

Required fields are shown with yellow backgrounds and asterisks.

Proposed Rule Change by NASDAQ Stock Market  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

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

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

**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 \*  Last Name \*   
Title \*   
E-mail \*   
Telephone \*  Fax

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,  
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date   
By    
(Name \*) (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.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) 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, entitled “Options Pricing,” at 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. Specifically, NOM proposes to amend the Non-Penny Pilot Options Fees for Removing Liquidity and the Customer Rebate to Add Liquidity as well as the Penny Pilot Options Customer Rebate to Add Liquidity.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments related to fee increases will be operative on November 2, 2012.<sup>3</sup>

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 portion of the rule text is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

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

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

<sup>3</sup> The amendments related to the Fees for Removing Liquidity in Non-Penny Pilot Options would be operative on November 2, 2012.

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 July 10, 2012. 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 Chapter XV, entitled "Options Pricing," at Section 2(1) governing the rebates and fees assessed for option orders entered into NOM. The Exchange is proposing to increase certain Non-Penny Pilot Options Fees for Removing Liquidity in order to offer increased Penny Pilot and Non-Penny Pilot Options Customer Rebates to Add Liquidity to attract additional order flow to the Exchange to the benefit of all market participants.

The Exchange proposes to amend the Fees for Removing Liquidity in Non-Penny Pilot Options. Today Customers and NOM Market Makers are assessed a \$0.79 per contract Fee for Removing Liquidity in Non-Penny Pilot Options and Professionals, Firms and Non-NOM Market Makers are assessed an \$0.85 per contract Fee for Removing Liquidity in Non-Penny Pilot Options. The Exchange proposes to increase the Customer and NOM Market Maker Fees for Removing Liquidity in Non-Penny Pilot Options from \$0.79 to \$0.82 per contract and also increase the Professional, Firm and

Non-NOM Market Maker Fees for Removing Liquidity in Non-Penny Pilot Options from \$0.85 per to \$0.89 per contract. The Exchange proposes that these amendments will become operative on November 2, 2012.

The Exchange also proposes to amend the Customer Rebate to Add Liquidity in Non-Penny Pilot Options. Today, the Customer Rebate to Add Liquidity in Non-Penny Pilot Options, including NDX, is \$0.75 per contract, unless a market participant adds Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month, then the Customer Rebate to Add Liquidity in Non-Penny Pilot Options is \$0.77 per contract.<sup>4</sup> The Exchange proposes to increase the Customer Rebate to Add Liquidity in Non-Penny Pilot Options, including NDX, from \$0.75 to \$0.80 per contract and also to increase the Customer Rebate to Add Liquidity in Non-Penny Pilot Options when a market participant adds Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month from \$0.77 to \$0.81 per contract. The Exchange proposes that these amendments become immediately effective.

The Exchange also proposes to amend the Customer Rebate to Add Liquidity in Penny Pilot Options. Today, the Exchange pays Customer Rebates to Add Liquidity on Penny Pilot Options as follows:

<b>Monthly Volume</b>	<b>Rebate to Add Liquidity</b>
<b>Tier 1</b> Participant adds Customer liquidity of up to 34,999 contracts per day in a month	\$0.26

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<sup>4</sup> NOM Participants under common ownership may aggregate their Customer volume to qualify for the increased Customer rebate. Common ownership is defined as 75 percent common ownership or control.

<b>Tier 2</b>	Participant adds Customer liquidity of 35,000 to 74,999 contracts per day in a month	\$0.43
<b>Tier 3</b>	Participant adds Customer liquidity of 75,000 or more contracts per day in a month	\$0.44
<b>Tier 4<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
<b>Tier 5<sup>b,c</sup></b>	Participant has Total Volume of 130,000 or more contracts per day in a month	\$0.45

<sup>a</sup>For purposes of Tier 4, 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.

<sup>b</sup>For purposes of Tier 5, "Total Volume" shall be defined as Customer, Professional, Firm, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and Non-Penny Pilot Options which either adds or removes liquidity.

<sup>c</sup>For purposes of Tier 5, the Exchange will allow NOM Participants under common ownership to aggregate their volume to qualify for the rebate. Common ownership is defined as 75 percent common ownership or control.

The Exchange proposes to amend the Tier 5 rebate which pays a \$0.45 per contract Rebate to Add Liquidity to NOM Options Participants that have Total Volume of 130,000 or more contracts per day in a month.<sup>5</sup> Total Volume is defined as Customer, Professional, Firm, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and Non-Penny Pilot Options which either adds or removes liquidity. The Exchange proposes to amend the Tier 5 rebate from \$0.45 to \$0.46 per contract.<sup>6</sup> The Exchange proposes that this amendment become immediately effective.

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<sup>5</sup> For purposes of Tier 5, the Exchange allows NOM Participants under common ownership to aggregate their volume to qualify for the rebate. Common ownership is defined as 75 percent common ownership or control.

<sup>6</sup> The Exchange is not proposing to otherwise amend Tier 5 or any other Penny

b. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(4) of the Act,<sup>8</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 increasing the Fees for Removing Liquidity in Non-Penny Pilot Options for all market participants is reasonable because the increased fees permit the Exchange to offer increased Customer Rebates to Add Liquidity in both Penny Pilot and Non-Penny Pilot Options. Also, the proposed Fees for Removing Liquidity are similar to the non-Penny Pilot Options fees at BATS Exchange, Inc. (“BATS”).<sup>9</sup>

The Exchange believes that increasing the Professional, Firm and Non-NOM Market Maker Fees for Removing Liquidity from \$0.85 to \$0.89 per contract is equitable and not unfairly discriminatory because all market participants would be assessed the same Fees for Removing Liquidity in Non-Penny Pilot Options, except Customers and NOM Market Makers. The Exchange believes that it is equitable and not unfairly discriminatory to increase Customer and NOM Market Maker Non-Penny Pilot Fees for Removing Liquidity from \$0.79 to \$0.82 per contract because Customers and NOM

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Pilot Options Customer rebate tier.

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> BATS is amending pricing effective November 1, 2012 to increase non-customer non-Penny pricing from \$0.80 to \$0.84 per contract. See BATS alert titled “BATS Options Exchange Pricing Effective November 1, 2012.”

Market Makers each bring benefits to the market. The Exchange believes that Customer order flow brings unique benefits to the market which benefits all market participants through increased liquidity. NOM Market Makers have obligations to the market and regulatory requirements,<sup>10</sup> which normally do not apply to other market participants. A NOM Market Maker has the obligation to make continuous markets, engage in a 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 a 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.

The Exchange believes that increasing the Customer Rebate to Add Liquidity in Non-Penny Pilot Options, including NDX, from \$0.75 to \$0.80 per contract and also increasing the Customer Rebate to Add Liquidity in Non-Penny Pilot Options when a market participant adds Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month from \$0.77 to \$0.81 per contract is reasonable because these increased rebates would continue to attract Customer order flow to the Exchange in Non-Penny Pilot Options. Today, NOM Options

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<sup>10</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.

Participants have the ability to earn a \$0.75 per contract Customer Rebate to Add Liquidity in Non-Penny Pilot Options and an increased rebate of \$0.77 when a market participant adds Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month. By increasing the both the Customer Rebate to Add Liquidity to \$0.80 per contract and the Customer Rebate for market participants that add Customer in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month to \$0.81 per contract should encourage market participants to send additional order flow to NOM to obtain an even greater Customer Rebate to Add Liquidity in Non-Penny Pilot Options.

The Exchange believes that increasing the Customer Rebate to Add Liquidity in Non-Penny Pilot Options, including NDX, from \$0.75 to \$0.80 per contract and also increasing the Customer Rebate to Add Liquidity in Non-Penny Pilot Options when a market participant adds Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month from \$0.77 to \$0.81 per contract is equitable and not unfairly discriminatory because Customer order flow brings unique benefits to the market which benefits all market participants. 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. These increased rebates are available to all NOM Options Participants acting as agent for Customer orders and in the case of the enhanced rebate of \$0.81 per contract, all NOM Options Participants that send 115,000 contracts per day in a month in either or both Penny Pilot or Non-Penny Pilot Options would be entitled to receive the enhanced rebate.

In the current U.S. options market, many of the contracts are quoted in pennies. Under this pricing structure, the minimum penny tick increment equates to a \$1.00 economic value difference per contract, given that a single standardized U.S. option contract covers 100 shares of the underlying stock. Where contracts are quoted in \$0.05 increments (non-pennies), the value per tick is \$5.00 in proceeds to the investor transacting in these contracts. Liquidity rebate and access fee structures on the make-take exchanges, including NOM, for securities quoted in penny increments are commonly in the \$0.30 to \$0.45 per contract range.<sup>11</sup> A \$0.30 per contract rebate in a penny quoted security is a rebate equivalent to 30% of the value of the minimum tick. A \$0.45 per contract fee in a penny quoted security is a charge equivalent to 45% of the value of that minimum tick. In other words, in penny quoted securities, where the price is improved by one tick with an access fee of \$0.45 per contract, an investor paying to access that quote is still \$0.55 better off than trading at the wider spread, even without the access fee (\$1.00 of price improvement - \$0.45 access fee = \$0.55 better economics). This computation is equally true for securities quoted in wider increments. Rebates and access fees near the \$0.89 per contract level equate to only 17.8% of the value of the minimum tick in Non-Penny Pilot Options, less than the experience today in Penny Pilot Options. For example, a retail investor transacting a single contract in a non-penny quoted security quoted a single tick tighter than the rest of the market, and paying an access fee of \$0.82 per contract, is receiving an economic benefit of \$4.18 (\$0.05 improved tick = \$5.00 in proceeds - \$0.82 access fee = \$4.18). The Exchange believes that encouraging NOM Market Makers to quote more aggressively by maintaining

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<sup>11</sup> NOM is proposing to only pay a Customer a Rebate to Add Liquidity in Non-Penny Pilot Options. Other market participants would not be entitled to a rebate.

reducing transaction fees<sup>12</sup> and incentivizing Customer orders to post on NOM will narrow the spread in Non-Penny Pilot Options to the benefit of investors and all market participants by improving the overall economics of the resulting transactions that occur on the Exchange, even if the access fee paid in connection with such transactions is higher. Accordingly, the Exchange believes that the proposed fees and rebates for Non-Penny Pilot Options are reasonable, equitable and not unfairly discriminatory.

The Exchange believes that the proposed increase to the Tier 5 Customer Rebate to Add Liquidity in Penny Pilot Options is reasonable because the increased rebate would encourage broker-dealers acting as agent for Customer orders to select the Exchange as a venue to post Customer orders. The Exchange believes the existing monthly volume thresholds have incentivized firms to increase Customer order flow to the Exchange. The Exchange desires to continue to encourage firms to route Customer orders to the Exchange by offering an increased Customer rebate.

The Exchange believes that the proposed increase to the Tier 5 Customer Rebate to Add Liquidity in Penny Pilot Options is equitable and not unfairly discriminatory because the Exchange is proposing to offer an even higher Tier 5 Customer rebate in Penny Pilot Options of \$0.46 per contract to NOM Participants which will be based on Total Volume. NOM Participants may total all Penny Pilot Option and Non-Penny Pilot Option volume that either adds or removes liquidity to reach the 130,000 volume

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<sup>12</sup> The Exchange notes that the proposed \$0.25 per contract NOM Market Maker Fee for Adding in Non-Penny Pilot Options is significantly less than transaction fees plus payment for order flow fees assessed by other options exchanges. For example, on NASDAQ OMX PHLX LLC (“Phlx”), the combined payment for order flow fee plus the transaction fee is \$0.92 per contract. See Phlx’s Pricing Schedule. Unlike Penny Pilot Options, the Exchange believes this significant reduction in fees for adding liquidity will have the same effect as a rebate in non-Penny Pilot Options in terms of a narrower spread.

requirement and qualify to obtain this rebate. All NOM Participants that transact Customer orders in Penny Pilot Options are eligible for the Customer rebates.<sup>13</sup>

The Exchange operates in a highly competitive market comprised of ten 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 rebate scheme and fees 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 rebates and fees 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 changes 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 rebates and fees to compete effectively for the execution and routing of options contracts and to reduce the overall cost to investors of options trading. The Exchange believes that incentivizing NOM Participants to transact greater Customer volume on the Exchange benefits all market participants because of the increased liquidity to the market.

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

No written comments were either solicited or received.

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<sup>13</sup> Tier 1 pays a rebate for NOM Participants that add Customer liquidity of up to 14,999 contracts per day in a month of Penny Pilot Options. There is no required minimum volume of Customer orders to qualify for a Customer Rebate to Add Liquidity.

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>14</sup>

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.

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Exhibit 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2012-127)

November \_\_, 2012

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

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 November 1, 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, entitled "Options Pricing," at 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. Specifically, NOM proposes to amend the Non-Penny Pilot Options Fees for Removing Liquidity and the Customer Rebate to Add Liquidity as well as the Penny Pilot Options Customer Rebate to Add Liquidity.

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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 that the amendments related to fee increases will be operative on November 2, 2012.<sup>3</sup>

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 modify Chapter XV, entitled "Options Pricing," at Section 2(1) governing the rebates and fees assessed for option orders entered into NOM. The Exchange is proposing to increase certain Non-Penny Pilot Options Fees for Removing Liquidity in order to offer increased Penny Pilot and Non-Penny Pilot Options Customer Rebates to Add Liquidity to attract additional order flow to the Exchange to the benefit of all market participants.

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<sup>3</sup> The amendments related to the Fees for Removing Liquidity in Non-Penny Pilot Options would be operative on November 2, 2012.

The Exchange proposes to amend the Fees for Removing Liquidity in Non-Penny Pilot Options. Today Customers and NOM Market Makers are assessed a \$0.79 per contract Fee for Removing Liquidity in Non-Penny Pilot Options and Professionals, Firms and Non-NOM Market Makers are assessed an \$0.85 per contract Fee for Removing Liquidity in Non-Penny Pilot Options. The Exchange proposes to increase the Customer and NOM Market Maker Fees for Removing Liquidity in Non-Penny Pilot Options from \$0.79 to \$0.82 per contract and also increase the Professional, Firm and Non-NOM Market Maker Fees for Removing Liquidity in Non-Penny Pilot Options from \$0.85 per to \$0.89 per contract. The Exchange proposes that these amendments will become operative on November 2, 2012.

The Exchange also proposes to amend the Customer Rebate to Add Liquidity in Non-Penny Pilot Options. Today, the Customer Rebate to Add Liquidity in Non-Penny Pilot Options, including NDX, is \$0.75 per contract, unless a market participant adds Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month, then the Customer Rebate to Add Liquidity in Non-Penny Pilot Options is \$0.77 per contract.<sup>4</sup> The Exchange proposes to increase the Customer Rebate to Add Liquidity in Non-Penny Pilot Options, including NDX, from \$0.75 to \$0.80 per contract and also to increase the Customer Rebate to Add Liquidity in Non-Penny Pilot Options when a market participant adds Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000

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<sup>4</sup> NOM Participants under common ownership may aggregate their Customer volume to qualify for the increased Customer rebate. Common ownership is defined as 75 percent common ownership or control.

contracts per day in a month from \$0.77 to \$0.81 per contract. The Exchange proposes that these amendments become immediately effective.

The Exchange also proposes to amend the Customer Rebate to Add Liquidity in Penny Pilot Options. Today, the Exchange pays Customer Rebates to Add Liquidity on Penny Pilot Options as follows:

<b>Monthly Volume</b>	<b>Rebate to Add Liquidity</b>
<b>Tier 1</b> Participant adds Customer liquidity of up to 34,999 contracts per day in a month	\$0.26
<b>Tier 2</b> Participant adds Customer liquidity of 35,000 to 74,999 contracts per day in a month	\$0.43
<b>Tier 3</b> Participant adds Customer liquidity of 75,000 or more contracts per day in a month	\$0.44
<b>Tier 4<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
<b>Tier 5<sup>b,c</sup></b> Participant has Total Volume of 130,000 or more contracts per day in a month	\$0.45

<sup>a</sup>For purposes of Tier 4, 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.

<sup>b</sup>For purposes of Tier 5, "Total Volume" shall be defined as Customer, Professional, Firm, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and Non-Penny Pilot Options which either adds or removes liquidity.

<sup>c</sup>For purposes of Tier 5, the Exchange will allow NOM Participants under common ownership to aggregate their volume to qualify for the rebate. Common ownership is defined as 75 percent common ownership or control.

The Exchange proposes to amend the Tier 5 rebate which pays a \$0.45 per contract Rebate to Add Liquidity to NOM Options Participants that have Total Volume

of 130,000 or more contracts per day in a month.<sup>5</sup> Total Volume is defined as Customer, Professional, Firm, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and Non-Penny Pilot Options which either adds or removes liquidity. The Exchange proposes to amend the Tier 5 rebate from \$0.45 to \$0.46 per contract.<sup>6</sup> The Exchange proposes that this amendment become immediately effective.

## 2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(4) of the Act,<sup>8</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 increasing the Fees for Removing Liquidity in Non-Penny Pilot Options for all market participants is reasonable because the increased fees permit the Exchange to offer increased Customer Rebates to Add Liquidity in both Penny Pilot and Non-Penny Pilot Options. Also, the proposed Fees for Removing Liquidity are similar to the non-Penny Pilot Options fees at BATS Exchange, Inc. (“BATS”).<sup>9</sup>

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<sup>5</sup> For purposes of Tier 5, the Exchange allows NOM Participants under common ownership to aggregate their volume to qualify for the rebate. Common ownership is defined as 75 percent common ownership or control.

<sup>6</sup> The Exchange is not proposing to otherwise amend Tier 5 or any other Penny Pilot Options Customer rebate tier.

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> BATS is amending pricing effective November 1, 2012 to increase non-customer non-Penny pricing from \$0.80 to \$0.84 per contract. See BATS alert titled “BATS Options Exchange Pricing Effective November 1, 2012.”

The Exchange believes that increasing the Professional, Firm and Non-NOM Market Maker Fees for Removing Liquidity from \$0.85 to \$0.89 per contract is equitable and not unfairly discriminatory because all market participants would be assessed the same Fees for Removing Liquidity in Non-Penny Pilot Options, except Customers and NOM Market Makers. The Exchange believes that it is equitable and not unfairly discriminatory to increase Customer and NOM Market Maker Non-Penny Pilot Fees for Removing Liquidity from \$0.79 to \$0.82 per contract because Customers and NOM Market Makers each bring benefits to the market. The Exchange believes that Customer order flow brings unique benefits to the market which benefits all market participants through increased liquidity. NOM Market Makers have obligations to the market and regulatory requirements,<sup>10</sup> which normally do not apply to other market participants. A NOM Market Maker has the obligation to make continuous markets, engage in a 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 a 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.

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<sup>10</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.

The Exchange believes that increasing the Customer Rebate to Add Liquidity in Non-Penny Pilot Options, including NDX, from \$0.75 to \$0.80 per contract and also increasing the Customer Rebate to Add Liquidity in Non-Penny Pilot Options when a market participant adds Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month from \$0.77 to \$0.81 per contract is reasonable because these increased rebates would continue to attract Customer order flow to the Exchange in Non-Penny Pilot Options. Today, NOM Options Participants have the ability to earn a \$0.75 per contract Customer Rebate to Add Liquidity in Non-Penny Pilot Options and an increased rebate of \$0.77 when a market participant adds Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month. By increasing the both the Customer Rebate to Add Liquidity to \$0.80 per contract and the Customer Rebate for market participants that add Customer in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month to \$0.81 per contract should encourage market participants to send additional order flow to NOM to obtain an even greater Customer Rebate to Add Liquidity in Non-Penny Pilot Options.

The Exchange believes that increasing the Customer Rebate to Add Liquidity in Non-Penny Pilot Options, including NDX, from \$0.75 to \$0.80 per contract and also increasing the Customer Rebate to Add Liquidity in Non-Penny Pilot Options when a market participant adds Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month from \$0.77 to \$0.81 per contract is equitable and not unfairly discriminatory because Customer order flow brings unique benefits to the market which benefits all market participants. 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. These increased rebates are available to all NOM Options Participants acting as agent for Customer orders and in the case of the enhanced rebate of \$0.81 per contract, all NOM Options Participants that send 115,000 contracts per day in a month in either or both Penny Pilot or Non-Penny Pilot Options would be entitled to receive the enhanced rebate.

In the current U.S. options market, many of the contracts are quoted in pennies. Under this pricing structure, the minimum penny tick increment equates to a \$1.00 economic value difference per contract, given that a single standardized U.S. option contract covers 100 shares of the underlying stock. Where contracts are quoted in \$0.05 increments (non-pennies), the value per tick is \$5.00 in proceeds to the investor transacting in these contracts. Liquidity rebate and access fee structures on the make-take exchanges, including NOM, for securities quoted in penny increments are commonly in the \$0.30 to \$0.45 per contract range.<sup>11</sup> A \$0.30 per contract rebate in a penny quoted security is a rebate equivalent to 30% of the value of the minimum tick. A \$0.45 per contract fee in a penny quoted security is a charge equivalent to 45% of the value of that minimum tick. In other words, in penny quoted securities, where the price is improved by one tick with an access fee of \$0.45 per contract, an investor paying to access that quote is still \$0.55 better off than trading at the wider spread, even without the access fee (\$1.00 of price improvement - \$0.45 access fee = \$0.55 better economics). This computation is equally true for securities quoted in wider increments. Rebates and access fees near the \$0.89 per contract level equate to only 17.8% of the value of the minimum

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<sup>11</sup> NOM is proposing to only pay a Customer a Rebate to Add Liquidity in Non-Penny Pilot Options. Other market participants would not be entitled to a rebate.

tick in Non-Penny Pilot Options, less than the experience today in Penny Pilot Options. For example, a retail investor transacting a single contract in a non-penny quoted security quoted a single tick tighter than the rest of the market, and paying an access fee of \$0.82 per contract, is receiving an economic benefit of \$4.18 ( $\$0.05$  improved tick =  $\$5.00$  in proceeds -  $\$0.82$  access fee =  $\$4.18$ ). The Exchange believes that encouraging NOM Market Makers to quote more aggressively by maintaining reducing transaction fees<sup>12</sup> and incentivizing Customer orders to post on NOM will narrow the spread in Non-Penny Pilot Options to the benefit of investors and all market participants by improving the overall economics of the resulting transactions that occur on the Exchange, even if the access fee paid in connection with such transactions is higher. Accordingly, the Exchange believes that the proposed fees and rebates for Non-Penny Pilot Options are reasonable, equitable and not unfairly discriminatory.

The Exchange believes that the proposed increase to the Tier 5 Customer Rebate to Add Liquidity in Penny Pilot Options is reasonable because the increased rebate would encourage broker-dealers acting as agent for Customer orders to select the Exchange as a venue to post Customer orders. The Exchange believes the existing monthly volume thresholds have incentivized firms to increase Customer order flow to the Exchange. The Exchange desires to continue to encourage firms to route Customer orders to the Exchange by offering an increased Customer rebate.

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<sup>12</sup> The Exchange notes that the proposed \$0.25 per contract NOM Market Maker Fee for Adding in Non-Penny Pilot Options is significantly less than transaction fees plus payment for order flow fees assessed by other options exchanges. For example, on NASDAQ OMX PHLX LLC (“Phlx”), the combined payment for order flow fee plus the transaction fee is \$0.92 per contract. See Phlx’s Pricing Schedule. Unlike Penny Pilot Options, the Exchange believes this significant reduction in fees for adding liquidity will have the same effect as a rebate in non-Penny Pilot Options in terms of a narrower spread.

The Exchange believes that the proposed increase to the Tier 5 Customer Rebate to Add Liquidity in Penny Pilot Options is equitable and not unfairly discriminatory because the Exchange is proposing to offer an even higher Tier 5 Customer rebate in Penny Pilot Options of \$0.46 per contract to NOM Participants which will be based on Total Volume. NOM Participants may total all Penny Pilot Option and Non-Penny Pilot Option volume that either adds or removes liquidity to reach the 130,000 volume requirement and qualify to obtain this rebate. All NOM Participants that transact Customer orders in Penny Pilot Options are eligible for the Customer rebates.<sup>13</sup>

The Exchange operates in a highly competitive market comprised of ten 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 rebate scheme and fees 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 rebates and fees present on the Exchange today and substantially influences the proposal set forth above.

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

NASDAQ does not believe that the proposed rule changes 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 rebates and fees to compete effectively for the execution and routing of options contracts and to reduce the

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<sup>13</sup> Tier 1 pays a rebate for NOM Participants that add Customer liquidity of up to 14,999 contracts per day in a month of Penny Pilot Options. There is no required minimum volume of Customer orders to qualify for a Customer Rebate to Add Liquidity.

overall cost to investors of options trading. The Exchange believes that incentivizing NOM Participants to transact greater Customer volume on the Exchange benefits all market participants because of the increased liquidity to the market.

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>14</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>14</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-2012-127 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-2012-127. 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-2012-127 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>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

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

**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 <sup>1</sup>	\$0.45	\$0.47	\$0.47	\$0.47	\$0.47
<b>Non-Penny Pilot Options (including NDX<sup>2</sup>):</b>					
Fee for Adding Liquidity	N/A	\$0.45	\$0.45	\$0.45	\$0.25
Fee for Removing Liquidity	\$0.[79]82	\$0.8[5]9	\$0.8[5]9	\$0.8[5]9	\$0.[79]82
Rebate to Add Liquidity	<sup>3</sup>	N/A	N/A	N/A	N/A
<b>SOX, HGX and OSX:</b>					
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>The Professional, Firm, Non-NOM Market Maker and NOM Market Maker Penny Pilot Options Fee for Removing Liquidity will be reduced by \$0.01 per contract for transactions in which the same NOM Participant or a NOM

Participant under common ownership is the buyer and the seller. Common ownership is defined as 75 percent common ownership or control.

<sup>2</sup>For transactions in NDX, a surcharge of \$0.10 per contract will be added to the Fee for Adding Liquidity and the Fee for Removing Liquidity in Non-Penny Pilot Options, except for a Customer who will not be assessed a surcharge.

<sup>3</sup>The Customer Rebate to Add Liquidity in Non-Penny Pilot Options, including NDX, will be \$0.[75]80 per contract, unless a market participant adds Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month, then the Customer Rebate to Add Liquidity in Non-Penny Pilot Options will be \$0.[77]81 per contract. NOM Participants under common ownership may aggregate their Customer volume to qualify for the increased Customer rebate. Common ownership is defined as 75 percent common ownership or control.

\*\*\* The Customer Rebate to Add Liquidity in Penny Pilot Options will be paid as noted below.

<b>Monthly Volume</b>	<b>Rebate to Add Liquidity</b>
<b>Tier 1</b> Participant adds Customer liquidity of up to 34,999 contracts per day in a month	\$0.26
<b>Tier 2</b> Participant adds Customer liquidity of 35,000 to 74,999 contracts per day in a month	\$0.43
<b>Tier 3</b> Participant adds Customer liquidity of 75,000 or more contracts per day in a month	\$0.44
<b>Tier 4<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
<b>Tier 5<sup>b,c</sup></b> Participant has Total Volume of 130,000 or more contracts per day in a month	\$0.4[5]6

<sup>a</sup>For purposes of Tier 4, 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.

<sup>b</sup>For purposes of Tier 5, "Total Volume" shall be defined as Customer, Professional, Firm, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and Non-Penny Pilot Options which either adds or removes liquidity.

°For purposes of Tier 5, the Exchange will allow NOM Participants under common ownership to aggregate their volume to qualify for the rebate. Common ownership is defined as 75 percent common ownership or control.

(2) - (4) No Change.

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