

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 25	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2012 - * 141 Amendment No. (req. for Amendments *)
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Filing by NASDAQ Stock Market
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) <input checked="" type="checkbox"/>	Section 3C(b)(2) <input checked="" type="checkbox"/>
Section 806(e)(2) <input checked="" type="checkbox"/>	

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

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

Relating to Penny Pilot Options

Contact Information

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

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.

(Title *)
 Executive Vice President and General Counsel

Date 12/19/2012
 By Edward S. Knight
 (Name *)

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

Edward S Knight,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

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

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

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

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

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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

Add Remove View

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

Partial Amendment

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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”)¹ and Rule 19b-4 thereunder,² The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to modify Chapter XV, Section 2 of the rules governing the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend its pricing to modify the Professional Rebate to Add Liquidity in Penny Pilot Options.³

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on January 2, 2013.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Penny Pilot was established in March 2008, expanded in October 2009, and, through a series of orders, extended through December 31, 2012. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008)(SR-NASDAQ-2008-026)(notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009)(SR-NASDAQ-2009-091)(notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009)(SR-NASDAQ-2009-097)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010)(SR-NASDAQ-2010-013)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR-NASDAQ-2010-053)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR-NASDAQ-2011-169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot); and 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR-NASDAQ-2012-075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012). See also NOM Rules, Chapter VI, Section 5.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1.

(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 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 amend the Professional Rebate to Add Liquidity in Penny Pilot Options to attract additional order flow to the Exchange.

The Exchange currently pays a flat Professional Rebate to Add Liquidity in Penny Pilot Options of \$0.29 per contract. The Exchange is now proposing to pay Professionals, a tiered rebate instead.. Specifically, the Exchange proposes to eliminate the flat \$0.29 per contract Professional Rebate to Add Liquidity and instead pay

Professionals rebates based on total number of Customer and Professional contracts that add liquidity in Penny Pilot Options in a given month as follows:

Monthly Volume	Rebate to Add Liquidity
Tier 1 Participant adds Customer and Professional liquidity of up to 34,999 contracts per day in a month	\$0.26
Tier 2 Participant adds Customer and Professional liquidity of 35,000 to 74,999 contracts per day in a month	\$0.43
Tier 3 Participant adds Customer and Professional liquidity of 75,000 or more contracts per day in a month	\$0.44
Tier 4^a Participant adds (1) Customer and Professional 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
Tier 5^{b,c} Participant has Total Volume of 130,000 or more contracts per day in a month	\$0.46

Professionals would be entitled to the same Rebate to Add Liquidity in Penny Pilot Options that Customers receive today. The Exchange would pay a Tier 1 rebate of \$0.26 per contract to market participants that add Customer and Professional liquidity of up to 34,999 contracts per day in a month. A Tier 2 rebate would pay \$0.43 per contract to market participants that add Customer and Professional liquidity between 35,000 and 74,999 contracts per day in a month. A Tier 3 rebate would pay a \$0.44 per contract rebate to market participants that add Customer and Professional liquidity of 75,000 contracts or more per day in a month. The Tier 4 rebate would pay a \$0.42 rebate to market participants that add (1) Customer and Professional liquidity of 25,000 or more contracts per day in a month. In addition, to qualify for Tier 4, the Participant must have

certified for the Investor Support Program (“ISP”) as set forth in Rule 7014;⁴ and executed at least one order on NASDAQ’s equity market.⁵ The Tier 5 rebate would pay a \$0.46 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.⁶ Total Volume is defined to include 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 apply the Rebate to Add Liquidity tiers to Professionals transacting Penny Pilot Options. The Exchange proposes to amend Chapter XV, Section 2 by noting that the tiers would apply to Professionals.

Additionally, the Exchange also proposes to add contracts executed in the “Professional” capacity to the tier requirements. NOM Participants would be able to count Customer and Professional contracts toward the number of contracts eligible to qualify for a tier as specified herein. The addition of Professional orders to the number of

⁴ For a detailed description of the ISP, see Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ-2010-141) (notice of filing and immediate effectiveness) (the “ISP Filing”). See also Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (NASDAQ-2010-153) (notice of filing and immediate effectiveness); and 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ-2010-154) (notice of filing and immediate effectiveness).

⁵ 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.

⁶ 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.

contracts eligible for each rebate tier will enable NOM Participants to achieve higher rebates.

b. Statutory Basis

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

The Exchange believes that the proposed tier structure for Professional Rebates to Add Liquidity in Penny Pilot Options is reasonable, equitable and not unfairly discriminatory because by incentivizing NOM Participants to select the Exchange as a venue to post Customer and Professional orders, the Exchange will attract additional Customer order flow to the benefit all market participants.

The use of volume tiers such as the proposed monthly volume tier Rebates to Add Liquidity in Penny Pilot Options has been found to be equitable and not unfairly discriminatory because members that account for more volume add greater value to the Exchange's trading environment. Additionally, with the exception of Tier 1, Professionals will have an opportunity to earn higher rebates than they earned in the past. With respect to Tier 1, the Exchange is proposing to pay a \$0.26 per contract Rebate to Add Liquidity as compared to a \$0.29 per contract rebate. The Exchange believes that this proposal is equitable and not unfairly discriminatory because the Professional has an

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

opportunity to earn higher rebates with the tier structure as compared the current \$0.29 per contract Rebate to Add Liquidity. In addition, the Exchange believes that the proposed monthly tier structure for Professional Rebates to Add Liquidity in Penny Pilot Options is equitable and not unfairly discriminatory because the Exchange would uniformly pay a Rebate to Add Liquidity to Professionals executing Penny Pilot Options based on the monthly tiers proposed herein.

The Exchange believes that paying Professionals a tiered Rebate to Add Liquidity is equitable and not unfairly discriminatory as compared to other market participants. For example, Customers are entitled to the same rebate and Customer order flow benefits all market participants. NOM Market Makers are entitled to a \$0.30 per contract Rebate to Add Liquidity in Penny Pilot Options, and that rebate is higher than Professionals and Customers because NOM Market Makers add value through continuous quoting⁹ and the commitment of capital. Firms earn a lower rebate of a \$0.10 per contract Rebate to Add Liquidity in Penny Pilot Options because unlike Customers and NOM Market Makers they do not bring the liquidity of a Customer nor do they have the obligations of a NOM Market Maker. Finally, Non-NOM Market Makers are entitled to a \$0.25 per contract rebate in Penny Pilot Options which is lower than the Professional and Customer categories because unlike Customers and NOM Market Makers they do not bring the

⁹ 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.

liquidity of a Customer nor do they have the obligations of a NOM Market Maker. Today, Professionals are paid a higher Rebate to Add Liquidity in Penny Pilot Options as compared to Firms and Non-NOM Market Makers. NOM Market Makers will continue to receive a higher Rebate to Add Liquidity in Penny Pilot Options as compared to Professionals earning a rebate in Tier 1.

Also, the Exchange believes the proposed tiered Rebates to Add Liquidity in Penny Pilot Options are reasonable, equitable and not unfairly discriminatory because the rebates are similar to a tiered rebate offered by NYSE Arca, Inc. (“NYSE Arca”). NYSE Arca pays a per contract rate on all posted liquidity in Customer Penny Pilot Issues by aggregating total contracts from customer posted orders in Penny Pilot Issues in a given month.¹⁰ Of note, NYSE Arca does not have a professional category similar to NOM and therefore, orders that would otherwise be classified as Customers orders on NOM¹¹ are being counted towards customer volume at NYSE Arca.

The Exchange proposes to count both Customer and Professional orders in the number of contracts eligible for the Rebate to Add Liquidity in Penny Pilot Options. NOM Participants will benefit from the addition of Professional orders to the number of contracts eligible for the rebate and as a result may qualify for a higher tier. The Exchange believes the addition of Professional orders to the types of orders eligible for a

¹⁰ See NYSE Arca’s Fee Schedule.

¹¹ See Securities Exchange Act Release No. 63028 (October 1, 2010), 75 FR 62443 (October 8, 2010) (SR-NASDAQ-2012-099). In this rule filing, the Exchange noted that NOM Participants will be required appropriately to mark all Professional orders. To comply with this requirement, Participants will be required to review their Public Customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Professional orders.

rebate tier is reasonable because it will incentivize NOM Participants to send additional Professional orders to the Exchange as well as Customer orders. The Exchange believes that adding Professional orders to the types of orders eligible for a rebate tier is equitable and not unfairly discriminatory because all NOM Participants will benefit from the additional liquidity the amendment may attract to the Exchange as a result of the increased incentive to send Professional as well as Customer orders. Also, all NOM Participants are eligible for the rebate and are able to earn a rebate by simply transacting one Customer or Professional order in a Penny Pilot Option.¹²

The Exchange operates in a highly competitive market comprised of eleven U.S. options exchanges in which sophisticated and knowledgeable market participants can readily send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed rebate structure and tiers are competitive and similar to other rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace impacts the rebates present on the Exchange today and substantially influences the proposals 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 fees to compete effectively for the execution and routing of options contracts and to reduce the overall cost to investors of options trading.

¹² A NOM Participant qualifies for a Tier 1 rebate of \$0.26 per contract by adding Customer and Professional liquidity of up to 34,999 contracts per day in a month.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

The foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act.¹³

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

Not applicable.

9. Exhibits

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

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2012-141)

December ____ 2012

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on December 19, 2012. The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASDAQ Stock Market LLC proposes to modify Chapter XV, Section 2 of the rules governing the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend its pricing to modify the Professional Rebate to Add Liquidity in Penny Pilot Options.³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Penny Pilot was established in March 2008, expanded in October 2009, and, through a series of orders, extended through December 31, 2012. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on January 2, 2013.

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.

(April 4, 2008)(SR-NASDAQ-2008-026)(notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009)(SR-NASDAQ-2009-091)(notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009)(SR-NASDAQ-2009-097)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010)(SR-NASDAQ-2010-013)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR-NASDAQ-2010-053)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR-NASDAQ-2011-169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot); and 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR-NASDAQ-2012-075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012). See also NOM Rules, Chapter VI, Section 5.

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

1. Purpose

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Monthly Volume	Rebate to Add Liquidity
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Tier 5^{b,c} Participant has Total Volume of 130,000 or more contracts per day in a month	\$0.46

Professionals would be entitled to the same Rebate to Add Liquidity in Penny Pilot Options that Customers receive today. The Exchange would pay a Tier 1 rebate of \$0.26 per contract to market participants that add Customer and Professional liquidity of up to 34,999 contracts per day in a month. A Tier 2 rebate would pay \$0.43 per contract to market participants that add Customer and Professional liquidity between 35,000 and 74,999 contracts per day in a month. A Tier 3 rebate would pay a \$0.44 per contract rebate to market participants that add Customer and Professional liquidity of 75,000 contracts or more per day in a month. The Tier 4 rebate would pay a \$0.42 rebate to market participants that add (1) Customer and Professional liquidity of 25,000 or more contracts per day in a month. In addition, to qualify for Tier 4, the Participant must have certified for the Investor Support Program (“ISP”) as set forth in Rule 7014;⁴ and executed at least one order on NASDAQ’s equity market.⁵ The Tier 5 rebate would pay a \$0.46 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.⁶ Total Volume is defined to

⁴ For a detailed description of the ISP, see Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ-2010-141) (notice of filing and immediate effectiveness) (the “ISP Filing”). See also Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (NASDAQ-2010-153) (notice of filing and immediate effectiveness); and 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ-2010-154) (notice of filing and immediate effectiveness).

⁵ 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.

⁶ 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.

include 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 apply the Rebate to Add Liquidity tiers to Professionals transacting Penny Pilot Options. The Exchange proposes to amend Chapter XV, Section 2 by noting that the tiers would apply to Professionals.

Additionally, the Exchange also proposes to add contracts executed in the “Professional” capacity to the tier requirements. NOM Participants would be able to count Customer and Professional contracts toward the number of contracts eligible to qualify for a tier as specified herein. The addition of Professional orders to the number of contracts eligible for each rebate tier will enable NOM Participants to achieve higher rebates.

2. Statutory Basis

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

The Exchange believes that the proposed tier structure for Professional Rebates to Add Liquidity in Penny Pilot Options is reasonable, equitable and not unfairly discriminatory because by incentivizing NOM Participants to select the Exchange as a

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

venue to post Customer and Professional orders, the Exchange will attract additional Customer order flow to the benefit all market participants.

The use of volume tiers such as the proposed monthly volume tier Rebates to Add Liquidity in Penny Pilot Options has been found to be equitable and not unfairly discriminatory because members that account for more volume add greater value to the Exchange's trading environment. Additionally, with the exception of Tier 1, Professionals will have an opportunity to earn higher rebates than they earned in the past. With respect to Tier 1, the Exchange is proposing to pay a \$0.26 per contract Rebate to Add Liquidity as compared to a \$0.29 per contract rebate. The Exchange believes that this proposal is equitable and not unfairly discriminatory because the Professional has an opportunity to earn higher rebates with the tier structure as compared the current \$0.29 per contract Rebate to Add Liquidity. In addition, the Exchange believes that the proposed monthly tier structure for Professional Rebates to Add Liquidity in Penny Pilot Options is equitable and not unfairly discriminatory because the Exchange would uniformly pay a Rebate to Add Liquidity to Professionals executing Penny Pilot Options based on the monthly tiers proposed herein.

The Exchange believes that paying Professionals a tiered Rebate to Add Liquidity is equitable and not unfairly discriminatory as compared to other market participants. For example, Customers are entitled to the same rebate and Customer order flow benefits all market participants. NOM Market Makers are entitled to a \$0.30 per contract Rebate to Add Liquidity in Penny Pilot Options, and that rebate is higher than Professionals and Customers because NOM Market Makers add value through continuous quoting⁹ and the

⁹ Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market

commitment of capital. Firms earn a lower rebate of a \$0.10 per contract Rebate to Add Liquidity in Penny Pilot Options because unlike Customers and NOM Market Makers they do not bring the liquidity of a Customer nor do they have the obligations of a NOM Market Maker. Finally, Non-NOM Market Makers are entitled to a \$0.25 per contract rebate in Penny Pilot Options which is lower than the Professional and Customer categories because unlike Customers and NOM Market Makers they do not bring the liquidity of a Customer nor do they have the obligations of a NOM Market Maker. Today, Professionals are paid a higher Rebate to Add Liquidity in Penny Pilot Options as compared to Firms and Non-NOM Market Makers. NOM Market Makers will continue to receive a higher Rebate to Add Liquidity in Penny Pilot Options as compared to Professionals earning a rebate in Tier 1.

Also, the Exchange believes the proposed tiered Rebates to Add Liquidity in Penny Pilot Options are reasonable, equitable and not unfairly discriminatory because the rebates are similar to a tiered rebate offered by NYSE Arca, Inc. (“NYSE Arca”). NYSE Arca pays a per contract rate on all posted liquidity in Customer Penny Pilot Issues by aggregating total contracts from customer posted orders in Penny Pilot Issues in a given month.¹⁰ Of note, NYSE Arca does not have a professional category similar to NOM and

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.

¹⁰ See NYSE Arca’s Fee Schedule.

therefore, orders that would otherwise be classified as Customers orders on NOM¹¹ are being counted towards customer volume at NYSE Arca.

The Exchange proposes to count both Customer and Professional orders in the number of contracts eligible for the Rebate to Add Liquidity in Penny Pilot Options. NOM Participants will benefit from the addition of Professional orders to the number of contracts eligible for the rebate and as a result may qualify for a higher tier. The Exchange believes the addition of Professional orders to the types of orders eligible for a rebate tier is reasonable because it will incentivize NOM Participants to send additional Professional orders to the Exchange as well as Customer orders. The Exchange believes that adding Professional orders to the types of orders eligible for a rebate tier is equitable and not unfairly discriminatory because all NOM Participants will benefit from the additional liquidity the amendment may attract to the Exchange as a result of the increased incentive to send Professional as well as Customer orders. Also, all NOM Participants are eligible for the rebate and are able to earn a rebate by simply transacting one Customer or Professional order in a Penny Pilot Option.¹²

The Exchange operates in a highly competitive market comprised of eleven U.S. options exchanges in which sophisticated and knowledgeable market participants can readily send order flow to competing exchanges if they deem fee levels at a particular

¹¹ See Securities Exchange Act Release No. 63028 (October 1, 2010), 75 FR 62443 (October 8, 2010) (SR-NASDAQ-2012-099). In this rule filing, the Exchange noted that NOM Participants will be required appropriately to mark all Professional orders. To comply with this requirement, Participants will be required to review their Public Customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Professional orders.

¹² A NOM Participant qualifies for a Tier 1 rebate of \$0.26 per contract by adding Customer and Professional liquidity of up to 34,999 contracts per day in a month.

exchange to be excessive. The Exchange believes that the proposed rebate structure and tiers are competitive and similar to other rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace impacts the rebates present on the Exchange today and substantially influences the proposals 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 fees to compete effectively for the execution and routing of options contracts and to reduce the overall cost to investors of options trading.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹³ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2012-141 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-2012-141. 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-2012-141 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Chapter XV Options Pricing

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

* * * * *

Sec. 2 NASDAQ Options Market—Fees and Rebates

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

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

	Fees and Rebates (per executed contract)				
	Customer	Professional	Firm	Non-NOM Market Maker	NOM Market Maker
Penny Pilot Options:					
Rebate to Add Liquidity	***	[\$0.29]***	\$0.10	\$0.25	\$0.30
Fee for Removing Liquidity ¹	\$0.45	\$0.47	\$0.47	\$0.47	\$0.47
Non-Penny Pilot Options (including NDX²):					
Fee for Adding Liquidity	N/A	\$0.45	\$0.45	\$0.45	\$0.25
Fee for Removing Liquidity	\$0.82	\$0.89	\$0.89	\$0.89	\$0.82
Rebate to Add Liquidity	³	N/A	N/A	N/A	N/A
SOX, HGX and OSX:					
Fee for Adding Liquidity	\$0.35	\$0.60	\$0.60	\$0.60	\$0.40
Fee for Removing Liquidity	\$0.35	\$0.60	\$0.60	\$0.60	\$0.40

¹The 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.

²For 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.

³The Customer Rebate to Add Liquidity in Non-Penny Pilot Options, including NDX, will be \$0.80 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 \$0.81 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 and Professional Rebate to Add Liquidity in Penny Pilot Options will be paid as noted below.

Monthly Volume	Rebate to Add Liquidity
Tier 1 Participant adds Customer <u>and Professional</u> liquidity of up to 34,999 contracts per day in a month	\$0.26
Tier 2 Participant adds Customer <u>and Professional</u> liquidity of 35,000 to 74,999 contracts per day in a month	\$0.43
Tier 3 Participant adds Customer <u>and Professional</u> liquidity of 75,000 or more contracts per day in a month	\$0.44
Tier 4^a Participant adds (1) Customer <u>and Professional</u> 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
Tier 5^{b,c} Participant has Total Volume of 130,000 or more contracts per day in a month	\$0.46

^aFor 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.

^bFor 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 Changes

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