in Penny Options and non-Penny Pilot Options

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 proposed rule change.

First Name *	Angela	Last Name *	Dunn
Title *	Associate General Counsel		
E-mail *	Angela.dunn@nasdaqomx.com		
Telephone *	(215) 496-5692	Fax	<input type="text"/>

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 officer.

Date 02/29/2012

By Edward S. Knight
(Name *)Executive Vice President and General Counsel
(Title *)

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

Edward S Knight,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information (required)

Add Remove View

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

Exhibit 1 - Notice of Proposed Rule Change (required)

Add Remove View

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

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

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

Add Remove View

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

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

Add Remove View

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

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to modify pricing for NASDAQ members using the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options. Specifically, NASDAQ proposes to amend Section 2 of Chapter XV of NOM Rules to increase transaction fees for adding and removing liquidity in All Other Options³ as well as the Customer Rebate to Add Liquidity in Penny Pilot Options (“Penny Options”).

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2012.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ All Other Options refers to non-Penny Pilot options. The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through June 30, 2012. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008)(SR-NASDAQ-2008-026)(notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009)(SR-NASDAQ-2009-091)(notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009)(SR-NASDAQ-2009-097)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010)(SR-NASDAQ-2010-013)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR-NASDAQ-2010-053)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR-NASDAQ-2011-169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot). See also NOM Rules, Chapter VI, Section 5.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and a copy of the applicable text in the Exchange's Rules is attached hereto 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 NASDAQ pursuant to authority delegated by the Board of Directors of NASDAQ on August 19, 2011. NASDAQ staff will advise the Board of Directors of NASDAQ of any action taken pursuant to delegated authority. No other action by NASDAQ is necessary for the filing of the rule change.

Questions regarding this rule filing may be directed to Angela Saccomandi Dunn, Associate General Counsel, at (215) 496-5692.

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

a. Purpose

NASDAQ proposes to modify certain transaction fees and rebates in Chapter XV, Sec. 2, entitled "NASDAQ Options Market – Fees," in order to attract and enhance participation in NOM and raise revenues.

Specifically, the Exchange proposes to amend All Other Options (non-Penny Options) rebates and fees. The Exchange proposes to increase the Professional Fee for Adding Liquidity in All Other Options from \$0.20 to \$0.30 per contract.⁴ The Exchange

⁴ The Exchange is not proposing to amend the Customer, Firm, Non-NOM Market Maker or NOM Market Maker Fees for Adding Liquidity in All Other Options.

also proposes to increase the Professional, Firm, Non-NOM Market Maker and NOM Market Maker Fees for Removing Liquidity in All Other Options from \$0.45 to \$0.50 per contract.⁵ The Exchange believes that increasing the Professional Fee for Adding Liquidity in All Other Options and the Professional, Firm, Non-NOM Market Maker and NOM Market Maker Fees for Removing Liquidity in All Other Options will help raise revenues.

The Exchange is also proposing to amend the monthly volume tiers of the Customer Rebate to Add Liquidity in Penny Options to further incentivize NOM Participants to route Customer orders to the Exchange. Currently, there are five tiers of the Customer Rebate to Add Liquidity in Penny Options. Each tier requires the NOM participant to meet certain criteria in order to qualify for the rebate. Specifically, the Exchange is proposing to amend Tier 5, which states that if a “Participant adds (1) Customer liquidity of 25,000 or more contracts per day in a month, and (2) the Participant has certified for the Investor Support Program set forth in Rule 7014;⁶ and (3)

⁵ The Exchange is not proposing to amend the Customer Fee for Removing Liquidity in All Other Options.

⁶ For a detailed description of the Investor Support Program or “ISP,” see Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (SR-NASDAQ-2010-141) (the “ISP Filing”). See also Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (SR-NASDAQ-2010-153); and 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (SR-NASDAQ-2010-154). In order to qualify for an ISP credit, a Participant would need to transact a certain amount of displayed liquidity through an ISP-designated port which results in an increase in the overall liquidity that the member provides to NASDAQ measured as a proportion of the consolidated share volume traded by all market participants across all trading venues. To this end, a member's “Baseline Participation Ratio” is determined by measuring the number of shares in liquidity-providing orders entered by the member (through any NASDAQ port) and executed on NASDAQ and dividing this number by the consolidated (across all trading venues) share volume traded in a given month. To determine whether a member added liquidity to NASDAQ in a

the Participant executed at least one order on NASDAQ's equity market," the Participant will be paid a rebate of \$0.40 per contract. The Exchange is proposing to increase this Customer rebate to \$0.41 per contract. The Exchange believes that further incentivizing NOM Participants to send additional Customer orders to the Exchange will benefit all market participants by adding liquidity to the market in Penny Options.

b. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,⁷ in general, and with Section 6(b)(4) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that its proposal to increase the Professional Fee for Adding Liquidity in All Other Options to \$0.30 per contract is reasonable, equitable and not unfairly discriminatory, because, as compared to Firms and Non-NOM Market Makers, a Professional would continue to be assessed a lower Fee for Adding Liquidity. In addition, the new fee is the same fee assessed today for a NOM Market Maker for adding liquidity. The Exchange believes that Professionals engage in trading activity similar to that conducted by market makers. For example, Professionals join bids and offers on the Exchange and thus compete for incoming order flow; Professionals do so in direct competition with the Exchange's market makers. Also, Professionals have access

given month, NASDAQ would perform the same calculation on a monthly basis for the then-current month and compare the resulting ratio to the Baseline Participation Ratio.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

to more information than a Customer and therefore should continue to be assessed a higher rate than a Customer.

The Exchange believes that its proposal to increase the Professional Fee for Removing Liquidity in All Other Options to \$0.50 per contract is reasonable, equitable and not unfairly discriminatory because Professionals would be assessed a fee that is less favorable than a Customer but equivalent to market makers because it has been established that Professionals have access to more information than a Customer.

In addition, the Exchange believes that its proposal to increase the Firm and Non-NOM Market Maker Fees for Removing Liquidity in All Other Options to \$0.50 per contract is reasonable because the Firm and Non-NOM Market Maker fees are within the range of fees assessed by other exchanges. NYSE Arca, Inc. (“NYSE Arca”) assesses Firms and Broker-Dealers a \$0.50 per contract fee for electronic orders.⁹

The Exchange also believes that its proposal to increase the Professional, Firm, Non-NOM Market Maker and NOM Market Maker Fees for Removing Liquidity in All Other Options to \$0.50 per contract is reasonable because the proposed Fees for Removing Liquidity are less than the average fees paid by market makers on other exchanges when factoring in payment for order flow.¹⁰ In addition, the Exchange believes that its proposal to increase the Professional, Firm, Non-NOM Market Maker and NOM Market Maker Fees for Removing Liquidity in All Other Options to \$0.50 per contract is equitable and not unfairly discriminatory because the Exchange is proposing

⁹ See NYSE Arca’s Fee Schedule.

¹⁰ NOM does not have a payment for order flow program.

to uniformly increase the fees applicable to all market participants except Customers.¹¹

A lower Customer Fee for Removing Liquidity benefits all market participants by incentivizing NOM Participants to transact a greater number of Customer orders, which results in increased liquidity.

The Exchange believes that the increased Customer rebate for market participants that add Customer liquidity of 25,000 or more contracts per day in a month, certify for the ISP and execute at least one order on NASDAQ's equity market is reasonable, because it will continue to incentivize NOM Participants to transact additional Customer orders and encourage participants in the Exchange's equity markets to also participate in the Exchange's options market.

The Exchange believes that the increased Customer rebate for market participants that add Customer liquidity of 25,000 or more contracts per day in a month, certify for the ISP and execute at least one order on NASDAQ's equity market is equitable and not unfairly discriminatory, because the increased rebate is intended to encourage increased activity in both NOM and in the ISP of the NASDAQ equity market. The goal of the ISP is to incentivize members¹² to provide liquidity from individual equity investors to the

¹¹ Customers are assessed a \$0.45 per contract Fee for Removing Liquidity in All Other Options.

¹² The Commission has expressed its concern that a significant percentage of the orders of individual investors are executed in the over-the-counter ("OTC") market, that is, not on exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. See Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, "Concept Release"). In the Concept Release, the Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. The Commission published the Concept Release to invite public comment on a wide range of market structure issues, including high frequency trading and un-displayed, or "dark," liquidity. See also Mary L. Schapiro, *Strengthening Our*

NASDAQ Market Center. The increased rebate would encourage firms that certify pursuant to Rule 7014 to increase the amount of Customer order liquidity to NOM. The addition of such liquidity, either through the ISP or through increased Customer order flow, would benefit all Exchange members that participate in those markets.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive or rebate opportunities to be inadequate. The Exchange believes that the proposed fee and rebate scheme are competitive and similar to other fees, rebates and tier opportunities in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts the fees and rebates present on the Exchange today and substantially influences the proposal set forth above.

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

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, NASDAQ has designed its fees to compete effectively for the execution and routing of options contracts and to reduce the overall cost to investors of options trading.

Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) ("Schapiro Speech," available on the Commission website) (comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

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)

The foregoing proposed rule change establishes or changes 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 pursuant to Section 19(b)(3)(A)(ii) of the Act.¹³

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

Not applicable.

9. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

5. Text of the proposed rule change.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2012-033)

February __, 2012

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The NASDAQ Stock Market LLC Relating to Fees and Rebates in Penny Pilot Options and non-Penny Pilot Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on February 29, 2012. 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 NASDAQ. 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

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NASDAQ proposes to amend Section 2 of Chapter XV of NOM Rules to increase transaction fees for adding and removing liquidity in All Other Options³ as well as the Customer Rebate to Add Liquidity in Penny Pilot Options ("Penny Options").

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ All Other Options refers to non-Penny Pilot options. The Penny Pilot

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2012.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. 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.

was established in March 2008 and in October 2009 was expanded and extended through June 30, 2012. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008)(SR-NASDAQ-2008-026)(notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009)(SR-NASDAQ-2009-091)(notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009)(SR-NASDAQ-2009-097)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010)(SR-NASDAQ-2010-013)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR-NASDAQ-2010-053)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR-NASDAQ-2011-169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot). See also NOM Rules, Chapter VI, Section 5.

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

1. Purpose

NASDAQ proposes to modify certain transaction fees and rebates in Chapter XV, Sec. 2, entitled “NASDAQ Options Market – Fees,” in order to attract and enhance participation in NOM and raise revenues.

Specifically, the Exchange proposes to amend All Other Options (non-Penny Options) rebates and fees. The Exchange proposes to increase the Professional Fee for Adding Liquidity in All Other Options from \$0.20 to \$0.30 per contract.⁴ The Exchange also proposes to increase the Professional, Firm, Non-NOM Market Maker and NOM Market Maker Fees for Removing Liquidity in All Other Options from \$0.45 to \$0.50 per contract.⁵ The Exchange believes that increasing the Professional Fee for Adding Liquidity in All Other Options and the Professional, Firm, Non-NOM Market Maker and NOM Market Maker Fees for Removing Liquidity in All Other Options will help raise revenues.

The Exchange is also proposing to amend the monthly volume tiers of the Customer Rebate to Add Liquidity in Penny Options to further incentivize NOM Participants to route Customer orders to the Exchange. Currently, there are five tiers of the Customer Rebate to Add Liquidity in Penny Options. Each tier requires the NOM participant to meet certain criteria in order to qualify for the rebate. Specifically, the Exchange is proposing to amend Tier 5, which states that if a “Participant adds (1)

⁴ The Exchange is not proposing to amend the Customer, Firm, Non-NOM Market Maker or NOM Market Maker Fees for Adding Liquidity in All Other Options.

⁵ The Exchange is not proposing to amend the Customer Fee for Removing Liquidity in All Other Options.

Customer liquidity of 25,000 or more contracts per day in a month, and (2) the Participant has certified for the Investor Support Program set forth in Rule 7014;⁶ and (3) the Participant executed at least one order on NASDAQ's equity market," the Participant will be paid a rebate of \$0.40 per contract. The Exchange is proposing to increase this Customer rebate to \$0.41 per contract. The Exchange believes that further incentivizing NOM Participants to send additional Customer orders to the Exchange will benefit all market participants by adding liquidity to the market in Penny Options.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,⁷ in general, and with Section 6(b)(4) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system

⁶ For a detailed description of the Investor Support Program or "ISP," see Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (SR-NASDAQ-2010-141) (the "ISP Filing"). See also Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (SR-NASDAQ-2010-153); and 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (SR-NASDAQ-2010-154). In order to qualify for an ISP credit, a Participant would need to transact a certain amount of displayed liquidity through an ISP-designated port which results in an increase in the overall liquidity that the member provides to NASDAQ measured as a proportion of the consolidated share volume traded by all market participants across all trading venues. To this end, a member's "Baseline Participation Ratio" is determined by measuring the number of shares in liquidity-providing orders entered by the member (through any NASDAQ port) and executed on NASDAQ and dividing this number by the consolidated (across all trading venues) share volume traded in a given month. To determine whether a member added liquidity to NASDAQ in a given month, NASDAQ would perform the same calculation on a monthly basis for the then-current month and compare the resulting ratio to the Baseline Participation Ratio.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

which NASDAQ operates or controls.

The Exchange believes that its proposal to increase the Professional Fee for Adding Liquidity in All Other Options to \$0.30 per contract is reasonable, equitable and not unfairly discriminatory, because, as compared to Firms and Non-NOM Market Makers, a Professional would continue to be assessed a lower Fee for Adding Liquidity. In addition, the new fee is the same fee assessed today for a NOM Market Maker for adding liquidity. The Exchange believes that Professionals engage in trading activity similar to that conducted by market makers. For example, Professionals join bids and offers on the Exchange and thus compete for incoming order flow; Professionals do so in direct competition with the Exchange's market makers. Also, Professionals have access to more information than a Customer and therefore should continue to be assessed a higher rate than a Customer.

The Exchange believes that its proposal to increase the Professional Fee for Removing Liquidity in All Other Options to \$0.50 per contract is reasonable, equitable and not unfairly discriminatory because Professionals would be assessed a fee that is less favorable than a Customer but equivalent to market makers because it has been established that Professionals have access to more information than a Customer.

In addition, the Exchange believes that its proposal to increase the Firm and Non-NOM Market Maker Fees for Removing Liquidity in All Other Options to \$0.50 per contract is reasonable because the Firm and Non-NOM Market Maker fees are within the range of fees assessed by other exchanges. NYSE Arca, Inc. ("NYSE Arca") assesses Firms and Broker-Dealers a \$0.50 per contract fee for electronic orders.⁹

⁹ See NYSE Arca's Fee Schedule.

The Exchange also believes that its proposal to increase the Professional, Firm, Non-NOM Market Maker and NOM Market Maker Fees for Removing Liquidity in All Other Options to \$0.50 per contract is reasonable because the proposed Fees for Removing Liquidity are less than the average fees paid by market makers on other exchanges when factoring in payment for order flow.¹⁰ In addition, the Exchange believes that its proposal to increase the Professional, Firm, Non-NOM Market Maker and NOM Market Maker Fees for Removing Liquidity in All Other Options to \$0.50 per contract is equitable and not unfairly discriminatory because the Exchange is proposing to uniformly increase the fees applicable to all market participants except Customers.¹¹ A lower Customer Fee for Removing Liquidity benefits all market participants by incentivizing NOM Participants to transact a greater number of Customer orders, which results in increased liquidity.

The Exchange believes that the increased Customer rebate for market participants that add Customer liquidity of 25,000 or more contracts per day in a month, certify for the ISP and execute at least one order on NASDAQ's equity market is reasonable, because it will continue to incentivize NOM Participants to transact additional Customer orders and encourage participants in the Exchange's equity markets to also participate in the Exchange's options market.

The Exchange believes that the increased Customer rebate for market participants that add Customer liquidity of 25,000 or more contracts per day in a month, certify for the ISP and execute at least one order on NASDAQ's equity market is equitable and not

¹⁰ NOM does not have a payment for order flow program.

¹¹ Customers are assessed a \$0.45 per contract Fee for Removing Liquidity in All Other Options.

unfairly discriminatory, because the increased rebate is intended to encourage increased activity in both NOM and in the ISP of the NASDAQ equity market. The goal of the ISP is to incentivize members¹² to provide liquidity from individual equity investors to the NASDAQ Market Center. The increased rebate would encourage firms that certify pursuant to Rule 7014 to increase the amount of Customer order liquidity to NOM. The addition of such liquidity, either through the ISP or through increased Customer order flow, would benefit all Exchange members that participate in those markets.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive or rebate opportunities to be inadequate. The Exchange believes that the proposed fee and rebate scheme are competitive and similar to other fees, rebates and tier opportunities in place on other exchanges. The Exchange believes

¹² The Commission has expressed its concern that a significant percentage of the orders of individual investors are executed in the over-the-counter ("OTC") market, that is, not on exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. See Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, "Concept Release"). In the Concept Release, the Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. The Commission published the Concept Release to invite public comment on a wide range of market structure issues, including high frequency trading and un-displayed, or "dark," liquidity. See also Mary L. Schapiro, *Strengthening Our Equity Market Structure* (Speech at the Economic Club of New York, Sept. 7, 2010) ("Schapiro Speech," available on the Commission website) (comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

that this competitive marketplace materially impacts the fees and rebates present on the Exchange today and substantially influences the proposal set forth above.

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.

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.¹³ 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.

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:

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

- 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-2012-033 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2012-033. 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-2012-033 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

Exhibit 5

New text is underlined; deleted text is in brackets.

* * * * *

Chapter XV Options Fees

* * * * *

Sec. 2 NASDAQ Options Market—Fees

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

(1) Fees for Execution of Contracts on the NASDAQ Options Market

Fees and Rebates (per executed contract)					
	Customer	Professional	Firm	Non-NOM Market Maker	NOM Market Maker
Penny Pilot Options:					
Rebate to Add Liquidity	***	\$0.29	\$0.10	\$0.25	\$0.30
Fee for Removing Liquidity	\$0.44	\$0.45	\$0.45	\$0.45	\$0.45
NDX and MNX:					
Rebate to Add Liquidity	\$0.10	\$0.10	\$0.10	\$0.10	\$0.20
Fee for Removing Liquidity	\$0.50	\$0.50	\$0.50	\$0.50	\$0.40
All Other Options:					

Fee for Adding Liquidity	\$0.00	\$0.[20]30	\$0.45	\$0.45	\$0.30
Fee for Removing Liquidity	\$0.45	\$0.[45]50	\$0.[45]50	\$0.[45]50	\$0.[45]50
Rebate to Add Liquidity	\$0.20	\$0.00	\$0.00	\$0.00	\$0.00

*** The Customer Rebate to Add Liquidity in Penny Pilot Options will be paid as noted below. Each Customer order of 5,000 or more, displayed or non-displayed contracts, which adds liquidity in Penny Pilot Options, will qualify for an additional rebate of \$0.01 per contract provided the NOM Participant has qualified for a rebate in Tier 2, 3, 4 or 5 for that month.

Monthly Volume	Rebate to Add Liquidity
Tier 1 Participant adds Customer liquidity of up to 14,999 contracts per day in a month	\$0.26
Tier 2 Participant adds Customer liquidity of 15,000 to 49,999 contracts per day in a month	\$0.38
Tier 3 Participant adds Customer liquidity of 50,000 or more contracts per day in a month	\$0.42
Tier 4 Participant adds (1) Customer liquidity of 100,000 or more contracts per day in a month, and (2) NOM Market Maker liquidity of 40,000 or more contracts per day in a month	\$0.43
Tier 5 Participant adds (1) Customer liquidity of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014; and (3) the Participant executed at least one order on NASDAQ's equity market	\$0.4[0]1

^a For purposes of Tier 4, the Exchange will aggregate the trading activity of separate NOM Participants when computing average daily volumes where 75 percent common ownership or control exists between NOM Participants.

^b For purposes of Tier 5, the Exchange will allow a NOM Participant to qualify for the rebate if a NASDAQ member under common ownership with the NOM Participant has certified for the Investor Support Program and executed at least one order on NASDAQ's equity market. Common ownership is defined as 75 percent common ownership or control.

* * * * *