

*Required fields are shown with yellow backgrounds and asterisks.*

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

File No.\* SR - 2012 - \* 050

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"/>
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## 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 Routing Fees

**Contact Information**

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

First Name *	Angela	Last Name *	Dunn
Title *	Associate General Counsel		
E-mail *	Angela.dunn@nasdaqomx.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 officer.

Date 04/11/2012

By Edward S. Knight  
(Name \*)Exdecutive 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to modify Chapter XV, Section 2, governing pricing for NASDAQ members using the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options.

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 rule text 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.

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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

The purpose of this rule filing is to recoup costs that the Exchange incurs for routing and executing Customer, Firm, Market Maker and Professional orders in equity and index options to the BATS Exchange, Inc. (“BATS”). The Exchange’s Routing Fees are located at Chapter XV, Section 2, entitled “NASDAQ Options Market-Fees and Rebates,” and are as follows:

<b>Exchange</b>	<b>Customer</b>	<b>Firm</b>	<b>MM</b>	<b>Professional</b>
BATS	\$0.55	\$0.55	\$0.55	\$0.55
BOX	\$0.11	\$0.55	\$0.55	\$0.11
CBOE	\$0.11	\$0.55	\$0.55	\$0.31
CBOE orders greater than 99 contracts in NDX, MNX ETFs, ETNs & HOLDRs	\$0.29	\$0.55	\$0.55	\$0.31
C2	\$0.55	\$0.55	\$0.55	\$0.55
ISE	\$0.11	\$0.55	\$0.55	\$0.29
ISE Select Symbols *	\$0.31	\$0.55	\$0.55	\$0.39
NYSE Arca Penny Pilot	\$0.55	\$0.55	\$0.55	\$0.55
NYSE Arca Non Penny Pilot	\$0.11	\$0.55	\$0.55	\$0.11
NYSE AMEX	\$0.11	\$0.55	\$0.55	\$0.31
PHLX (for all options other than PHLX Select Symbols)	\$0.11	\$0.55	\$0.55	\$0.31
PHLX Select Symbols **	\$0.50	\$0.55	\$0.55	\$0.51

\* These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

\*\* These fees are applicable to orders routed to PHLX that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See PHLX's Pricing Schedule for the complete list of symbols that are subject to these fees.

The Exchange is proposing to amend the current BATS Routing Fees by renaming those fees as “BATS Penny.”<sup>3</sup> The Exchange is not proposing to amend the current rate of \$0.55 per contract for Customers, Firms, Market Makers, and Professionals but proposes to apply those fees solely to Penny options routed to BATS.

The Exchange proposes to create new Routing Fees to BATS for non-Penny options. BATS recently adopted a \$0.75 per contract non-Penny fee for customers that remove liquidity from the BATS Options order book and a \$0.80 per contract non-Penny fee for professionals, firms and market makers that remove liquidity from the BATS Options order book.<sup>4</sup> The Exchange is proposing to adopt BATS non-Penny Routing Fees to account for the new BATS fees to remove liquidity and other routing costs incurred by the Exchange when routing to BATS, as follows:

<b>Exchange</b>	<b>Customer</b>	<b>Firm</b>	<b>MM</b>	<b>Professional</b>
BATS non-Penny	\$0.86	\$0.91	\$0.91	\$0.91

NASDAQ Options Services LLC (“NOS”), a member of the Exchange, is the Exchange’s exclusive order router. Each time NOS routes to away markets NOS is charged a \$0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which are passed through to the Exchange. The Exchange currently recoups clearing and transaction charges incurred by the Exchange

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<sup>3</sup> BATS defines Penny options as those issues that are quoted pursuant to BATS Rule 21.5, Interpretation and Policy .01.

<sup>4</sup> See SR-BATS-2012-015.

when Customer, Firm, Market Maker and Professional orders are routed to an away market. The Exchange currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, the Exchange's exclusive order router; the Exchange's membership fees at away markets; and technical costs associated with routing.<sup>5</sup>

The Exchange is adopting BATS non-Penny Routing Fees to account for the BATS remove fees of \$0.75 per contract for customer orders and \$0.80 per contract for professional, firm and market maker orders, the \$0.06 clearing cost and another \$0.05 per contract associated with administrative and technical costs associated with operating NOS.

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

b. Statutory Basis

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

The Exchange believes that the proposed amendment to the current BATS

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<sup>5</sup> In addition to membership fees and transaction fees, the Exchange also incurs an Options Regulatory Fee when routing to an away market that assesses that fee.

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

Routing Fees to rename those fees as “BATS Penny” and apply those fees to Penny options routed to BATS and adopt separate Routing Fees for non-Penny options routed to BATS is reasonable because the two separate categories take into account the different fees to remove liquidity assessed by BATS for non-Penny versus Penny options. The Exchange seeks to recoup costs incurred when routing orders to BATS on behalf of its members.

The Exchange believes that the proposed amendment to the current BATS Routing Fees to rename those fees as “BATS Penny” and apply those fees to Penny options routed to BATS and adopt separate Routing Fees for non-Penny options routed to BATS is equitable and not unfairly discriminatory because the Exchange will uniformly apply the BATS Penny as well as BATS non-Penny Routing Fees to its members based on the type of options orders routed to BATS.<sup>8</sup>

The proposed BATS non-Penny Routing Fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Customer, Firm, Market Maker and Professional orders to BATS on behalf of members. Each destination market’s transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange along with other administrative and technical costs that are incurred by the Exchange. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the remove fees assessed by BATS for non-Penny options, plus clearing and other administrative and technical fees for the execution of such orders when routed to BATS. The Exchange also believes that the proposed BATS non-Penny Routing Fees are equitable and not unfairly discriminatory because

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<sup>8</sup> See note 3.

they would be uniformly applied to all non-Penny orders that are routed to BATS.

With respect to the Firm and Market Maker Routing Fees, the Exchange initially proposed to assess fixed Routing Fees of \$0.55 per contract applicable to all away markets.<sup>9</sup> The Exchange noted in that rule change that pricing on the various options exchanges varies significantly from exchange to exchange for non-Customer orders. Accordingly, the Exchange proposed a \$0.55 per contract side Routing Fee in order to capture the majority of the transaction and clearing fees for Firm and Market Maker orders, while making the Exchange's Routing Fees easier to calculate and predict for members whose proprietary orders are routed away. In addition, fixed Routing Fees are easier to comprehend by the members whose orders are routed away. Further, predicting, calculating and charging back "pass-through" fees is an unduly burdensome, expensive and complicated task for members whose orders are routed away. The Exchange noted that fixed Routing Fees for Firm and Market Maker orders should ease the burden, expense and complexity of this task. Furthermore, fixed fees are easier to manage and maintain for the Exchange, ensuring accurate billing and accounting. The Exchange believes its proposal to increase the BATS non-Penny Customer Routing Fee from \$0.55 per contract to \$0.86 per contract and the Professional, Firm and Market Maker Routing Fees from \$0.55 per contract to \$0.91 per contract is reasonable because the fees proposed by BATS are not within the range of fees assessed by other exchanges since the recent increase in the BATS fee to remove liquidity from \$0.44 per contract to \$0.75 per contract for customer non-Penny options and from \$0.44 per contract to \$0.80 for professionals, firms and market makers. The Exchange believes it is reasonable to

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<sup>9</sup> See Securities Exchange Act Release No. 61666 (March 5, 2010), 75 FR 12318 (March 15, 2010) (SR-NASDAQ-2010-027).



recoup the BATS remove fees plus the clearing and other costs to recoup Routing Fees.

The Exchange believes that the increase to the Firm and Market Maker non-Penny BATS Routing Fees are equitable and not unfairly discriminatory because, as previously mentioned, those fees would be similarly calculated for Customers, Firms, Market Makers and Professionals.<sup>10</sup> Additionally, the non-Penny BATS Routing Fees would be uniformly assessed for all non-Penny orders routed to BATS.

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

NASDAQ 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.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>11</sup> NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge imposed 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.

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<sup>10</sup> The Exchange's proposed non-Penny BATS Routing Fees are calculated similarly for all participants by adding the fee to remove liquidity assessed by BATS for the particular market participant plus a fee of \$.11 per contract which represents clearing and other costs noted herein.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

The proposed rule change is based on a rule filing by BATS.<sup>12</sup>

9. Exhibits

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

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<sup>12</sup> See SR-BATS-2012-015 (an immediately effective rule change to modify the fees assessed by BATS to remove liquidity in the BATS Options order book in Penny and non-Penny options). Specifically, BATS adopted a \$0.75 per contract non-Penny fee for customers that remove liquidity from the BATS Options order book and a \$0.80 per contract non-Penny fee for professionals, firms and market makers that remove liquidity from the BATS Options order book.

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2012-050)

April \_\_, 2012

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of  
Proposed Rule Change by The NASDAQ Stock Market LLC Relating to Routing Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on April 11, 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

The NASDAQ Stock Market LLC proposes to modify Chapter XV, Section 2, governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options.

The text of the proposed rule change is available on the Exchange's Website at <http://www.nasdaq.cchwallstreet.com>, 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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of this rule filing is to recoup costs that the Exchange incurs for routing and executing Customer, Firm, Market Maker and Professional orders in equity and index options to the BATS Exchange, Inc. (“BATS”). The Exchange’s Routing Fees are located at Chapter XV, Section 2, entitled “NASDAQ Options Market-Fees and Rebates,” and are as follows:

<b>Exchange</b>	<b>Customer</b>	<b>Firm</b>	<b>MM</b>	<b>Professional</b>
BATS	\$0.55	\$0.55	\$0.55	\$0.55
BOX	\$0.11	\$0.55	\$0.55	\$0.11
CBOE	\$0.11	\$0.55	\$0.55	\$0.31
CBOE orders greater than 99 contracts in NDX, MNX ETFs, ETNs & HOLDRs	\$0.29	\$0.55	\$0.55	\$0.31
C2	\$0.55	\$0.55	\$0.55	\$0.55
ISE	\$0.11	\$0.55	\$0.55	\$0.29
ISE Select Symbols *	\$0.31	\$0.55	\$0.55	\$0.39
NYSE Arca Penny Pilot	\$0.55	\$0.55	\$0.55	\$0.55

NYSE Arca Non Penny Pilot	\$0.11	\$0.55	\$0.55	\$0.11
NYSE AMEX	\$0.11	\$0.55	\$0.55	\$0.31
PHLX (for all options other than PHLX Select Symbols)	\$0.11	\$0.55	\$0.55	\$0.31
PHLX Select Symbols**	\$0.50	\$0.55	\$0.55	\$0.51

\*-These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

\*\*These fees are applicable to orders routed to PHLX that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See PHLX's Pricing Schedule for the complete list of symbols that are subject to these fees.

The Exchange is proposing to amend the current BATS Routing Fees by renaming those fees as “BATS Penny.”<sup>3</sup> The Exchange is not proposing to amend the current rate of \$0.55 per contract for Customers, Firms, Market Makers, and Professionals but proposes to apply those fees solely to Penny options routed to BATS.

The Exchange proposes to create new Routing Fees to BATS for non-Penny options. BATS recently adopted a \$0.75 per contract non-Penny fee for customers that remove liquidity from the BATS Options order book and a \$0.80 per contract non-Penny fee for professionals, firms and market makers that remove liquidity from the BATS Options order book.<sup>4</sup> The Exchange is proposing to adopt BATS non-Penny Routing Fees to account for the new BATS fees to remove liquidity and other routing costs incurred by the Exchange when routing to BATS, as follows:

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<sup>3</sup> BATS defines Penny options as those issues that are quoted pursuant to BATS Rule 21.5, Interpretation and Policy .01.

<sup>4</sup> See SR-BATS-2012-015.

<b>Exchange</b>	<b>Customer</b>	<b>Firm</b>	<b>MM</b>	<b>Professional</b>
BATS non-Penny	\$0.86	\$0.91	\$0.91	\$0.91

NASDAQ Options Services LLC (“NOS”), a member of the Exchange, is the Exchange’s exclusive order router. Each time NOS routes to away markets NOS is charged a \$0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which are passed through to the Exchange. The Exchange currently recoups clearing and transaction charges incurred by the Exchange when Customer, Firm, Market Maker and Professional orders are routed to an away market. The Exchange currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, the Exchange’s exclusive order router; the Exchange’s membership fees at away markets; and technical costs associated with routing.<sup>5</sup>

The Exchange is adopting BATS non-Penny Routing Fees to account for the BATS remove fees of \$0.75 per contract for customer orders and \$0.80 per contract for professional, firm and market maker orders, the \$0.06 clearing cost and another \$0.05 per contract associated with administrative and technical costs associated with operating NOS.

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

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<sup>5</sup> In addition to membership fees and transaction fees, the Exchange also incurs an Options Regulatory Fee when routing to an away market that assesses that fee.

2. Statutory Basis

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

The Exchange believes that the proposed amendment to the current BATS Routing Fees to rename those fees as “BATS Penny” and apply those fees to Penny options routed to BATS and adopt separate Routing Fees for non-Penny options routed to BATS is reasonable because the two separate categories take into account the different fees to remove liquidity assessed by BATS for non-Penny versus Penny options. The Exchange seeks to recoup costs incurred when routing orders to BATS on behalf of its members.

The Exchange believes that the proposed amendment to the current BATS Routing Fees to rename those fees as “BATS Penny” and apply those fees to Penny options routed to BATS and adopt separate Routing Fees for non-Penny options routed to BATS is equitable and not unfairly discriminatory because the Exchange will uniformly apply the BATS Penny as well as BATS non-Penny Routing Fees to its members based on the type of options orders routed to BATS.<sup>8</sup>

The proposed BATS non-Penny Routing Fees are reasonable because they seek to

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<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> See note 3.

recoup costs that are incurred by the Exchange when routing Customer, Firm, Market Maker and Professional orders to BATS on behalf of members. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange along with other administrative and technical costs that are incurred by the Exchange. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the remove fees assessed by BATS for non-Penny options, plus clearing and other administrative and technical fees for the execution of such orders when routed to BATS. The Exchange also believes that the proposed BATS non-Penny Routing Fees are equitable and not unfairly discriminatory because they would be uniformly applied to all non-Penny orders that are routed to BATS.

With respect to the Firm and Market Maker Routing Fees, the Exchange initially proposed to assess fixed Routing Fees of \$0.55 per contract applicable to all away markets.<sup>9</sup> The Exchange noted in that rule change that pricing on the various options exchanges varies significantly from exchange to exchange for non-Customer orders. Accordingly, the Exchange proposed a \$0.55 per contract side Routing Fee in order to capture the majority of the transaction and clearing fees for Firm and Market Maker orders, while making the Exchange's Routing Fees easier to calculate and predict for members whose proprietary orders are routed away. In addition, fixed Routing Fees are easier to comprehend by the members whose orders are routed away. Further, predicting, calculating and charging back "pass-through" fees is an unduly burdensome, expensive and complicated task for members whose orders are routed away. The Exchange noted that fixed Routing Fees for Firm and Market Maker orders should ease the burden,

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<sup>9</sup> See Securities Exchange Act Release No. 61666 (March 5, 2010), 75 FR 12318 (March 15, 2010) (SR-NASDAQ-2010-027).



expense and complexity of this task. Furthermore, fixed fees are easier to manage and maintain for the Exchange, ensuring accurate billing and accounting. The Exchange believes its proposal to increase the BATS non-Penny Customer Routing Fee from \$0.55 per contract to \$0.86 per contract and the Professional, Firm and Market Maker Routing Fees from \$0.55 per contract to \$0.91 per contract is reasonable because the fees proposed by BATS are not within the range of fees assessed by other exchanges since the recent increase in the BATS fee to remove liquidity from \$0.44 per contract to \$0.75 per contract for customer non-Penny options and from \$0.44 per contract to \$0.80 for professionals, firms and market makers. The Exchange believes it is reasonable to recoup the BATS remove fees plus the clearing and other costs to recoup Routing Fees. The Exchange believes that the increase to the Firm and Market Maker non-Penny BATS Routing Fees are equitable and not unfairly discriminatory because, as previously mentioned, those fees would be similarly calculated for Customers, Firms, Market Makers and Professionals.<sup>10</sup> Additionally, the non-Penny BATS Routing Fees would be uniformly assessed for all non-Penny orders routed to BATS.

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<sup>10</sup> The Exchange's proposed non-Penny BATS Routing Fees are calculated similarly for all participants by adding the fee to remove liquidity assessed by BATS for the particular market participant plus a fee of \$.11 per contract which represents clearing and other costs noted herein.

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.<sup>11</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.

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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2012-050 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-2012-050. 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-2012-050 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>12</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>12</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

*New text is underlined; deleted text is in brackets.*

**NASDAQ Stock Market Rules**

\* \* \* \* \*

**Options Rules**

\* \* \* \* \*

**Chapter XV Options Pricing**

**NASDAQ Options Market Participants may be subject to the Charges for Membership, Services and Equipment in the Rule 7000 Series as well as the fees in this Chapter XV.**

\* \* \* \* \*

**Sec. 2 NASDAQ Options Market—Fees and Rebates**

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

\* \* \* \* \*

**(4)** Fees for routing contracts to markets other than the NASDAQ Options Market shall be assessed as provided below. The current fees and a historical record of applicable fees shall be posted on the NasdaqTrader.com website.

<b>Exchange</b>	<b>Customer</b>	<b>Firm</b>	<b>MM</b>	<b>Professional</b>
BATS <u>Penny</u>	\$0.55	\$0.55	\$0.55	\$0.55
BOX	\$0.11	\$0.55	\$0.55	\$0.11
<u>BATS non-Penny</u>	<u>\$0.86</u>	<u>\$0.91</u>	<u>\$0.91</u>	<u>\$0.91</u>
CBOE	\$0.11	\$0.55	\$0.55	\$0.31
CBOE orders greater than 99 contracts in NDX, MNX ETFs, ETNs & HOLDRs	\$0.29	\$0.55	\$0.55	\$0.31
C2	\$0.55	\$0.55	\$0.55	\$0.55
ISE	\$0.11	\$0.55	\$0.55	\$0.29
ISE Select Symbols*	\$0.31	\$0.55	\$0.55	\$0.39
NYSE Arca Penny	\$0.55	\$0.55	\$0.55	\$0.55

## Pilot

NYSE Arca Non Penny Pilot	\$0.11	\$0.55	\$0.55	\$0.11
NYSE AMEX	\$0.11	\$0.55	\$0.55	\$0.31
PHLX (for all options other than PHLX Select Symbols)	\$0.11	\$0.55	\$0.55	\$0.31
PHLX Select Symbols **	\$0.50	\$0.55	\$0.55	\$0.51

\* These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

\*\* These fees are applicable to orders routed to PHLX that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See PHLX's Pricing Schedule for the complete list of symbols that are subject to these fees.

\* \* \* \* \*