

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="22"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2013"/> - * <input type="text" value="013"/> Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by   
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"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

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 type="checkbox"/>	Section 3C(b)(2) <input type="checkbox"/>
Section 806(e)(2) <input type="checkbox"/>	

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

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

A proposed rule change to modify Chapter XV, Section 2 of the rules governing the NASDAQ Options Market, NASDAQ's facility for executing and routing standardized equity and index 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 \*  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.

(Title \*)

Date  By

(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.

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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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, security-based swap submission, or advance notice 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**

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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to modify Chapter XV, Section 2 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 by limiting the transactions to which the “Customer” fees apply, adding a new “Broker-Dealer” fee category that will apply to certain transactions to which “Customer” fees currently apply, and to delete outdated references to fees assessed on orders executed in NOM’s Closing Cross.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on February 1, 2013.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and a copy of applicable portion of the rule text is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of NASDAQ pursuant to authority delegated by the Board of Directors of NASDAQ on July 10, 2012.

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

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

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 Carla Behnfeldt, Associate General Counsel, at (215) 496-5208.

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, by limiting the transactions to which "Customer" fees and rebates apply and by adding a new "Broker-Dealer" category. The Exchange will apply the new Broker-Dealer fees and rebates rather than Customer fees and rebates to transactions for the account of a broker or dealer that are currently assessed at Customer rates. Transactions that are subject to the new Broker-Dealer fee category will no longer be considered "Customer" transactions for any purpose in Chapter XV, including rebates.

There is currently NOM pricing for five separate categories of market participants: Customer, Professional, Firm, Non-NOM Market Maker and NOM Market Maker. "Customer" pricing currently applies to any transaction that is identified for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of a Professional.<sup>3</sup> NOM now proposes to further limit the

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<sup>3</sup> See Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR-NASDAQ-2011-066) ("Professional Filing"). In this filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has

“Customer” fee category so that it does not apply to transactions identified for clearing in the Customer range at OCC that are for the account of a broker or dealer. Going forward, these transactions for the account of a broker or dealer that are currently charged “Customer” fees will be charged under the new “Broker-Dealer” fee category.

The new Broker-Dealer category would be an addition to the existing fee categories. Broker-Dealer transactions will be any transactions that do not fall within any of the other categories.<sup>4</sup> As discussed above, transactions currently identified for clearing in the Customer range at OCC for the account of a broker or dealer will fall within the new Broker-Dealer category. The Exchange proposes to charge transactions in the Broker-Dealer category the same fees charged for transactions currently in the Firm category, and to provide the same rebates offered with respect to transactions in the Firm category.

Additionally, the Exchange currently pays NOM Participants a tiered Rebate to Add Liquidity in Penny Pilot Options based on the volume of Customer and Professional orders they execute on the Exchange. Orders for brokers and dealers that currently fall within the Customer pricing category and that will now fall within the Broker-Dealer pricing category will no longer be eligible for this rebate. However, Broker-Dealer orders, just like Firm orders, will count toward Total Volume for purposes of calculating the Tier 5 Rebate to Add Liquidity in Penny Pilot Options.

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access to sophisticated trading systems that contain functionality not available to retail Customers.

<sup>4</sup> The other categories are Customer, Professional Firm, Non-NOM Market Maker and NOM Market Maker.

Section 2(2) is being amended to reflect that, like transactions in the Firm fee category, Broker-Dealer transactions will be assessed the Fee for Removing Liquidity during the Exchange's Opening Cross.

Finally, the Exchange is eliminating Section 2(3), Closing Cross, as unnecessary. The Exchange no longer conducts a closing cross and the fees are no longer applicable to any transactions.

b. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that assessing for Broker-Dealer transactions executed on the Exchange the same pricing assessed today for Firm transactions executed on the Exchange is reasonable because other options exchanges similarly assess the same transaction fees for Broker-Dealers and Firms. NASDAQ OMX BX, Inc., ("BX"), International Securities Exchange, LLC ("ISE") and NYSE Arca, Inc. ("NYSE Arca") also charge Broker-Dealer transactions at the same rates as Firm transactions.

The Exchange believes that the proposed Broker-Dealer fees are reasonable, equitable and not unfairly discriminatory because it is the same pricing uniformly charged by the Exchange with respect to transactions in the Professional, Firm and Non-

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<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

NOM Market Maker categories. Only Customer and NOM Market Maker transactions receive more favorable fees due to the special benefits they bring 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>7</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 the proposed Broker-Dealer Rebate to Add Liquidity in Penny Pilot Options is equitable and not unfairly discriminatory because it is the same rebate that is currently applied to Firms, which rebate is lower than that applicable to Customers, Professionals, Non-NOM Market Makers and NOM Market Makers because Customers, Professionals, Non-NOM Market Makers and NOM Market Makers provide

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<sup>7</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.

benefits to the market which Firms and Broker-Dealers do not. Customers and Professionals provide liquidity which benefits the market. Non-NOM Market Makers and NOM Market Makers have obligations to the market place and regulatory burdens placed on them that other broker-dealers trading for their own account do not currently bear.

The Exchange believes that the lack of a Broker-Dealer Rebate to Add Liquidity in Non-Penny Pilot Options is equitable and not unfairly discriminatory because Professionals, Firms, Non-NOM Market Makers and NOM Market Makers also do not receive any rebate. Only Customers will receive a rebate because Customer order flow brings liquidity to the market which in turn benefits all market participants. The provision of Customer flow is encouraged by the rebate for this reason.

A Customer and Professional Rebate to Add Liquidity in Penny Pilot Options is currently paid to a Participant having Total Volume of 130,000 or more contracts per day in a month (“Tier 5 Total Volume”). The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to count Broker-Dealer orders that previously fell within the “Customer” category toward Tier 5 Total Volume because Firm orders as well as orders in all other fee categories uniformly count toward Tier 5 “Total Volume”.

Finally, the Exchange believes it is reasonable, equitable, and not unfairly discriminatory to remove outdated references to fees assessed on closing cross transactions because doing so will make the fee schedule more up to date and accurate.

#### 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.

While the Exchange's proposal would result in higher fees for Broker-Dealers than Customers, the Exchange does not believe the proposed fees would result in any intramarket burden on competition as between market participants. The Exchange believes that the proposed Broker-Dealer pricing does not misalign fees and rebates as between market participants. The Exchange proposes to assess certain fees and pay certain rebates to Broker-Dealers which pricing is consistent with fees and rebates currently assessed on other options exchanges today.

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

The foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the

person is a member of the self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>8</sup>

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

The proposed rule change is based on the NYSE Arca, BX and ISE pricing schedules which price Broker-Dealer and Firm orders in the same way, rather than pricing Broker-Dealers as Customers.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.
5. Applicable portion of the Exchange's Pricing Schedule.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2013-013)

January \_\_ 2013

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of 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

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 January 2, 2013. 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 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.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

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

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

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, by limiting the transactions to which “Customer” fees and rebates apply and by adding a new “Broker-Dealer” category. The Exchange will apply the new Broker-Dealer fees and rebates rather than Customer fees and rebates to transactions for the account of a broker or dealer that are currently assessed at Customer rates. Transactions that are subject to the new Broker-Dealer fee category will no longer be considered “Customer” transactions for any purpose in Chapter XV, including rebates.

There is currently NOM pricing for five separate categories of market participants: Customer, Professional, Firm, Non-NOM Market Maker and NOM Market Maker. "Customer" pricing currently applies to any transaction that is identified for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of a Professional.<sup>3</sup> NOM now proposes to further limit the

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<sup>3</sup> See Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014(May 19, 2011) (SR-NASDAQ-2011-066) (“Professional Filing”). In this

“Customer” fee category so that it does not apply to transactions identified for clearing in the Customer range at OCC that are for the account of a broker or dealer. Going forward, these transactions for the account of a broker or dealer that are currently charged “Customer” fees will be charged under the new “Broker-Dealer” fee category.

The new Broker-Dealer category would be an addition to the existing fee categories. Broker-Dealer transactions will be any transactions that do not fall within any of the other categories.<sup>4</sup> As discussed above, transactions currently identified for clearing in the Customer range at OCC for the account of a broker or dealer will fall within the new Broker-Dealer category. The Exchange proposes to charge transactions in the Broker-Dealer category the same fees charged for transactions currently in the Firm category, and to provide the same rebates offered with respect to transactions in the Firm category.

Additionally, the Exchange currently pays NOM Participants a tiered Rebate to Add Liquidity in Penny Pilot Options based on the volume of Customer and Professional orders they execute on the Exchange. Orders for brokers and dealers that currently fall within the Customer pricing category and that will now fall within the Broker-Dealer pricing category will no longer be eligible for this rebate. However, Broker-Dealer orders, just like Firm orders, will count toward Total Volume for purposes of calculating the Tier 5 Rebate to Add Liquidity in Penny Pilot Options.

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filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.

<sup>4</sup> The other categories are Customer, Professional Firm, Non-NOM Market Maker and NOM Market Maker.

Section 2(2) is being amended to reflect that, like transactions in the Firm fee category, Broker-Dealer transactions will be assessed the Fee for Removing Liquidity during the Exchange's Opening Cross.

Finally, the Exchange is eliminating Section 2(3), Closing Cross, as unnecessary. The Exchange no longer conducts a closing cross and the fees are no longer applicable to any transactions.

## 2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that assessing for Broker-Dealer transactions executed on the Exchange the same pricing assessed today for Firm transactions executed on the Exchange is reasonable because other options exchanges similarly assess the same transaction fees for Broker-Dealers and Firms. NASDAQ OMX BX, Inc., ("BX"), International Securities Exchange, LLC ("ISE") and NYSE Arca, Inc. ("NYSE Arca") also charge Broker-Dealer transactions at the same rates as Firm transactions.

The Exchange believes that the proposed Broker-Dealer fees are reasonable, equitable and not unfairly discriminatory because it is the same pricing uniformly charged by the Exchange with respect to transactions in the Professional, Firm and Non-

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<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

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The Exchange believes that the proposed Broker-Dealer Rebate to Add Liquidity in Penny Pilot Options is equitable and not unfairly discriminatory because it is the same rebate that is currently applied to Firms, which rebate is lower than that applicable to Customers, Professionals, Non-NOM Market Makers and NOM Market Makers because Customers, Professionals, Non-NOM Market Makers and NOM Market Makers provide

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<sup>7</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.

benefits to the market which Firms and Broker-Dealers do not. Customers and Professionals provide liquidity which benefits the market. Non-NOM Market Makers and NOM Market Makers have obligations to the market place and regulatory burdens placed on them that other broker-dealers trading for their own account do not currently bear.

The Exchange believes that the lack of a Broker-Dealer Rebate to Add Liquidity in Non-Penny Pilot Options is equitable and not unfairly discriminatory because Professionals, Firms, Non-NOM Market Makers and NOM Market Makers also do not receive any rebate. Only Customers will receive a rebate because Customer order flow brings liquidity to the market which in turn benefits all market participants. The provision of Customer flow is encouraged by the rebate for this reason.

A Customer and Professional Rebate to Add Liquidity in Penny Pilot Options is currently paid to a Participant having Total Volume of 130,000 or more contracts per day in a month (“Tier 5 Total Volume”). The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to count Broker-Dealer orders that previously fell within the “Customer” category toward Tier 5 Total Volume because Firm orders as well as orders in all other fee categories uniformly count toward Tier 5 “Total Volume”.

Finally, the Exchange believes it is reasonable, equitable, and not unfairly discriminatory to remove outdated references to fees assessed on closing cross transactions because doing so will make the fee schedule more up to date and accurate.

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.

While the Exchange's proposal would result in higher fees for Broker-Dealers than Customers, the Exchange does not believe the proposed fees would result in any intramarket burden on competition as between market participants. The Exchange believes that the proposed Broker-Dealer pricing does not misalign fees and rebates as between market participants. The Exchange proposes to assess certain fees and pay certain rebates to Broker-Dealers which pricing is consistent with fees and rebates currently assessed on other options exchanges today.

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>8</sup> NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of such 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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-013 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-2013-013. 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-2013-013 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>9</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>9</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.**

\* \* \* \* \*

**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><u>Broker- Dealer</u></b>
<b>Penny Pilot Options:</b>						
Rebate to Add Liquidity	***	***	\$0.10	\$0.25	\$0.30	<u>\$0.10</u>
Fee for Removing Liquidity <sup>1</sup>	\$0.45	\$0.47	\$0.47	\$0.47	\$0.47	<u>\$0.47</u>
<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	<u>\$0.45</u>
Fee for Removing Liquidity	\$0.82	\$0.89	\$0.89	\$0.89	\$0.82	<u>\$0.89</u>
Rebate to Add Liquidity	<sup>3</sup>	N/A	N/A	N/A	N/A	<u>N/A</u>
<b>SOX, HGX and OSX:</b>						
Fee for Adding Liquidity	\$0.35	\$0.60	\$0.60	\$0.60	\$0.40	<u>\$0.60</u>
Fee for Removing Liquidity	\$0.35	\$0.60	\$0.60	\$0.60	\$0.40	<u>\$0.60</u>

<sup>1</sup>The Professional, Firm, Broker-Dealer, 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 \$0.80 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.

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

<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, Broker-Dealer, 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.

## (2) Opening Cross

All orders executed in the Opening Cross:

Customer orders will receive the Rebate to Add Liquidity during the Exchange's Opening Cross, unless the contra-side is also a Customer. Broker-Dealers, Professionals, Firms, Non-NOM Market Makers and NOM Market Makers will be assessed the Fee for Removing Liquidity during the Exchange's Opening Cross.

**(3) Closing Cross**

Charge to member entering Market-On-Close and Limit-On-Close orders executed in the NASDAQ Options Market Closing Cross	[\$0.45 per executed contract]
Credit to member entering all other orders executed in the NASDAQ Options Market Closing Cross]	[\$0.30 per executed contract]

**(4) No change.**

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