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Page 1 of * 29

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

File No.* SR - 2013 - * 051
Amendment No. (req. for Amendments *)

Filing by NASDAQ Stock Market

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☑ Section 19(b)(3)(B) * ☐

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☑ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) ☐ Section 806(e)(2) ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) ☐

Exhibit 2 Sent As Paper Document ☐ Exhibit 3 Sent As Paper Document ☐

Description

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

Routing Fees

Contact Information

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

Date 03/19/2013
By Edward S. Knight
(Name *)

(Title *)
Executive Vice President and General Counsel

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,

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS 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 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, 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 Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend 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 its Routing Fees.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on April 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 the 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. 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.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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 amend its Routing Fees at Chapter XV, Section 2(3) of the Exchange Rules in order to recoup costs that the Exchange incurs for routing and executing orders in equity options to various away markets.

Today, the Exchange calculates Routing Fees by assessing certain Exchange costs related to routing orders to away markets plus the away market's transaction fee. The Exchange assesses a $0.05 per contract[3] fixed Routing Fee when routing orders to NASDAQ OMX PHLX LLC ("PHLX") and NASDAQ OMX BX, Inc. ("BX Options") and a $0.11 per contract[4] fixed Routing Fee to all other options exchanges in addition to the actual transaction fee or rebate paid by the away market. The fixed Routing Fee is based on costs that are incurred by the Exchange when routing to an away market in

3 In a previous rule filing, the Exchange discussed the manner in which it analyzed costs related to routing to BX Options and PHLX and determined the costs are lower as compared to other away markets because NOS is utilized by all three exchanges to route orders. In that filing the Exchange noted that because PHLX, BX Options and NOM all utilize NOS, the cost to the Exchange is less as compared to routing to other away markets. In addition the fixed costs are reduced because NOS is owned and operated by NASDAQ OMX and the three exchanges and NOS share common technology and related operational functions. See Securities Exchange Act Release No. 68718 (January 24, 2013), 78 FR 6386 (January 30, 2013) (SR-NASDAQ-2012-010).

4 The $0.11 per contract Fixed Fee would apply to all options exchanges other than BX Options and PHLX, which are discussed separately in this proposal. The Exchange anticipates that if other options exchanges are approved by the Commission after the filing of this proposal, those exchanges would be assessed the $0.11 per contract fee applicable to "all other options exchanges."

addition to the away market's transaction fee. For example, the Exchange incurs a fee when it utilizes Nasdaq Options Services LLC ("NOS"), a member of the Exchange and the Exchange's exclusive order router,[5] to route orders in options listed and open for trading to destination markets. Each time NOS routes to away markets NOS incurs a clearing-related cost[6] and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange also incurs administrative and technical costs associated with operating NOS, membership fees at away markets, Options Regulatory Fees ("ORFs") and technical costs associated with routing options. The transaction fee assessed by the Exchange is based on the away market's actual transaction fee or rebate for a particular market participant at the time that the order was entered into the Exchange's trading system. This transaction fee is calculated on an order-by-order basis, since different away markets charge different amounts. In the event that there is no transaction fee or rebate assessed by the away market, the only fee assessed is the fixed Routing Fee. With respect to the rebate, the Exchange pays a market participant the rebate offered by an away market where there is such a rebate. Any rebate available is netted against a fee assessed by the Exchange.[7]

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5 See NASDAQ Rules at Chapter VI, Section 11(e) (Order Routing).

6 The Options Clearing Corporation ("OCC") assesses a clearing fee of $0.01 per contract side. See Securities Exchange Act Release No. 68025 (October 10, 2012), 77 FR 63398 (October 16, 2012) (SR-OCC-2012-18).

7 For example, if a Customer order is routed to BOX, and BOX offers a customer rebate of $0.20 per contract, the Exchange would assess a $0.11 per contract fixed fee which would net against the rebate ($0.20 per contract in this example). The market participant for whom the Customer contract was routed would receive a $0.09 per contract rebate.

C2 recently filed a rule change to amend its transaction fees and rebates for simple, non-complex orders, in equity options classes which became operative on February 1, 2013.[8] As a result of that filing the Exchange amended its Pricing Schedule and today assesses non-Customer simple, non-complex orders in equity options (single stock) that are routed to C2 a Routing Fee which includes a fixed cost of $0.11 per contract plus a flat rate of $0.85 per contract, except with respect to Customers.[9] With respect to Customers, the Exchange does not pass the rebate offered by C2, rather, Customer simple, non-complex orders in equity options (single stock) that are routed to C2 are assessed $0.00 per contract.

The Exchange is proposing to further simplify its Routing Fees by assessing a flat rate of $0.95 per contract on all non-Customer orders routed to any away market. The Exchange would no longer pass any rebate paid by an away market for non-Customer orders. With respect to Customer orders, the Exchange is proposing to continue to assess Customer orders routed to PHLX a fixed fee of $0.05 per contract ("Fixed Fee") in addition to the actual transaction fee assessed by the away market. This fee is not changing. With respect to Customer orders that are routed to BX Options, the Exchange will not assess a Routing Fee and will not pass the rebate. Today, BX Options pays a Customer Rebate to Remove Liquidity as follows: Customers are paid $0.12 per contract in IWM, SPY and QQQ, $0.32 per contract in All Other Penny Pilot Options and $0.70

8 See Securities Exchange Act Release No. 68792 (January 31, 2013), 78 FR 8621 (February 6, 2013) (SR-C2-2013-004).

9 See Securities Exchange Act Release No. 68976 (February 25, 2013), 78 FR 13928 (March 1, 2013) (SR-NASDAQ-2013-029).

per contract in Non-Penny Pilot Options.[10] The Exchange is proposing to not assess a Routing Fee when routing orders to BX Options because that exchange pays a rebate. Instead of netting the customer rebate paid by BX Options against the fixed fee,[11] the Exchange would simply not assess a fee. Although market participants routing to BX Options will not receive a credit, as is the case today, market participants will not pay a Customer Routing Fee when their orders are routed to BX Options with this proposal. The Exchange proposes to assess a Customer Routing Fee of $0.11 per contract ("Fixed Fee") in addition to the actual transaction fee when routing to an options exchange other than PHLX and BX Options, as is the case today. The Exchange is amending the payment of rebates and will no longer pay rebates when routing Customer orders to an away market, instead the Exchange will not assess a Routing Fee if a Customer order is routed to an away market that pays a rebate.

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

b. Statutory Basis

NASDAQ believes that its proposal to amend its pricing is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(4) of the Act,[13] in

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10 See BX Options Rules at Chapter XV, Section 2(1).

11 BX Options does not assess a Customer a Fee to Remove Liquidity in any symbols today. See Chapter V, Section 2(1) of the BX Options Rules.

12 15 U.S.C. 78f(b).

13 15 U.S.C. 78f(b)(4).

particular, in that it is an equitable allocation of reasonable fees and other charges among its Participants.

The Exchange believes that its proposal to amend its non-Customer Routing Fees from a fixed fee plus actual transaction charges to a flat rate is reasonable because the flat rate makes it easier for market participants to anticipate the Routing Fees which they would be assessed at any given time. The Exchange believes that assessing all non-Customer orders the same flat rate will provide market participants with certainty with respect to Routing Fees. While, each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets, including clearing costs, administrative and technical costs associated with operating NOS, membership fees at away markets, ORFs and technical costs associated with routing options, the Exchange believes that the proposed Routing Fees will enable it to recover the costs it incurs to route non-Customer orders to away markets. Other exchanges similarly assess a fixed rate fee to route non-Customer orders.[14]

The Exchange believes that its proposal to amend the non-Customer Routing Fees from a fixed fee plus actual transaction charges to a flat rate is equitable and not unfairly discriminatory because the Exchange would uniformly assess the same Routing Fees to all non-Customer market participants. Under its flat fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or a slight loss for non-Customer orders routed to and executed at away markets. The proposed Routing Fee for

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14 BATS Exchange, Inc. ("BATS") assesses non-Customer fixed rates of $0.57 and $0.95 per contract when routing to away markets. See BATS BZX Exchange Fee Schedule. The Chicago Board Options Exchange Incorporated ("CBOE") assesses non-Customer orders a $0.50 per contract routing fee in addition to the customary CBOE execution charges. See CBOE's Fees Schedule.

non-Customer orders is an approximation of the maximum fees the Exchange will be charged for such executions, including costs, at away markets. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services for non-Customer orders. The Exchange believes that the fixed rate non-Customer Routing Fee is equitable and not unfairly discriminatory because market participants have the ability to directly route orders to an away market and avoid the Routing Fee. Participants may choose to mark the order as ineligible for routing to avoid incurring these fees.[15] The Exchange routes orders to away markets where the Exchange's disseminated bid or offer is inferior to the national best bid (best offer) ("NBBO") price and based on price first.[16]

The Exchange believes that its proposal to not pass a rebate that is offered by an away market for non-Customer orders is reasonable because to the extent that another market is paying a rebate, the Exchange will assess a $0.95 per contract fee as its total cost in each instance. The Routing Fee is transparent and simple. If a market participant desires the rebate, the market participant has the option to direct the order to that away market. Other options exchanges today do not pass the rebate.[17] The Exchange believes that its proposal to not pass a rebate that is offered by an away market for non-Customer orders is equitable and not unfairly discriminatory because the Exchange would not pay such a rebate on any non-Customer order.

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15 See NASDAQ Rules at Chapter VI, Section 11(e) (Order Routing).

16 Id.

17 See CBOE's Fees Schedule and International Securities Exchange LLC's ("ISE") Fee Schedule.

The Exchange believes that amending the Customer Routing Fee to BX Options from $0.05 per contract in addition to the actual transaction fee to $0.00 is reasonable, because, unlike PHLX,[18] BX Options pays a Customer Rebate to Remove Liquidity as follows: Customers are paid $0.12 per contract in IWM, SPY and QQQ, $0.32 per contract in All Other Penny Pilot Options and $0.70 per contract in Non-Penny Pilot Options.[19] The Exchange believes that not assessing a fee for routing orders to BX Options, instead of netting the customer rebate paid by BX Options against the fixed fee[20] is reasonable because although market participants routing orders to BX Options will not receive a credit, as is the case today with respect to Customer orders routed to BX Options, the Routing Fee will be more transparent. Market participants will not pay a Customer Routing Fee when routing orders to BX Options with this proposal instead of the $0.05 per contract fee netted against the rebate, as is the case today. The Exchange believes that the proposed Customer Routing Fee to BX Options is equitable and not unfairly discriminatory because the proposal would apply uniformly to all market participants.

Further, the Exchange believes that it is reasonable to also not assess a Customer Routing Fee when routing to all other options exchanges, except PHLX and BX Options, if the away market pays a rebate. The Exchange will continue to assess a Fixed Fee of $0.11 per contract plus the actual transaction charge assessed by the away market when

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18 The PHLX Customer Routing Fee is not being amended by this proposal. The Exchange would continue to assess Customer orders routed to PHLX a $0.05 per contact Fixed Fee along plus the actual transaction fee.

19 <u>See</u> BX Options Rules at Chapter XV, Section 2(1).

20 BX Options does not assess a Customer a Fee to Remove Liquidity in any symbols today. <u>See</u> Chapter V, Section 2(1) of the BX Options Rules.

routing to all other options exchanges, except PHLX and BX Options, but instead of paying the rebate, as is the case today, the Exchange will not assess a Customer Routing Fee to that away market because the Exchange will collect the rebate to offset the fee. The Exchange believes that market participants will have more certainty as to the Customer Routing Fee that will be assessed by the Exchange. The Exchange believes that the proposed pricing for the Customer Routing Fee to all other away markets, except PHLX and BX Options, is equitable and not unfairly discriminatory because while the Exchange may operate at a slight gain or a slight loss when routing Customer orders to the away market, depending on the rebate paid by the away market, the proposal would apply uniformly to all market participants when routing to an away market that pays a rebate.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to continue to assess Customer orders that are routed to PHLX a Fixed Fee of $0.05 per contract and orders that are routed to other away markets, other than PHLX and BX Options, a Fixed Fee of $0.11 per contract because the cost, in terms of actual cash outlays, to the Exchange to route to PHLX (and BX Options)[21] is lower. For example, costs related to routing to PHLX are lower as compared to other away markets because NOS is utilized by all three exchanges to route orders.[22] NOS and the three NASDAQ OMX options markets have a common data center and staff that are responsible for the day-to-day operations of NOS. Because the three exchanges are in a

[21] With this proposal, the Exchange would not assess the $0.05 per contract Fixed Fee for routing orders to BX Options because that exchange pays Customer rebates, which the Exchange would retain to offset its cost.

[22] See Chapter VI, Section 11 of the NASDAQ and BX Options Rules and PHLX Rule 1080(m)(iii)(A).

common data center, Routing Fees are reduced because costly expenses related to, for example, telecommunication lines to obtain connectivity are avoided when routing orders in this instance. The costs related to connectivity to route orders to other NASDAQ OMX exchanges are de minimis. When routing orders to non-NASDAQ OMX exchanges, the Exchange incurs costly connectivity charges related to telecommunication lines and other related costs when routing orders. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to PHLX.

Finally, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess different fees for Customers orders as compared to non-Customer orders because the Exchange has traditionally assessed lower fees to Customers as compared to non-Customers. Customers will continue to receive the lowest fees or no fees when routing orders, as is the case today. Other options exchanges also assess lower Routing Fees for customer orders as compared to non-customer orders.[23]

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposal creates intra-market competition because the Exchange is applying the same Routing Fees and credits to all market participants in the same manner dependent on the routing venue, with the exception of

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23 BATS assesses lower customer routing fees as compared to non-customer routing fees per the away market. For example BATS assesses ISE customer routing fees of $0.30 per contract and an ISE non-customer routing fee of $0.57 per contract. See BATS BZX Exchange Fee Schedule.

Customers. The Exchange has proposed separate Customer Routing Fees. Customers will continue to receive the lowest fees or no fees when routing orders, as is the case today. Other options exchanges also assess lower Routing Fees for customer orders as compared to non-customer orders.[24]

The Exchange's proposal would allow the Exchange to recoup its costs when routing orders to away markets when such orders are designated as available for routing by the market participant. The Exchange is passing along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to PHLX and is providing those saving to all market participants. Participants may choose to mark the order as ineligible for routing to avoid incurring these fees.[25] Today, other options exchanges also assess fixed routing fees to recoup costs incurred by the Exchange to route orders to away markets.[26]

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. Accordingly, the fees that are assessed by the Exchange must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably allocated to those Participants that opt to direct orders to the Exchange rather than competing venues.

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24 Id.

25 See supra note 15.

26 See CBOE's Fees Schedule and ISE's Fee Schedule.

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.[27]

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

Not applicable.

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 rule text.

[27] 15 U.S.C. 78s(b)(3)(A)(ii).

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-NASDAQ-2013-051)

March ____ 2013

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 19, 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

NASDAQ proposes to amend 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 its Routing Fees.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on April 1, 2013.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's website at http://www.nasdaq.cchwallstreet.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

NASDAQ proposes to amend its Routing Fees at Chapter XV, Section 2(3) of the Exchange Rules in order to recoup costs that the Exchange incurs for routing and executing orders in equity options to various away markets.

Today, the Exchange calculates Routing Fees by assessing certain Exchange costs related to routing orders to away markets plus the away market's transaction fee. The Exchange assesses a $0.05 per contract[3] fixed Routing Fee when routing orders to

[3] In a previous rule filing, the Exchange discussed the manner in which it analyzed costs related to routing to BX Options and PHLX and determined the costs are lower as compared to other away markets because NOS is utilized by all three exchanges to route orders. In that filing the Exchange noted that because PHLX, BX Options and NOM all utilize NOS, the cost to the Exchange is less as compared to routing to other away markets. In addition the fixed costs are reduced because NOS is owned and operated by NASDAQ OMX and the three exchanges and NOS share common technology and related operational functions.

NASDAQ OMX PHLX LLC ("PHLX") and NASDAQ OMX BX, Inc. ("BX Options") and a $0.11 per contract[4] fixed Routing Fee to all other options exchanges in addition to the actual transaction fee or rebate paid by the away market. The fixed Routing Fee is based on costs that are incurred by the Exchange when routing to an away market in addition to the away market's transaction fee. For example, the Exchange incurs a fee when it utilizes Nasdaq Options Services LLC ("NOS"), a member of the Exchange and the Exchange's exclusive order router,[5] to route orders in options listed and open for trading to destination markets. Each time NOS routes to away markets NOS incurs a clearing-related cost[6] and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange also incurs administrative and technical costs associated with operating NOS, membership fees at away markets, Options Regulatory Fees ("ORFs") and technical costs associated with routing options. The transaction fee assessed by the Exchange is based on the away market's actual transaction fee or rebate for a particular market participant at the time that the order was entered into the Exchange's trading system. This transaction

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See Securities Exchange Act Release No. 68718 (January 24, 2013), 78 FR 6386 (January 30, 2013) (SR-NASDAQ-2012-010).

4 The $0.11 per contract Fixed Fee would apply to all options exchanges other than BX Options and PHLX, which are discussed separately in this proposal. The Exchange anticipates that if other options exchanges are approved by the Commission after the filing of this proposal, those exchanges would be assessed the $0.11 per contract fee applicable to "all other options exchanges."

5 See NASDAQ Rules at Chapter VI, Section 11(e) (Order Routing).

6 The Options Clearing Corporation ("OCC") assesses a clearing fee of $0.01 per contract side. See Securities Exchange Act Release No. 68025 (October 10, 2012), 77 FR 63398 (October 16, 2012) (SR-OCC-2012-18).

fee is calculated on an order-by-order basis, since different away markets charge different amounts. In the event that there is no transaction fee or rebate assessed by the away market, the only fee assessed is the fixed Routing Fee. With respect to the rebate, the Exchange pays a market participant the rebate offered by an away market where there is such a rebate. Any rebate available is netted against a fee assessed by the Exchange.[7]

C2 recently filed a rule change to amend its transaction fees and rebates for simple, non-complex orders, in equity options classes which became operative on February 1, 2013.[8] As a result of that filing the Exchange amended its Pricing Schedule and today assesses non-Customer simple, non-complex orders in equity options (single stock) that are routed to C2 a Routing Fee which includes a fixed cost of $0.11 per contract plus a flat rate of $0.85 per contract, except with respect to Customers.[9] With respect to Customers, the Exchange does not pass the rebate offered by C2, rather, Customer simple, non-complex orders in equity options (single stock) that are routed to C2 are assessed $0.00 per contract.

The Exchange is proposing to further simplify its Routing Fees by assessing a flat rate of $0.95 per contract on all non-Customer orders routed to any away market. The Exchange would no longer pass any rebate paid by an away market for non-Customer

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7 For example, if a Customer order is routed to BOX, and BOX offers a customer rebate of $0.20 per contract, the Exchange would assess a $0.11 per contract fixed fee which would net against the rebate ($0.20 per contract in this example). The market participant for whom the Customer contract was routed would receive a $0.09 per contract rebate.

8 See Securities Exchange Act Release No. 68792 (January 31, 2013), 78 FR 8621 (February 6, 2013) (SR-C2-2013-004).

9 See Securities Exchange Act Release No. 68976 (February 25, 2013), 78 FR 13928 (March 1, 2013) (SR-NASDAQ-2013-029).

orders. With respect to Customer orders, the Exchange is proposing to continue to assess Customer orders routed to PHLX a fixed fee of $0.05 per contract ("Fixed Fee") in addition to the actual transaction fee assessed by the away market. This fee is not changing. With respect to Customer orders that are routed to BX Options, the Exchange will not assess a Routing Fee and will not pass the rebate. Today, BX Options pays a Customer Rebate to Remove Liquidity as follows: Customers are paid $0.12 per contract in IWM, SPY and QQQ, $0.32 per contract in All Other Penny Pilot Options and $0.70 per contract in Non-Penny Pilot Options.[10] The Exchange is proposing to not assess a Routing Fee when routing orders to BX Options because that exchange pays a rebate. Instead of netting the customer rebate paid by BX Options against the fixed fee,[11] the Exchange would simply not assess a fee. Although market participants routing to BX Options will not receive a credit, as is the case today, market participants will not pay a Customer Routing Fee when their orders are routed to BX Options with this proposal. The Exchange proposes to assess a Customer Routing Fee of $0.11 per contract ("Fixed Fee") in addition to the actual transaction fee when routing to an options exchange other than PHLX and BX Options, as is the case today. The Exchange is amending the payment of rebates and will no longer pay rebates when routing Customer orders to an away market, instead the Exchange will not assess a Routing Fee if a Customer order is routed to an away market that pays a rebate.

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10 See BX Options Rules at Chapter XV, Section 2(1).

11 BX Options does not assess a Customer a Fee to Remove Liquidity in any symbols today. See Chapter V, Section 2(1) of the BX Options Rules.

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

2. Statutory Basis

NASDAQ believes that its proposal to amend its pricing is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(4) of the Act,[13] in particular, in that it is an equitable allocation of reasonable fees and other charges among its Participants.

The Exchange believes that its proposal to amend its non-Customer Routing Fees from a fixed fee plus actual transaction charges to a flat rate is reasonable because the flat rate makes it easier for market participants to anticipate the Routing Fees which they would be assessed at any given time. The Exchange believes that assessing all non-Customer orders the same flat rate will provide market participants with certainty with respect to Routing Fees. While, each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets, including clearing costs, administrative and technical costs associated with operating NOS, membership fees at away markets, ORFs and technical costs associated with routing options, the Exchange believes that the proposed Routing Fees will enable it to recover the costs it incurs to route non-Customer orders to away markets. Other exchanges similarly assess a fixed rate fee to route non-Customer orders.[14]

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12 15 U.S.C. 78f(b).

13 15 U.S.C. 78f(b)(4).

14 BATS Exchange, Inc. ("BATS") assesses non-Customer fixed rates of $0.57 and $0.95 per contract when routing to away markets. See BATS BZX Exchange Fee Schedule. The Chicago Board Options Exchange Incorporated ("CBOE")

The Exchange believes that its proposal to amend the non-Customer Routing Fees from a fixed fee plus actual transaction charges to a flat rate is equitable and not unfairly discriminatory because the Exchange would uniformly assess the same Routing Fees to all non-Customer market participants. Under its flat fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or a slight loss for non-Customer orders routed to and executed at away markets. The proposed Routing Fee for non-Customer orders is an approximation of the maximum fees the Exchange will be charged for such executions, including costs, at away markets. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services for non-Customer orders. The Exchange believes that the fixed rate non-Customer Routing Fee is equitable and not unfairly discriminatory because market participants have the ability to directly route orders to an away market and avoid the Routing Fee. Participants may choose to mark the order as ineligible for routing to avoid incurring these fees.[15] The Exchange routes orders to away markets where the Exchange's disseminated bid or offer is inferior to the national best bid (best offer) ("NBBO") price and based on price first.[16]

The Exchange believes that its proposal to not pass a rebate that is offered by an away market for non-Customer orders is reasonable because to the extent that another market is paying a rebate, the Exchange will assess a $0.95 per contract fee as its total

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assesses non-Customer orders a $0.50 per contract routing fee in addition to the customary CBOE execution charges. See CBOE's Fees Schedule.

15 See NASDAQ Rules at Chapter VI, Section 11(e) (Order Routing).

16 Id.

cost in each instance. The Routing Fee is transparent and simple. If a market participant desires the rebate, the market participant has the option to direct the order to that away market. Other options exchanges today do not pass the rebate.[17] The Exchange believes that its proposal to not pass a rebate that is offered by an away market for non-Customer orders is equitable and not unfairly discriminatory because the Exchange would not pay such a rebate on any non-Customer order.

The Exchange believes that amending the Customer Routing Fee to BX Options from \$0.05 per contract in addition to the actual transaction fee to \$0.00 is reasonable, because, unlike PHLX,[18] BX Options pays a Customer Rebate to Remove Liquidity as follows: Customers are paid \$0.12 per contract in IWM, SPY and QQQ, \$0.32 per contract in All Other Penny Pilot Options and \$0.70 per contract in Non-Penny Pilot Options.[19] The Exchange believes that not assessing a fee for routing orders to BX Options, instead of netting the customer rebate paid by BX Options against the fixed fee[20] is reasonable because although market participants routing orders to BX Options will not receive a credit, as is the case today with respect to Customer orders routed to BX Options, the Routing Fee will be more transparent. Market participants will not pay a Customer Routing Fee when routing orders to BX Options with this proposal instead of the \$0.05 per contract fee netted against the rebate, as is the case today. The Exchange

17 See CBOE's Fees Schedule and International Securities Exchange LLC's ("ISE") Fee Schedule.

18 The PHLX Customer Routing Fee is not being amended by this proposal. The Exchange would continue to assess Customer orders routed to PHLX a \$0.05 per contact Fixed Fee along plus the actual transaction fee.

19 See BX Options Rules at Chapter XV, Section 2(1).

20 BX Options does not assess a Customer a Fee to Remove Liquidity in any symbols today. See Chapter V, Section 2(1) of the BX Options Rules.

believes that the proposed Customer Routing Fee to BX Options is equitable and not unfairly discriminatory because the proposal would apply uniformly to all market participants.

Further, the Exchange believes that it is reasonable to also not assess a Customer Routing Fee when routing to all other options exchanges, except PHLX and BX Options, if the away market pays a rebate. The Exchange will continue to assess a Fixed Fee of $0.11 per contract plus the actual transaction charge assessed by the away market when routing to all other options exchanges, except PHLX and BX Options, but instead of paying the rebate, as is the case today, the Exchange will not assess a Customer Routing Fee to that away market because the Exchange will collect the rebate to offset the fee. The Exchange believes that market participants will have more certainty as to the Customer Routing Fee that will be assessed by the Exchange. The Exchange believes that the proposed pricing for the Customer Routing Fee to all other away markets, except PHLX and BX Options, is equitable and not unfairly discriminatory because while the Exchange may operate at a slight gain or a slight loss when routing Customer orders to the away market, depending on the rebate paid by the away market, the proposal would apply uniformly to all market participants when routing to an away market that pays a rebate.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to continue to assess Customer orders that are routed to PHLX a Fixed Fee of $0.05 per contract and orders that are routed to other away markets, other than PHLX and BX Options, a Fixed Fee of $0.11 per contract because the cost, in terms of actual cash outlays, to the Exchange to route to PHLX (and BX Options)[21] is lower. For example, costs related to routing to PHLX are lower as compared to other away markets because NOS is utilized by all three exchanges to route orders.[22] NOS and the three NASDAQ OMX options markets have a common data center and staff that are responsible for the day-to-day operations of NOS. Because the three exchanges are in a common data center, Routing Fees are reduced because costly expenses related to, for example, telecommunication lines to obtain connectivity are avoided when routing orders in this instance. The costs related to connectivity to route orders to other NASDAQ OMX exchanges are de minimis. When routing orders to non-NASDAQ OMX exchanges, the Exchange incurs costly connectivity charges related to telecommunication lines and other related costs when routing orders. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to PHLX.

Finally, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess different fees for Customers orders as compared to non-Customer orders because the Exchange has traditionally assessed lower fees to Customers as compared to non-Customers. Customers will continue to receive the lowest

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[21] With this proposal, the Exchange would not assess the $0.05 per contract Fixed Fee for routing orders to BX Options because that exchange pays Customer rebates, which the Exchange would retain to offset its cost.

[22] See Chapter VI, Section 11 of the NASDAQ and BX Options Rules and PHLX Rule 1080(m)(iii)(A).

fees or no fees when routing orders, as is the case today. Other options exchanges also assess lower Routing Fees for customer orders as compared to non-customer orders.[23]

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

NASDAQ Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposal creates intra-market competition because the Exchange is applying the same Routing Fees and credits to all market participants in the same manner dependent on the routing venue, with the exception of Customers. The Exchange has proposed separate Customer Routing Fees. Customers will continue to receive the lowest fees or no fees when routing orders, as is the case today. Other options exchanges also assess lower Routing Fees for customer orders as compared to non-customer orders.[24]

The Exchange's proposal would allow the Exchange to recoup its costs when routing orders to away markets when such orders are designated as available for routing by the market participant. The Exchange is passing along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to PHLX and is providing those saving to all market participants. Participants may choose to mark the order as ineligible for routing to avoid incurring these fees.[25]

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23 BATS assesses lower customer routing fees as compared to non-customer routing fees per the away market. For example BATS assesses ISE customer routing fees of $0.30 per contract and an ISE non-customer routing fee of $0.57 per contract. See BATS BZX Exchange Fee Schedule.

24 Id.

25 See supra note 15.

Today, other options exchanges also assess fixed routing fees to recoup costs incurred by the Exchange to route orders to away markets.[26]

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. Accordingly, the fees that are assessed by the Exchange must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably allocated to those Participants 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[27] 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.

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[26] See CBOE's Fees Schedule and ISE's Fee Schedule.

[27] 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-2013-051 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-2013-051. 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-2013-051 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.[28]

Kevin M. O'Neill
Deputy Secretary

[28] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Chapter XV Options Pricing

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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) – (2) No Changes

(3) Fees for routing contracts to markets other than the NASDAQ Options Market shall be assessed as follows:

Non-Customer	• $0.95 per contract to any options exchange.
Customer	• Routing Fees to PHLX: $0.05 per contract fee (“Fixed Fee”) in addition to the actual transaction fee assessed. • Routing Fees to BX Options: $0.00. • Routing Fees to all other options exchanges: $0.11 per contract fee (“Fixed Fee”) in addition to the actual transaction fee assessed. If the away market pays a rebate, the Routing Fee will be $0.00.

[• Routing Fees to PHLX and BX Options: $0.05 per contract fee in addition to the actual transaction fee assessed or rebate paid by these exchanges.]

[• Routing Fees to all other options exchanges: $0.11 per contract fee in addition to the actual transaction fee assessed or rebate paid by the away market.*]

[* Non-Customer simple, non-complex orders in equity options (single stock) that are routed to C2 will be assessed: $0.11 per contract plus $0.85 per contract. Customer simple, non-complex orders in equity options (single stock) that are routed to C2 will be assessed $0.00.]

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