

## OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 27

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

File No.\* SR - 2012 - \* 068

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 \* ☒ Amendment \* ☐ Withdrawal ☐

Section 19(b)(2) \* ☐ Section 19(b)(3)(A) \* ☒ Section 19(b)(3)(B) \* ☐

Rule

Pilot ☐ Extension of Time Period  
for Commission Action \* ☐ Date Expires \*

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)  
☒ 19b-4(f)(2) ☐ 19b-4(f)(5)  
☐ 19b-4(f)(3) ☐ 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 NDX Pricing

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 05/30/2012

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 EDFS website.

**Form 19b-4 Information (required)**

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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 (required)**

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

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Exhibit Sent As Paper Document

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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

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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) 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 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 Chapter XV, Section 2 entitled “NASDAQ Options Market – Fees and Rebates” to adopt rebates and fees relating to options on the Nasdaq 100 Index traded under the symbol NDX (“NDX”).

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on June 1, 2012.

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

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

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

taken pursuant to delegated authority. No other action by NASDAQ is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to Jonathan F. Cayne, Associate General Counsel, at (301) 978-8493 or 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 amend Chapter XV, Section 2 to adopt rebates and fees relating to NDX options. NASDAQ currently assesses the same rebates and fees for NDX and options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX") as follows:

	Customer Professional Firm			Non-NOM Market Maker	NOM Market Maker
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

The Exchange proposes to assess the following Rebate to Remove Liquidity, Rebates to Add Liquidity,<sup>3</sup> Fees to Add Liquidity and Fees for Removing Liquidity<sup>4</sup> for transactions in NDX:

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<sup>3</sup> An order that adds liquidity is one that is entered into NOM and rests on the NOM book.

<sup>4</sup> An order that removes liquidity is one that is entered into NOM and that executes

	<u>Customer</u>	<u>Professional</u>	<u>Firm</u>	<u>Non-NOM Market Maker</u>	<u>NOM Market Maker</u>
<b>NDX</b>					
Rebate to Remove Liquidity	\$0.40	\$0.00	\$0.00	\$0.00	\$0.00
Rebate to Add Liquidity	<sup>1</sup>	\$0.00	\$0.00	\$0.00	<sup>1</sup>
Fee to Add Liquidity	<sup>1</sup>	\$0.70	\$0.70	\$0.70	<sup>1</sup>
Fee for Removing Liquidity	\$0.00	\$0.70	\$0.70	\$0.70	\$0.70

<sup>1</sup> A Customer and NOM Market Maker will either receive a Rebate to Add Liquidity of \$0.20 per contract when trading against a Professional, Firm, NOM Market Maker or Non-NOM Market Maker or will pay a Fee to Add Liquidity of \$0.65 per contract when trading against a Customer.

A Customer or a NOM Market Maker<sup>5</sup> would therefore be entitled to receive a Rebate to Add Liquidity or would pay a Fee to Add Liquidity depending on the counterparty to the transaction. The Exchange also proposes to amend Chapter XV, Section 2 to remove the term “NDX and” in NDX and MNX title of the rebates and fees currently in the Rule.

b. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the

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against an order resting on the NOM book.

<sup>5</sup> NOM Market Makers must be registered as such pursuant to Chapter VII, Section 2 of the Nasdaq Options Rules, and must also remain in good standing pursuant to Chapter VII, Section 4.

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 they provide 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 adopt separate fees and rebates for transactions in NDX is reasonable because the Exchange has previously distinguished other index products.<sup>8</sup> The Exchange is proposing to assess certain participants higher Fees to Add and Remove Liquidity for NDX and pay a higher Customer Rebate to Remove Liquidity (\$0.40 per contract). The Exchange believes that its success at attracting Customer order flow benefits all market participants by improving the quality of order interaction and executions at the Exchange. Additionally, these proposed fees and rebates for NDX are also similar to complex order fees currently in place at the International Securities Exchange, LLC (“ISE”).<sup>9</sup>

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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 Chapter XV, Section 2(1) fees. The Exchange currently assesses different fees and rebates for other indexes such as HGX, SOX and OSX. Also, the Exchange assesses different fees for Penny Pilot transactions and non-Penny Pilot transactions. In addition, some market participants, such as market makers, have obligations pursuant to Exchange rules which the Exchange recognizes in its pricing.

<sup>9</sup> See ISE’s Fee Schedule. ISE recently adopted fees for complex orders in two of the most actively-traded index option products, the NASDAQ 100 Index option (“NDX”) and the Russell 2000 Index option (“RUT”). Specifically, ISE charges ISE market maker orders, firm proprietary orders and Customer (Professional Orders) \$0.25 per contract for providing liquidity on the complex order book in NDX and RUT and \$ 0.70 per contract for taking liquidity from the complex order book in NDX and RUT. Non-ISE Market Makers are charged \$0.25 per contract for providing liquidity and \$0.75 per contract for taking liquidity from the complex order book in NDX and RUT. Priority

The Exchange believes that its proposal to adopt separate fees and rebates for transactions in NDX is equitable and not unfairly discriminatory because Customers will receive a \$0.40 per contract Rebate to Remove Liquidity, which in turn will attract Customer order flow to the Exchange to the benefit of all market participants through increased liquidity. Further, the Exchange also believes it is reasonable, equitable and not unfairly discriminatory to only offer rebates for removing liquidity to Customers and not other market participants as an incentive to attract Customer order flow in NDX to the Exchange. It is an important Exchange function to provide an opportunity to all market participants to trade against Customer orders.

The Exchange's proposal to pay a \$0.20 per contract Rebate to Add Liquidity to Customers and NOM Market Makers when trading against a Professional, Firm, NOM Market Maker or Non-NOM Market Maker,<sup>10</sup> and assess a Fee to Add Liquidity of \$0.65 per contract when trading against a Customer is reasonable because the Exchange believes that providing Customers and Market Makers with the opportunity to either earn a rebate or pay a lower fee should incentivize these critical market participants to post liquidity on NOM. While the Customer and NOM Market Maker are unaware at the time they enter a transaction whether they would earn a rebate or pay a lower fee, the

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Customer orders are not charged a fee for trading in the complex order book in NDX and RUT and receive a rebate of \$0.50 per contract when those orders trade with non-Priority Customer orders in the complex order book in NDX and RUT. In comparison, NOM has proposed to adopt a similar fee structure, although not related to complex orders as is the case at ISE, with respect to paying a rebate and assessing a fee depending on the contra-party to the transaction and whether the participant is adding or removing liquidity. In addition, the proposed NOM Fees for Removing Liquidity are similar to those adopted by ISE.

<sup>10</sup> Non-NOM Market Makers are registered market makers on another options market that append the market maker designation to orders routed to NOM.

Exchange believes that the possibility of earning a \$0.20 per contract Rebate to Add Liquidity when trading against a non-Customer (Professional, Firm, NOM Market Maker or Non-NOM Market Maker) or the opportunity to pay a lower fee, as compared to other market participants,<sup>11</sup> when trading against a Customer should incentivize both Customers and Market Makers to add liquidity. Increased liquidity benefits all market participants.

The Exchange's proposal to pay a \$0.20 per contract Rebate to Add Liquidity to Customers and NOM Market Makers when trading against a Professional, Firm, NOM Market Maker or Non-NOM Market Maker, and assess a Fee to Add Liquidity of \$0.65 per contract when trading against a Customer is equitable and not unfairly discriminatory because Customers and NOM Market Makers differ from other market participants. Customer order flow benefits all market participants by improving liquidity, the quality of order interaction and executions at the Exchange. NOM Market Makers have obligations to the market and regulatory requirements,<sup>12</sup> which normally do not apply to other market participants. A NOM Market Maker has the obligation to make continuous markets, engage in course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into

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<sup>11</sup> Professionals, Firms and Non-NOM Market Makers are assessed a \$0.70 per contract Fee to Add Liquidity.

<sup>12</sup> Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. See Chapter VII, Section 5.



transactions that are inconsistent with course of dealings. The proposed differentiation as between Customers and NOM Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by Customers and NOM Market Makers, as well as the differing mix of orders entered. Further, as noted herein, the Customer and NOM Market Maker are unaware at the time the order is entered whether they would receive the \$0.20 per contract Rebate to Add Liquidity or pay the \$0.65 per contract Fee to Add Liquidity because they are aware of the identity of the contra-party, which would determine whether they receive a rebate or pay a fee. The Exchange believes that the Customer and NOM Market Maker rebate or fee pricing structure is equitable and not unfairly discriminatory because the Rebate to Add Liquidity, which is only being offered to Customers and NOM Market Makers, would reward these participants for posting liquidity that interacts with a non-Customer order (Professionals, Firms, NOM Market Makers and Non-NOM Market Makers). Also, the Customer and NOM Market Maker Fees to Add Liquidity (\$0.65 per contract), when trading with a Customer, are equitable and not unfairly discriminatory because the fees are lower as compared to other market participants.<sup>13</sup> The \$0.65 per contract Customer and NOM Market Maker Fee to Add Liquidity seeks to recoup the \$0.22 license fee<sup>14</sup> and fund the \$0.40 Customer Rebate to Remove Liquidity, which attracts liquidity to the Exchange and benefits all participants. The Exchange believes the combination of fees and rebates for Customers and NOM Market Makers to add liquidity

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<sup>13</sup> Professionals, Firms and Non-NOM Market Makers are assessed a \$0.70 per Contract Fee to Add Liquidity.

<sup>14</sup> NOM is assessed a license fee of \$0.22 per contract to list NDX.

will incentivize these participants to add liquidity in NDX and will also serve to fund the \$0.22 license fee.

The Exchange's proposal to assess Professionals, Firms, and Non-NOM Market Makers a \$0.70 per contract Fee to Add Liquidity is reasonable because the higher fees would enable the Exchange to reward Customers that remove liquidity with rebates. The advantage of increased Customer order flow benefits all market participants. The Exchange's proposal to assess Professionals, Firms, and Non-NOM Market Makers a \$0.70 per contract Fee to Add Liquidity is equitable and not unfairly discriminatory because all other market participants (Professionals, Firms, and Non-NOM Market Makers), other than Customers and NOM Market Makers which are distinguished above, would be assessed the same Fee to Add Liquidity. Also, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to not offer a Rebate to Add Liquidity to Professionals, Firms and Non-NOM Market Makers because these participants do not bring the unique benefits that Customer order flow provides the market nor do these participants have the obligations that were described herein for NOM Market Makers.

The Exchange's proposal to assess all market participants except Customers a \$0.70 per contract Fee for Removing Liquidity is equitable and not unfairly discriminatory because Professionals, Firms, NOM Market Makers and Non-NOM Market Makers would be assessed the same Fee for Removing Liquidity. Also, the Exchange believes the \$0.70 per contract Fees for Removing Liquidity are reasonable because the Exchange currently pays a license fee<sup>15</sup> to list NDX on NOM and is seeking

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<sup>15</sup> Id.

to recoup that fee and to pay the proposed \$0.20 per contract Rebate to Add Liquidity to Customers and NOM Market Makers in NDX. In addition, the Exchange believes that these remove fees are within the range of fees for removing liquidity assessed by other exchanges.<sup>16</sup>

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. The Exchange believes that the proposed fee and rebate scheme is competitive and similar to other fees and rebates 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 and rebates to compete effectively for the execution and routing of options contracts and to reduce the

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<sup>16</sup> See BATS Exchange, Inc.'s Fee Schedule. Professional, Firm and Market Maker orders are assessed a fee of \$0.80 per contract to remove liquidity from the BATS Options order book. Customer orders are assessed a fee of \$0.75 per contract to remove liquidity from the BATS Options order book. BATS also offers liquidity rebates for all other securities of \$0.70 per contract for a Professional, Firm or Market Maker order that adds liquidity to the BATS Options order book and \$0.75 per contract for a Customer order that adds liquidity to the BATS Options order book. The Exchange is proposing to assess Professional, Firms and Non-NOM Market Makers \$0.70 per contract fees to add and remove liquidity, but no rebates and assess Customers and NOM Market Makers \$0.65 per contract when trading against a Customer or a \$0.20 per contract rebate when trading against a Professional, Firm, NOM Market Maker or Non-NOM Market Maker.

overall cost to investors of options trading. The Exchange believes that the proposed fee/rebate pricing structure would attract liquidity to and benefit order interaction at the Exchange to the benefit of all market participants.

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.<sup>17</sup>

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

The proposed rule change is based on fees in place at ISE<sup>18</sup> and BATS.<sup>19</sup> organization or of the Commission.

9. Exhibits

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

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>18</sup> See note 9.

<sup>19</sup> See note 16.

Exhibit 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2012-068)

May \_\_, 2012

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

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 May 30, 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 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 Chapter XV, Section 2 entitled "NASDAQ Options Market – Fees and Rebates" to adopt rebates and fees relating to options on the Nasdaq 100 Index traded under the symbol NDX ("NDX").

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

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

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on June 1, 2012.

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.

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

NASDAQ proposes to amend Chapter XV, Section 2 to adopt rebates and fees relating to NDX options. NASDAQ currently assesses the same rebates and fees for NDX and options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX") as follows:

	Customer Professional Firm			Non-NOM Market Maker	NOM Market Maker
NDX and MNX:					
Rebate to Add Liquidity	\$0.10	\$0.10	\$0.10	\$0.10	\$0.20
Fee for Removing	\$0.50	\$0.50	\$0.50	\$0.50	\$0.40

## Liquidity

The Exchange proposes to assess the following Rebate to Remove Liquidity, Rebates to Add Liquidity,<sup>3</sup> Fees to Add Liquidity and Fees for Removing Liquidity<sup>4</sup> for transactions in NDX:

	<b><u>Customer</u></b>	<b><u>Professional</u></b>	<b><u>Firm</u></b>	<b><u>Non-NOM Market Maker</u></b>	<b><u>NOM Market Maker</u></b>
<b>NDX</b>					
Rebate to Remove Liquidity	\$0.40	\$0.00	\$0.00	\$0.00	\$0.00
Rebate to Add Liquidity	<sup>1</sup>	\$0.00	\$0.00	\$0.00	<sup>1</sup>
Fee to Add Liquidity	<sup>1</sup>	\$0.70	\$0.70	\$0.70	<sup>1</sup>
Fee for Removing Liquidity	\$0.00	\$0.70	\$0.70	\$0.70	\$0.70

<sup>1</sup> A Customer and NOM Market Maker will either receive a Rebate to Add Liquidity of \$0.20 per contract when trading against a Professional, Firm, NOM Market Maker or Non-NOM Market Maker or will pay a Fee to Add Liquidity of \$0.65 per contract when trading against a Customer.

A Customer or a NOM Market Maker<sup>5</sup> would therefore be entitled to receive a Rebate to Add Liquidity or would pay a Fee to Add Liquidity depending on the contra-

<sup>3</sup> An order that adds liquidity is one that is entered into NOM and rests on the NOM book.

<sup>4</sup> An order that removes liquidity is one that is entered into NOM and that executes against an order resting on the NOM book.

<sup>5</sup> NOM Market Makers must be registered as such pursuant to Chapter VII, Section

party to the transaction. The Exchange also proposes to amend Chapter XV, Section 2 to remove the term “NDX and” in NDX and MNX title of the rebates and fees currently in the Rule.

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 they provide 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 adopt separate fees and rebates for transactions in NDX is reasonable because the Exchange has previously distinguished other index products.<sup>8</sup> The Exchange is proposing to assess certain participants higher Fees to Add and Remove Liquidity for NDX and pay a higher Customer Rebate to Remove Liquidity (\$0.40 per contract). The Exchange believes that its success at attracting Customer order flow benefits all market participants by improving the quality of order interaction and executions at the Exchange. Additionally, these proposed fees

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2 of the Nasdaq Options Rules, and must also remain in good standing pursuant to Chapter VII, Section 4.

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

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

<sup>8</sup> See Chapter XV, Section 2(1) fees. The Exchange currently assesses different fees and rebates for other indexes such as HGX, SOX and OSX. Also, the Exchange assesses different fees for Penny Pilot transactions and non-Penny Pilot transactions. In addition, some market participants, such as market makers, have obligations pursuant to Exchange rules which the Exchange recognizes in its pricing.



and rebates for NDX are also similar to complex order fees currently in place at the International Securities Exchange, LLC (“ISE”).<sup>9</sup>

The Exchange believes that its proposal to adopt separate fees and rebates for transactions in NDX is equitable and not unfairly discriminatory because Customers will receive a \$0.40 per contract Rebate to Remove Liquidity, which in turn will attract Customer order flow to the Exchange to the benefit of all market participants through increased liquidity. Further, the Exchange also believes it is reasonable, equitable and not unfairly discriminatory to only offer rebates for removing liquidity to Customers and not other market participants as an incentive to attract Customer order flow in NDX to the Exchange. It is an important Exchange function to provide an opportunity to all market participants to trade against Customer orders.

The Exchange’s proposal to pay a \$0.20 per contract Rebate to Add Liquidity to Customers and NOM Market Makers when trading against a Professional, Firm, NOM

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<sup>9</sup> See ISE’s Fee Schedule. ISE recently adopted fees for complex orders in two of the most actively-traded index option products, the NASDAQ 100 Index option (“NDX”) and the Russell 2000 Index option (“RUT”). Specifically, ISE charges ISE market maker orders, firm proprietary orders and Customer (Professional Orders) \$0.25 per contract for providing liquidity on the complex order book in NDX and RUT and \$ 0.70 per contract for taking liquidity from the complex order book in NDX and RUT. Non-ISE Market Makers are charged \$0.25 per contract for providing liquidity and \$0.75 per contract for taking liquidity from the complex order book in NDX and RUT. Priority Customer orders are not charged a fee for trading in the complex order book in NDX and RUT and receive a rebate of \$0.50 per contract when those orders trade with non-Priority Customer orders in the complex order book in NDX and RUT. In comparison, NOM has proposed to adopt a similar fee structure, although not related to complex orders as is the case at ISE, with respect to paying a rebate and assessing a fee depending on the contra-party to the transaction and whether the participant is adding or removing liquidity. In addition, the proposed NOM Fees for Removing Liquidity are similar to those adopted by ISE.

Market Maker or Non-NOM Market Maker,<sup>10</sup> and assess a Fee to Add Liquidity of \$0.65 per contract when trading against a Customer is reasonable because the Exchange believes that providing Customers and Market Makers with the opportunity to either earn a rebate or pay a lower fee should incentivize these critical market participants to post liquidity on NOM. While the Customer and NOM Market Maker are unaware at the time they enter a transaction whether they would earn a rebate or pay a lower fee, the Exchange believes that the possibility of earning a \$0.20 per contract Rebate to Add Liquidity when trading against a non-Customer (Professional, Firm, NOM Market Maker or Non-NOM Market Maker) or the opportunity to pay a lower fee, as compared to other market participants,<sup>11</sup> when trading against a Customer should incentivize both Customers and Market Makers to add liquidity. Increased liquidity benefits all market participants.

The Exchange's proposal to pay a \$0.20 per contract Rebate to Add Liquidity to Customers and NOM Market Makers when trading against a Professional, Firm, NOM Market Maker or Non-NOM Market Maker, and assess a Fee to Add Liquidity of \$0.65 per contract when trading against a Customer is equitable and not unfairly discriminatory because Customers and NOM Market Makers differ from other market participants. Customer order flow benefits all market participants by improving liquidity, the quality of order interaction and executions at the Exchange. NOM Market Makers have

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<sup>10</sup> Non-NOM Market Makers are registered market makers on another options market that append the market maker designation to orders routed to NOM.

<sup>11</sup> Professionals, Firms and Non-NOM Market Makers are assessed a \$0.70 per contract Fee to Add Liquidity.

obligations to the market and regulatory requirements,<sup>12</sup> which normally do not apply to other market participants. A NOM Market Maker has the obligation to make continuous markets, engage in course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with course of dealings. The proposed differentiation as between Customers and NOM Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by Customers and NOM Market Makers, as well as the differing mix of orders entered. Further, as noted herein, the Customer and NOM Market Maker are unaware at the time the order is entered whether they would receive the \$0.20 per contract Rebate to Add Liquidity or pay the \$0.65 per contract Fee to Add Liquidity because they are aware of the identity of the contra-party, which would determine whether they receive a rebate or pay a fee. The Exchange believes that the Customer and NOM Market Maker rebate or fee pricing structure is equitable and not unfairly discriminatory because the Rebate to Add Liquidity, which is only being offered to Customers and NOM Market Makers, would reward these participants for posting liquidity that interacts with a non-Customer order (Professionals, Firms, NOM Market Makers and Non-NOM Market Makers).

Also, the Customer and NOM Market Maker Fees to Add Liquidity (\$0.65 per contract),

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<sup>12</sup> Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. See Chapter VII, Section 5.

when trading with a Customer, are equitable and not unfairly discriminatory because the fees are lower as compared to other market participants.<sup>13</sup> The \$0.65 per contract Customer and NOM Market Maker Fee to Add Liquidity seeks to recoup the \$0.22 license fee<sup>14</sup> and fund the \$0.40 Customer Rebate to Remove Liquidity, which attracts liquidity to the Exchange and benefits all participants. The Exchange believes the combination of fees and rebates for Customers and NOM Market Makers to add liquidity will incentivize these participants to add liquidity in NDX and will also serve to fund the \$0.22 license fee.

The Exchange's proposal to assess Professionals, Firms, and Non-NOM Market Makers a \$0.70 per contract Fee to Add Liquidity is reasonable because the higher fees would enable the Exchange to reward Customers that remove liquidity with rebates. The advantage of increased Customer order flow benefits all market participants. The Exchange's proposal to assess Professionals, Firms, and Non-NOM Market Makers a \$0.70 per contract Fee to Add Liquidity is equitable and not unfairly discriminatory because all other market participants (Professionals, Firms, and Non-NOM Market Makers), other than Customers and NOM Market Makers which are distinguished above, would be assessed the same Fee to Add Liquidity. Also, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to not offer a Rebate to Add Liquidity to Professionals, Firms and Non-NOM Market Makers because these participants do not bring the unique benefits that Customer order flow provides the

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<sup>13</sup> Professionals, Firms and Non-NOM Market Makers are assessed a \$0.70 per Contract Fee to Add Liquidity.

<sup>14</sup> NOM is assessed a license fee of \$0.22 per contract to list NDX.

market nor do these participants have the obligations that were described herein for NOM Market Makers.

The Exchange's proposal to assess all market participants except Customers a \$0.70 per contract Fee for Removing Liquidity is equitable and not unfairly discriminatory because Professionals, Firms, NOM Market Makers and Non-NOM Market Makers would be assessed the same Fee for Removing Liquidity. Also, the Exchange believes the \$0.70 per contract Fees for Removing Liquidity are reasonable because the Exchange currently pays a license fee<sup>15</sup> to list NDX on NOM and is seeking to recoup that fee and to pay the proposed \$0.20 per contract Rebate to Add Liquidity to Customers and NOM Market Makers in NDX. In addition, the Exchange believes that these remove fees are within the range of fees for removing liquidity assessed by other exchanges.<sup>16</sup>

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. The Exchange believes that the proposed fee and rebate

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<sup>15</sup> Id.

<sup>16</sup> See BATS Exchange, Inc.'s Fee Schedule. Professional, Firm and Market Maker orders are assessed a fee of \$0.80 per contract to remove liquidity from the BATS Options order book. Customer orders are assessed a fee of \$0.75 per contract to remove liquidity from the BATS Options order book. BATS also offers liquidity rebates for all other securities of \$0.70 per contract for a Professional, Firm or Market Maker order that adds liquidity to the BATS Options order book and \$0.75 per contract for a Customer order that adds liquidity to the BATS Options order book. The Exchange is proposing to assess Professional, Firms and Non-NOM Market Makers \$0.70 per contract fees to add and remove liquidity, but no rebates and assess Customers and NOM Market Makers \$0.65 per contract when trading against a Customer or a \$0.20 per contract rebate when trading against a Professional, Firm, NOM Market Maker or Non-NOM Market Maker.

scheme is competitive and similar to other fees and rebates 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.

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>17</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>17</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-2012-068 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-2012-068. 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-2012-068 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>18</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).



**Exhibit 5**

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

**NASDAQ Stock Market Rules**

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**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.**

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

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

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

<b>Fees and Rebates (per executed contract)</b>					
	<b>Customer</b>	<b>Professional</b>	<b>Firm</b>	<b>Non-NOM Market Maker</b>	<b>NOM Market Maker</b>
<b>Penny Pilot Options:</b>					
Rebate to Add Liquidity	***	\$0.29	\$0.10	\$0.25	\$0.30
Fee for Removing Liquidity	\$0.45	\$0.45	\$0.45	\$0.45	\$0.45
<b>Non-Penny Pilot Options:</b>					
Fee for Adding Liquidity	\$0.00	\$0.30	\$0.45	\$0.45	\$0.30
Fee for Removing Liquidity	\$0.45	\$0.50	\$0.50	\$0.50	\$0.50
Rebate to Add Liquidity	\$0.20	\$0.00	\$0.00	\$0.00	\$0.00

**NDX**

<u>Rebate to Remove Liquidity</u>	<u>\$0.40</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
<u>Rebate to Add Liquidity</u>	<sup>1</sup>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<sup>1</sup>
<u>Fee to Add Liquidity</u>	<sup>1</sup>	<u>\$0.70</u>	<u>\$0.70</u>	<u>\$0.70</u>	<sup>1</sup>
<u>Fee for Removing Liquidity</u>	<u>\$0.00</u>	<u>\$0.70</u>	<u>\$0.70</u>	<u>\$0.70</u>	<u>\$0.70</u>

**[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

**SOX, HGX and OSX:**

Fee for Adding Liquidity	\$0.35	\$0.45	\$0.45	\$0.45	\$0.35
Fee for Removing Liquidity	\$0.35	\$0.45	\$0.45	\$0.45	\$0.35

<sup>1</sup> A Customer and NOM Market Maker will either receive a Rebate to Add Liquidity of \$0.20 per contract when trading against a Professional, Firm, NOM Market Maker or Non-NOM Market Maker or will pay a Fee to Add Liquidity of \$0.65 per contract when trading against a Customer.

\*\*\* 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.

<b>Monthly Volume</b>	<b>Rebate to Add Liquidity</b>
<b>Tier 1</b> Participant adds Customer liquidity of up to 14,999 contracts per day in a month	\$0.26

<b>Tier 2</b>	Participant adds Customer liquidity of 15,000 to 49,999 contracts per day in a month	\$0.38
<b>Tier 3</b>	Participant adds Customer liquidity of 50,000 to 74,999 contracts per day in a month	\$0.43
<b>Tier 4</b>	Participant adds Customer liquidity of 75,000 or more contracts per day in a month	\$0.44
<b>Tier 5<sup>a</sup></b>	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	\$0.42

<sup>a</sup> 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.

**(2) – (4) No Change**

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