

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="70"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2014"/> - * <input type="text" value="023"/>	Amendment No. (req. for Amendments *) <input type="text"/>
---	--	---	--

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	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 type="checkbox"/> 19b-4(f)(6)
			<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 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

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

Description

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

A proposed rule change relating to NASDAQ Options Market fees and rebates.

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 * <input type="text" value="Jurij"/>	Last Name * <input type="text" value="Trypupenko"/>
Title * <input type="text" value="Associate General Counsel"/>	
E-mail * <input type="text" value="jurij.trypupenko@nasdaqomx.com"/>	
Telephone * <input type="text" value="(301) 978-8132"/>	Fax <input type="text" value="(301) 978-8472"/>

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 <input type="text" value="03/03/2014"/>	Executive Vice President and General Counsel
By <input type="text" value="Edward S. Knight"/>	
(Name *)	

Persona Not Validated - 1383935917270,

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 *

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 modify Chapter XV, entitled “Options Pricing,” at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options. Specifically, NOM proposes amending Customer³ and Professional⁴ Rebates To Add Liquidity in Penny Pilot Options⁵; amending *note d* and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “Customer” means any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Chapter I, Section 1(a)(48)). See Chapter XV.

⁴ The term “Professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants. See Chapter XV.

⁵ The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through June 30, 2014. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR-NASDAQ-2008-026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009)(SR-NASDAQ-2009-091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009)(SR-NASDAQ-2009-097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR-NASDAQ-2010-013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May

adopting proposed *note e*; amending NOM Market Maker⁶ Rebates to Add Liquidity in Penny Pilot Options; and amending the NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. The text of the proposed rule change is attached hereto as Exhibit 5.⁷

(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 17, 2013.

NASDAQ staff will advise the Board of Directors of NASDAQ of any action taken

4, 2010), 75 FR 25895 (May 10, 2010) (SR-NASDAQ-2010-053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR-NASDAQ-2011-169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot); 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR-NASDAQ-2012-075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012); 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR-NASDAQ-2012-143) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2013); 69787 (June 18, 2013), 78 FR 37858 (June 24, 2013) (SR-NASDAQ-2013-082) and 71105 (December 17, 2013), 78 FR 77530 (December 23, 2013) (SR-NASDAQ-2013-154). See also NOM Rules, Chapter VI, Section 5.

⁶ The term “NOM Market Maker” means a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security. See Chapter XV.

⁷ Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://nasdaqomx.cchwallstreet.com>.

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

Questions and comments on the proposed rule change may be directed to Jurij Trypupenko, Associate General Counsel, The NASDAQ OMX Group, Inc., at (301) 978-8132.

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

a. Purpose

NASDAQ proposes to amend Customer, Professional and Market Maker Rebates to Add Liquidity in Penny Pilot Options in order to continue to incentivize Participants to select NOM as a venue when directing order flow. The Exchange also proposes to increase the NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options in permit the Exchange to continue to offer rebate incentives to attract liquidity to the Exchange. Specifically, the Exchange proposes to amending Tier 1, Tier 2, Tier 3, Tier 4, and Tier 5 Customer and Professional Rebates to Add Liquidity in Penny Pilot Options by modifying certain percentage metrics; amending *note d*, which is applicable to Customer and Professional rebate Tiers 7 and 8, and adopting proposed *note e*, which would be applicable to Customer and Professional rebate Tier 8; amending Tier 1, Tier 2, Tier 3, Tier 4, and Tier 5, and adding Tier 6, regarding NOM Market Maker Rebates to Add Liquidity in Penny Pilot Options by modifying certain percentage metrics; and amending the NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options.

Rebates for Adding Customer and/or Professional Liquidity

The Exchange currently pays Customer and Professional Rebates to Add Liquidity in Penny Pilot Options based on an eight tier rebate structure, which is found in Chapter XV Section 2(1), as follows:

Monthly Volume	Rebate to Add Liquidity
Tier 1 Participant adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.20% of total industry customer equity and ETF option average daily volume ("ADV") contracts per day in a month	\$0.25
Tier 2 Participant adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month	\$0.42
Tier 3 Participant adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month	\$0.43
Tier 4 Participant adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.40% or more of total industry customer equity and ETF option ADV contracts per day in a month	\$0.45

- Tier 5** Participant adds (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options 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 \$0.45
- Tier 6** Participant has Total Volume of 100,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer and/or Professional liquidity in Penny Pilot Options \$0.45
- Tier 7** Participant has Total Volume of 150,000 or more contracts per day in a month, of which 50,000 or more contracts per day in a month must be Customer and/or Professional liquidity in Penny Pilot Options \$0.47
- Tier 8** Participant adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.75% or more of national customer volume in multiply-listed equity and ETF options classes in a month. (Customer) and \$0.47 (Professional)

The Exchange is proposing to make amendments to Customer and Professional Rebate to Add Liquidity Tiers 1 through 5 as noted below.

The Exchange proposes to amend the Tier 1 Customer and Professional Penny Pilot Options Rebates to Add Liquidity by modifying the percentage of volume from 0.20% to 0.10% of the total industry customer equity and ETF option ADV contracts per

day in a month (generally known in this proposal as the “percentage eligibility metric”). The Exchange proposes to also reduce from \$0.25 to \$0.20 per contract the Tier 1 Customer and Professional Rebates to Add Liquidity. This amendment simultaneously modifies the percentage eligibility metric and the rebate for Tier 1. With this amendment, the Exchange would pay a Tier 1 \$0.20 per contract rebate to Participants that add Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.10% of total industry customer equity and ETF option ADV contracts per day in a month.

The Exchange proposes to amend the Tier 2 Customer and Professional Penny Pilot Options Rebates to Add Liquidity by modifying the percentage of volume from above 0.20% to 0.30% to above 0.10% to 0.20% of the total industry customer equity and ETF option ADV contracts per day in a month. The Exchange proposes to also reduce from \$0.42 to \$0.25 per contract the Customer and Professional Tier 2 Rebates to Add Liquidity. This amendment simultaneously modifies the percentage eligibility metric and the rebate for Tier 2. With this amendment, the Exchange would pay a Tier 2 \$0.25 per contract rebate to Participants that add Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.10% to 20% of total industry customer equity and ETF option ADV contracts per day in a month.

The Exchange proposes to amend the Tier 3 Customer and Professional Penny Pilot Options Rebates to Add Liquidity by modifying the percentage of volume from above 0.30% to 0.40% to above 0.20% to 0.30% of the total industry customer equity and ETF option ADV contracts per day in a month. The Exchange proposes to also reduce from \$0.43 to \$0.42 per contract the Customer and Professional Tier 3 Rebates to Add

Liquidity. This amendment simultaneously modifies the percentage eligibility metric and the rebate for Tier 3. With this amendment, the Exchange would pay a Tier 3 \$0.42 per contract rebate to Participants that add Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.20% to 30% of total industry customer equity and ETF option ADV contracts per day in a month.

The Exchange proposes to amend the Tier 4 Customer and Professional Penny Pilot Options Rebates to Add Liquidity by changing the percentage eligibility metric from above 0.40% to above 0.30% to 0.40% of the total industry customer equity and ETF option ADV contracts per day in a month. The Exchange proposes to also reduce from \$0.45 to \$0.43 per contract the Customer and Professional Tier 4 Rebates to Add Liquidity. This amendment simultaneously modifies the percentage eligibility metric and the rebate for Tier 4. The Exchange believes that deleting the words “or more” brings greater clarity to the rule text as proposed. With this amendment, the Exchange would pay a Tier 4 rebate of \$0.43 per contract to Participants that add Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options from above 0.40% to above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month.

The Exchange proposes to amend the Tier 5 Customer and Professional Penny Pilot Options Rebates to Add Liquidity to add an alternative to the current contracts per day metric. Specifically, the Exchange proposes to add the alternative metric of above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month to the requirements to qualify for Tier 5. With this amendment, the Exchange would pay a Tier 5 \$0.45 per contract rebate where Participants add Customer and/or

Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds liquidity per the current Tier 5 metric where Participant adds (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options 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. The Exchange is not amending the current qualification for the Tier 5 Customer and Professional rebate, but is adding an alternate method to qualify for the tier to provide Participants another opportunity to earn a rebate.

The Exchange would continue to incentivize Participants, with Customer and Professional Tiers 1 through 5 rebates, as amended, to direct liquidity to the Exchange by paying the specified rebates to those Participants that add Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options according to metrics keyed to industry customer equity and ETF option average ADV contracts per day in a month.

There are also four explanatory *notes* applicable to Customer and Professional Tiers 5 through 8, notes b:

^aFor purposes of Tier 5, the Exchange will allow a NOM Participant to qualify for the rebate if a NASDAQ member under Common Ownership with the NOM Participant has certified for the Investor Support Program and executed at least one order on NASDAQ's equity market.

^bFor purposes of Tiers 6, 7 and 8, "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/or Non-Penny Pilot Options which either adds or removes liquidity on NOM.

^cFor purposes of Tiers 6, 7 and 8, the Exchange will allow NOM Participants under Common Ownership to aggregate their volume to qualify for the rebate.

^dParticipants that qualify for Customer or Professional Rebate to Add Liquidity Tiers 7 or 8 in a given month will be assessed a Professional, Firm, Non-NOM Market Maker or Broker-Dealer Fee for Removing Liquidity in Penny Pilot Options of \$0.48 per contract.

The Exchange is proposing to amend *note d*, which is applicable to Tiers 7 and 8, and to adopt *note e*, which would be applicable to Tier 8.

In particular, the Exchange proposes to amend *note d* to indicate that it is applicable to Participants under Common Ownership.⁸ As such, *note d* would be applicable not only to individual Participants but also to Participants under 75% common ownership or control. The Exchange also proposes to add NOM Market Makers to the list of participants to which a Fee for Removing Liquidity in Penny Pilot Options will be assessed. With this amendment, *note d* would state that “Participants or Participants under Common Ownership that qualify for Customer or Professional Rebate to Add Liquidity Tiers 7 or 8 in a given month will be assessed a Professional, Firm, Non-NOM Market Maker, NOM Market Maker or Broker-Dealer Fee for Removing Liquidity in Penny Pilot Options of \$0.48 per contract.”⁹

⁸ The term “Common Ownership” shall mean Participants under 75% common ownership or control. See Chapter XV definitions.

⁹ Commensurate with adding a reference to NOM Market Maker in *note d* as amended, the Exchange proposes to add a reference to *note d* in the line reflecting a NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options, and to amend the Fee for Removing Liquidity from \$0.48 to \$0.49 per contract, as proposed herein.

The Exchange also proposes to adopt *note e* that would be applicable to Tier 8 Customer Rebates.¹⁰ The proposed note would add an additional \$0.02 per contract Penny Pilot Options Customer Rebate to Add Liquidity in addition to the Penny Pilot Option Customer rebate of \$0.48 per contract currently applicable to Tier 8. With this amendment, proposed *note e* would state that Participants that add Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.25% or more of national customer volume in multiply-listed equity and ETF options classes in a month will receive an additional \$0.02 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month. As such, Participants would continue to earn a \$0.47 per contract Professional Rebate per Tier 8, but, with this proposal, would be able to earn a \$0.50 per contract Customer Rebate per *note e*.

Rebates for Adding NOM Market Maker Liquidity

The Exchange currently pays NOM Market Maker Rebates to Add Liquidity based on a five tier rebate structure, which is found in Chapter XV Section 2(1), as follows:

Monthly Volume	Rebate to Add Liquidity
Tier 1 Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 29,999 contracts per day in a month	\$0.25

¹⁰ Tier 8 pays a \$0.48 per contract Customer Rebate to Add Liquidity in Penny Pilot Options and a \$0.47 per contract Professional Rebate to Add Liquidity in Penny Pilot Options.

Tier 2	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 30,000 to 59,999 contracts per day in a month	\$0.30
Tier 3	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 60,000 to 69,999 contracts per day in a month	\$0.32
Tier 4	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 70,000 or more contracts per day in a month	\$0.32 or \$0.38 in the following symbols BAC, GLD, IWM, QQQ and VXX or \$0.40 in SPY
Tier 5	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 40,000 or more contracts per day in a month and qualifies for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options.	\$0.40

For purposes of qualifying for a NOM Market Maker Penny Pilot Options Rebate to Add Liquidity tier, the Exchange today calculates the number of contracts per day in a month. Similarly to the metric used to calculate Customer and/or Professional Rebates to add Liquidity in Penny Pilot Options, the Exchange proposes to make certain amendments to the NOM Market Maker Rebate to Add Liquidity Tiers 1 through 5, and add a new Tier 6, to establish a metric of total industry customer equity and ETF option ADV contracts per day in a month.

The Exchange proposes to modify the Tier 1 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of 29,999 contracts per day in a month to 0.10% of total industry customer equity and ETF option ADV contracts per day in a month. The Exchange proposes to also reduce the Tier 1 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options from \$0.25 to \$0.20 per contract. This amendment simultaneously establishes a percentage eligibility metric and modifies the Tier 1 rebate. With this amendment, the Exchange would pay a \$0.20 per contract rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.10% of total industry customer equity and ETF option ADV contracts per day in a month.

The Exchange proposes to modify the Tier 2 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of 30,000 to 59,999 contracts per day in a month to above 0.10% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month. The Exchange proposes to also reduce the Tier 2 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity from \$0.30 to \$0.25 per contract. This amendment simultaneously establishes a percentage eligibility metric and modifies the Tier 2 rebate. With this amendment, the Exchange would pay a \$0.25 per contract Tier 2 rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.10% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month.

The Exchange proposes to modify the Tier 3 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric from 60,000 to 69,999 contracts per day in a month to above 0.30% to 0.60% of total industry customer equity and ETF

option ADV contracts per day in a month. The Exchange proposes to also reduce the Tier 3 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity from \$0.32 to \$0.30 per contract. This amendment simultaneously establishes a percentage eligibility metric and modifies the Tier 3 rebate. With this amendment, the Exchange would pay a \$0.30 per contract rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.30% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month.

The Exchange proposes to modify the Tier 4 NOM Market Maker Rebate to Add Liquidity by amending the metric of 70,000 or more contracts per day in a month to above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month. The Exchange would continue to pay a Tier 4 rebate of \$0.32 or \$.38 per contract in symbols BAC, GLD, IWM, QQQ and VXX or \$0.38 per contract in SPY; the rebate would be paid to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month.

The Exchange proposes to modify the Tier 5 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of 40,000 or more contracts per day in a month to above 0.30% of total industry customer equity and ETF option ADV contracts per day in a month, and qualify for the Tier 7 or 8 Customer and/or Professional Rebate. The Exchange would continue to pay a Tier 5 rebate of \$.40 per contract rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.30% of total industry customer equity and ETF option ADV

contracts per day in a month and qualify for the Tier 7 or 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options.

The Exchange also proposes to adopt a new Tier 6 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by offering Participants that add the highest level of NOM Market Maker liquidity a rebate. Proposed Tier 6 would have a format similar to other NOM Market Maker liquidity rebate tiers. With this amendment, the Exchange would pay a \$0.42 per contract rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options.

The Exchange would continue to incentivize Participants, with NOM Market Maker rebate Tiers 1 through 6 as amended, to provide liquidity by paying specified rebates to those Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options according to percentage metrics keyed to industry customer equity and ETF option average ADV contracts per day in a month. The proposed percentage metrics are dynamic in that they reference total industry options contracts per day rather than a static number of contracts, and thereby make the NOM Market Maker rebate structure similar for Customer and/or Professional Penny Pilot Options as well as for NOM Market Makers for similar products (e.g. Penny Pilot Options and Non-Penny Pilot Options).¹¹

b. Statutory Basis

¹¹ The Exchange notes that if a Participant qualifies for two tiers, the higher rebate will be paid in a given month.

NASDAQ believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act¹³ 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's goal is to modify or institute percentage eligibility thresholds and adjust Penny Pilot Options Rebates to Add Liquidity in order to continue to encourage market participants to direct a greater amount of Customer, Professional and NOM Market Maker liquidity to the Exchange. The Exchange's proposal does not eliminate rebates or the ability for market participants to earn rebates, but rather is modifying and explaining the methodology to earn rebates as noted herein.

Rebates for Adding Customer and/or Professional Liquidity

The Exchange proposes to amend Tiers 1, 2, 3, 4, and 5 regarding Customer and Professional Penny Pilot Options Rebates to Add Liquidity by modifying the applicable percentage metric and amending certain rebates. This proposal is reasonable, equitable and not unfairly discriminatory for the reasons noted below.

The Exchange's proposal to amend the Tier 1 Customer and Professional Penny Pilot Options Rebate to Add Liquidity rebates from \$0.25 to \$0.20 per contract and also reduce the percentage eligibility metric from 0.20% to 0.10% is reasonable because while Participants may get a moderately smaller rebate, they would qualify for the rebate at a

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4), (5).

significantly lower percentage metric. Thus, the Exchange is still paying a rebate to incentivize Participants to transact a qualifying number of Customer and/or Professional contracts on the Exchange and receive a rebate. While certain Participants that currently qualify for certain rebate tiers may receive lower rebates with this proposal, the Exchange believes that the rebates will continue to incentivize NOM Participants to direct Customer and Professional order flow to the Exchange to receive these rebates. However, for those Participants as for all NOM Participants, there are no barriers to earning greater Penny Pilot Options rebates by adding further liquidity on NOM in Penny Pilot Options and Non-Penny Pilot Options. A NOM Participant may choose to earn greater or lower rebates dependent on the amount of order flow directed to NOM. It also worth noting that the Exchange is under no obligation to offer rebates and does so to provide incentives to market participants to choose NOM over other similarly positioned options exchanges.

The Exchange's proposal to amend the Tier 1 Customer and Professional Penny Pilot Options Rebate to Add Liquidity rebates from \$0.25 to \$0.20 per contract and also reduce the percentage eligibility metric from 0.20% to 0.10% is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 1 Customer and Professional Penny Pilot Options Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange's proposal to amend the Tier 2 Customer and Professional Penny Pilot Options Rebate to Add Liquidity rebates from \$0.42 to \$0.25 per contract and also reduce the percentage eligibility metric from above 0.20% to 0.30% to above 0.10% to 0.20% is reasonable because, while the rebate is being reduced, the Exchange is still

paying a rebate incentive to Participants to transact qualifying Customer and/or Professional volume on the Exchange. The Exchange believes that the amendment is reasonable because while there is a rebate reduction, the Exchange also proposes to significantly reduce the eligibility metric to achieve the rebate, and with corresponding drops in the metrics in this tier and other tiers, Participants may qualify for other rebates when directing liquidity to the Exchange. While the change in the Tier 2 rebate appears to be a steep reduction, the change was made to realign the rebate tier structure (e.g. the combination of Tiers 4 and 5 into a single Tier and the introduction of the amended Tier 1). It also important to note that no NOM Participant earned the Tier 2 \$0.42 rebate so far in 2014.

The Exchange's proposal to amend the Tier 2 Customer and Professional Penny Pilot Options Rebate to Add Liquidity rebates from \$0.42 to \$0.25 per contract and also reduce the percentage eligibility metric from above 0.20% to 0.30% to above 0.10% to 0.20% is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 2 Customer and Professional Penny Pilot Options Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange's proposal to amend the Tier 3 Customer and Professional Penny Pilot Options Rebate to Add Liquidity rebates from \$0.43 to \$0.42 per contract and also reduce the percentage eligibility metric from above 0.30% to 0.40% to above 0.20% to 0.30% is reasonable because, while the rebate is being reduced, the Exchange is still paying a rebate incentive to Participants to transact qualifying Customer and/or Professional volume on the Exchange. Participants may get a moderately smaller rebate, but they would qualify for the rebate at a significantly lower percentage metric. Thus, the

Exchange is still paying a rebate to incentivize Participants to transact a qualifying number of Customer and/or Professional contracts on the Exchange and receive a significant rebate. It also important to note that no NOM Participant earned the \$0.43 rebate in 2014.

The Exchange's proposal to amend the Tier 3 Customer and Professional Penny Pilot Options Rebate to Add Liquidity rebates from \$0.43 to \$0.42 per contract and also reduce the percentage eligibility metric from above 0.30% to 0.40% to above 0.20% to 0.30% is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 3 Customer and Professional Penny Pilot Options Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange's proposal to amend the Tier 4 Customer and Professional Penny Pilot Options Rebate to Add Liquidity rebates from \$0.45 to \$0.43 per contract and also reduce the percentage eligibility metric from above 0.40% to above 0.30% to 0.40% is reasonable because, while the rebate is being reduced, the Exchange is still paying a rebate incentive to Participants to transact qualifying Customer and/or Professional volume on the Exchange. Participants may get a moderately smaller rebate, but they would qualify for the rebate at a significantly lower percentage metric. Thus, the Exchange is still paying a rebate to incentivize Participants to transact a qualifying number of Customer and/or Professional contracts on the Exchange and receive a significant rebate. The criteria from Tier 4 today was merged into Tier 5 and current Tier 4 was amended as proposed above. It also important to note no NOM Participants earned rebate pursuant to the Tier 4 in place for February.

The Exchange's proposal to amend the Tier 4 Customer and Professional Penny Pilot Options Rebate to Add Liquidity rebates from \$0.45 to \$0.43 per contract and also reduce the percentage eligibility metric from above 0.40% to above 0.30% to 0.40% is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 4 Customer and Professional Penny Pilot Options Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange believes its proposal to amend Chapter XV, Section 2 to delete deleting the words "or more" in Tier 4 is reasonable, equitable and not unfairly discriminatory because it adds greater clarity to the rule text and this change would be applied uniformly in calculating the Tier 4 rebate. Also, the Exchange believes that this amendment is non-substantive and merely clarifies the rule text.

The Exchange's proposal to adopt an alternative percentage eligibility metric to the Tier 5 Customer and Professional Penny Pilot Options Tier 5 Rebate to Add Liquidity of above 0.40% of total is reasonable because the additional new metric will provide another method for Participants to qualify for the Customer and Professional Tier 5 rebate and will continue to incentivize Participants to transact an even greater number of qualifying Customer and/or Professional volume on the Exchange. Additionally, Participants that receive a Tier 5 rebate of \$0.45 per contract will continue to earn the rebate but will have an additional means to qualify for this rebate.

The Exchange's proposal to adopt an alternative percentage eligibility metric to the Tier 5 Customer and Professional Penny Pilot Options Tier 5 Rebate to Add Liquidity of above 0.40% of total is equitable and not unfairly discriminatory because all eligible

Participants that qualify for the Tier 5 Customer and Professional Penny Pilot Options Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange's proposal to amend *note d* is reasonable because today, Participants under Common Ownership and NOM Market Makers are not included in *note d*. This amendment provides that all Participants or Participants under Common Ownership that qualify for Customer or Professional Rebate to Add Liquidity Tiers 7 or 8 in a given month will be assessed a Professional, Firm, Non-NOM Market Maker, NOM Market Maker or Broker-Dealer Fee for Removing Liquidity in Penny Pilot Options of \$0.48 per contract uniformly. As is the case with the rebates proposed above and the fee discount provided in *note d*, competition among similarly positioned options exchanges (e.g., price/time priority) is the driver behind assessing NOM Market Makers the Fee for Removing Liquidity.

The Exchange's proposal to amend *note d* is equitable and not unfairly discriminatory because as amended the *note* would be uniformly applied to all Participants.

The Exchange's proposal to adopt *note e* is reasonable because Participants would have an opportunity to earn an additional \$0.02 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month¹⁴ and incentivize Participants to transact an even greater number of qualifying Customer volume.

The Exchange's proposal to adopt *note e* is equitable and not unfairly discriminatory because they will be uniformly applied to all Participants. All Participants

¹⁴ The proposal would provide Participants an opportunity to earn a rebate of \$0.50 per contract, similar to the rebates offered at BATS Options Exchange.

will have an equal opportunity to benefit from the proposals if they qualify for the additional rebate.¹⁵

The Exchange's proposal to add a reference to *note d* in the line reflecting the NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options Liquidity, and to amend the NOM Market Maker Fee for Removing Liquidity from \$0.48 to \$0.49 per contract is reasonable because the proposed fee will be equal to the fees assessed to other non-Customers. Further, the Exchange's ability to offer increased Customer and Professional Penny Pilot Options Rebates to Add Liquidity is possible with a corresponding increase to the NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options. The Exchange believes that the rebate brings a greater amount of liquidity to the Exchange which benefits all market participants. As is the case with the rebates proposed above and the fee discount provided in *note d*, competition among similarly positioned options exchanges (e.g., price/time priority) is the driver behind the inclusion of NOM Market Makers into *note d*.

The Exchange's proposal to add a reference to *note d* in the line reflecting the NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options Liquidity, and to amend the NOM Market Maker Fee for Removing Liquidity from \$0.48 to \$0.49 per contract is equitable and not unfairly discriminatory because the Exchange is increasing the NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options so that all non-Customer market participants are uniformly assessed this fee. Customers will

¹⁵ The Exchange believes that it is not unfair or unfairly discriminatory to offer Professionals an additional \$0.02 rebate because by offering Professionals slightly higher rebates as compared to other market participants, the Exchange hopes to simply remain competitive with other venues so that it remains a choice for market participants when posting orders and the result may be additional Professional order flow for the Exchange.

continue to be assessed the lowest Fees for Removing Liquidity in Penny Pilot Options, as is the case today.¹⁶ Customer liquidity brings unique benefits to the market in terms of liquidity which benefits all market participants.

Rebates for Adding NOM Market Maker Liquidity

The Exchange's proposal to amend NOM Market Maker Rebate to Add Liquidity Tiers 1, 2, 3, 4, and 5, and add new Tier 6, in Penny Pilot Options and establish the applicable percentage metric is reasonable, equitable and not unfairly discriminatory for the reasons noted below.

The Exchange's proposal to modify the Tier 1 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of 29,999 contracts per day in a month to 0.10% of total industry customer equity and ETF option ADV contracts per day in a month, and to reduce the Tier 1 rebate from \$0.32 to \$0.30 per contract is reasonable because the decreased rebate, in light of establishment of the new percentage eligibility metric, would be the same for adding NOM Market Maker liquidity as for adding Customer and/or Professional Liquidity. This provides pricing/rebate consistency within the tiers and is continuing to incentivize Participants to transact an even greater number of qualifying Customer and/or Professional volume on NOM.

The Exchange's proposal to modify the Tier 1 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of 29,999 contracts per day in a month to 0.10% of total industry customer equity and ETF option ADV contracts per day

¹⁶ The Customer removal fee is \$0.47. Customer liquidity benefits all market participants by providing more trading opportunities, which attract Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

in a month, and to reduce the Tier 1 rebate from \$0.32 to \$0.30 per contract is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 1 NOM Market Maker Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange's proposal to modify the Tier 2 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of 30,000 to 59,999 contracts per day in a month to above 0.10% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month, and to reduce the Tier 2 rebate from \$0.30 to \$0.25 per contract is reasonable because the decreased rebate, in light of establishment of the new percentage eligibility metric that would be the same for adding NOM Market Maker liquidity as for adding Customer and/or Professional Liquidity will provide pricing consistency and continue to incentivize Participants to transact an even greater number of qualifying Customer and/or Professional volume on NOM.

The Exchange's proposal to modify the Tier 2 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of 30,000 to 59,999 contracts per day in a month to above 0.10% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month, and to reduce the Tier 2 rebate from \$0.30 to \$0.25 per contract the Rebate to Add Liquidity, is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 2 NOM Market Maker Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange's proposal to modify the Tier 3 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of from 60,000 to 69,999 contracts per day in a month to above 0.30% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month, and to reduce the Tier 3 rebate from

reduce from \$0.32 to \$0.30 per contract is reasonable because the decreased rebate, in light of establishment of the new percentage eligibility metric, would be the same for adding NOM Market Maker liquidity as for adding Customer and/or Professional Liquidity will provide pricing consistency and continue to incentivize Participants to transact an even greater number of qualifying Customer and/or Professional volume on NOM.

The Exchange's proposal to modify the Tier 3 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of from 60,000 to 69,999 contracts per day in a month to above 0.30% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month, and to reduce the Tier 3 rebate from reduce from \$0.32 to \$0.30 per contract is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 3 NOM Market Maker Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange's proposal to modify the Tier 4 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of from 70,000 or more contracts per day in a month to above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month and continue to pay a Rebate to Add Liquidity is reasonable because the amendment will provide pricing consistency and continue to incentivize Participants to transact an even greater number of qualifying Customer and/or Professional volume on NOM.

The Exchange's proposal to modify the Tier 4 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of from 70,000 or more contracts per day in a month to above 0.60% of total industry customer equity and ETF

option ADV contracts per day in a month and continue to pay a \$0.32 or \$0.38 per contract Rebate to Add Liquidity as currently provided, is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 4 NOM Market Maker Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange's proposal to modify the Tier 5 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of 40,000 or more contracts per day in a month to above 0.30% of total industry customer equity and ETF option ADV contracts per day in a month and continue to pay a \$0.40 per contract Rebate to Add is reasonable because the amendment will provide pricing consistency and continue to incentivize Participants to transact an even greater number of qualifying Customer and/or Professional volume on NOM.

The Exchange's proposal to modify the Tier 5 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of 40,000 or more contracts per day in a month to above 0.30% of total industry customer equity and ETF option ADV contracts per day in a month and continue to pay a \$0.40 Rebate to Add is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 5 NOM Market Maker Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange's proposal to adopt a new Tier 6 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity for Participants that add the highest level of NOM Market Maker liquidity that would pay a \$0.42 per contract rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month, and in addition qualify for the Tier 7 or Tier 8 Customer and/or Professional

Rebate to Add Liquidity in Penny Pilot Options¹⁷ is reasonable because the amendment will provide pricing consistency and continue to incentivize Participants to transact an even greater number of qualifying Customer and/or Professional volume on NOM.

The Exchange's proposal to adopt a new Tier 6 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity for Participants that add the highest level of NOM Market Maker liquidity that would pay a \$0.42 per contract rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month, and in addition qualify for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options¹⁸ is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 6 NOM Market Maker Rebate to Add Liquidity will be uniformly paid the rebate. The Exchange notes that NOM Market Makers have obligations to the market and regulatory requirements,¹⁹

¹⁷ For purposes of Tier 7, Participants may add Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and/or Non-Penny Pilot Options and for purposes of Tier 8, Participants may add Customer or Professional liquidity in Penny Pilot or Non-Penny Pilot Options.

¹⁸ For purposes of Tier 7, Participants may add Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and/or Non-Penny Pilot Options and for purposes of Tier 8, Participants may add Customer or Professional liquidity in Penny Pilot or Non-Penny Pilot Options.

¹⁹ 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

which normally do not apply to other market participants. A NOM Market Maker has the obligation, for example, 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 would continue to incentivize Participants, with Tiers 1 through 6 NOM Market Maker Penny Pilot Options Rebates to Add Liquidity, as amended, to provide liquidity by paying specified rebates to those Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options according to percentage metrics keyed to industry customer equity and ETF option average ADV contracts per day in a month. The proposed percentage metrics are dynamic in nature in that they reference total industry options contracts per day rather than a static number of contracts per day, and thereby make the Rebate structure similar for Customers and/or Professionals as well as for NOM Market Makers for similar products (e.g. Penny Pilot Options and Non-Penny Pilot Options).²⁰

In addition, the Exchange believes it is reasonable to use percentage metrics keyed to industry customer equity and ETF option average ADV contracts per day in a

on NOM for all purposes under the Act or rules thereunder. See Chapter VII, Section 5.

²⁰ The Exchange notes that if a Participant qualifies for two tiers, the higher rebate will be paid.

month because that is a benchmark that Participants are comfortable with in respect to Customer and Professional liquidity. Moreover, while the Exchange evaluated the continued use of industry market maker volume, the Exchange believes that industry customer volume is a fair metric because it does not have the periodic spikes that may occur due to floor trading. Because NOM is an electronic market place with no trading floor, the Exchange believes that an industry volume metric is fair and reasonable.

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

NASDAQ 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 believes that lowering percentage eligibility thresholds in Tiers 1 through 4 and adding a percentage eligibility metric in Tier 5 for Customer and Professional rebates, and amending Tiers 1 through 5 and adding Tier 6 to add percentage eligibility thresholds, will incentivize market participants to send additional order Customer and/or Professional flow to the Exchange. The attraction of additional order flow to the Exchange and should in turn promote competition. The Exchange's addition of percentage eligibility thresholds to the Tier 5 Customer and Professional liquidity rebate should encourage additional Customer and/or Professional order flow to the Exchange. The Exchange's addition of a new Tier 6 NOM Market Maker liquidity rebate for Participants that bring the largest amount of such liquidity should encourage Participants to direct additional NOM Market Maker order flow to the Exchange, and will dovetail with the amended rebate tiers below Tier 6.

Added liquidity benefits all market participants by providing more trading opportunities, which attracts market participants to the Exchange. An increase in the

activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that encouraging Participants to add Customer, Professional, and NOM Market Maker liquidity creates competition among options exchanges because the Exchange believes that the rebates may cause market participants to select NOM as a venue to send order flow. The Exchange is continuing to offer rebates at specified, lower percentage metrics in exchange for additional add Customer, Professional, and NOM Market Maker order flow being executed at the Exchange, which additional order flow should benefit other market participants.

The Exchange believes that the increase to the NOM Market Maker Penny Pilot Options Fees for Removing Liquidity does not create an undue burden on competition as the Exchange will uniformly assess non-NOM Market Makers the same Fees for Removing Liquidity in Penny Pilot Options and offer these Participants the opportunity to reduce these fees by adding liquidity to the Exchange and qualifying for certain Customer and/or Professional and NOM Market Maker rebates. Thus, all but Customers will be assessed a uniform fee and Customers will continue to earn a lower fee because Customer liquidity offers unique benefits to the market which benefits all market participants.

Finally, the Exchange's proposal to amend *note d* and adopt *note e* does not create an undue burden on competition but rather further clarifies the Exchange's structure of fees for removing liquidity and rebates for adding liquidity

The Exchange operates in a highly competitive market comprised of twelve U.S. options exchanges in which many sophisticated and knowledgeable market participants

can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. These market forces support the Exchange belief that the proposed rebate structure and tiers proposed herein are competitive with rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace continues to impact the rebates present on the Exchange today and substantially influences the proposals set forth above.

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.²¹

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

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

Not applicable.

11. Exhibits

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2014-023)

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

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 3, 2014, 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 modify Chapter XV, entitled “Options Pricing,” at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options. Specifically, NOM proposes amending Customer³ and Professional⁴ Rebates To

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “Customer” means any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a

Add Liquidity in Penny Pilot Options⁵; amending *note d* and adopting proposed *note e*; amending NOM Market Maker⁶ Rebates to Add Liquidity in Penny Pilot Options; and amending the NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options.

"Professional" (as that term is defined in Chapter I, Section 1(a)(48)). See Chapter XV.

⁴ The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants. See Chapter XV.

⁵ The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through June 30, 2014. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR-NASDAQ-2008-026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009)(SR-NASDAQ-2009-091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009)(SR-NASDAQ-2009-097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR-NASDAQ-2010-013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR-NASDAQ-2010-053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR-NASDAQ-2011-169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot); 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR-NASDAQ-2012-075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012); 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR-NASDAQ-2012-143) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2013); 69787 (June 18, 2013), 78 FR 37858 (June 24, 2013) (SR-NASDAQ-2013-082) and 71105 (December 17, 2013), 78 FR 77530 (December 23, 2013) (SR-NASDAQ-2013-154). See also NOM Rules, Chapter VI, Section 5.

⁶ The term "NOM Market Maker" means a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security. See Chapter XV.

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 Customer, Professional and Market Maker Rebates to Add Liquidity in Penny Pilot Options in order to continue to incentivize Participants to select NOM as a venue when directing order flow. The Exchange also proposes to increase the NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options in permit the Exchange to continue to offer rebate incentives to attract liquidity to the Exchange. Specifically, the Exchange proposes to amending Tier 1, Tier 2, Tier 3, Tier 4, and Tier 5 Customer and Professional Rebates to Add Liquidity in Penny Pilot Options by modifying certain percentage metrics; amending *note d*, which is applicable to Customer and Professional rebate Tiers 7 and 8, and adopting proposed *note e*, which would be applicable to Customer and Professional rebate Tier 8; amending Tier 1, Tier 2, Tier 3, Tier 4, and Tier 5, and adding Tier 6, regarding NOM Market Maker Rebates to

Add Liquidity in Penny Pilot Options by modifying certain percentage metrics; and amending the NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options.

Rebates for Adding Customer and/or Professional Liquidity

The Exchange currently pays Customer and Professional Rebates to Add Liquidity in Penny Pilot Options based on an eight tier rebate structure, which is found in Chapter XV Section 2(1), as follows:

Monthly Volume	Rebate to Add Liquidity
Tier 1 Participant adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.20% of total industry customer equity and ETF option average daily volume ("ADV") contracts per day in a month	\$0.25
Tier 2 Participant adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month	\$0.42
Tier 3 Participant adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month	\$0.43
Tier 4 Participant adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.40% or more of total industry customer equity and ETF option ADV	\$0.45

contracts per day in a month

- | | | |
|-------------------------|--|--|
| Tier
5 | Participant adds (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options 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 | \$0.45 |
| Tier
6 | Participant has Total Volume of 100,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer and/or Professional liquidity in Penny Pilot Options | \$0.45 |
| Tier
7 | Participant has Total Volume of 150,000 or more contracts per day in a month, of which 50,000 or more contracts per day in a month must be Customer and/or Professional liquidity in Penny Pilot Options | \$0.47 |
| Tier
8 | Participant adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.75% or more of national customer volume in multiply-listed equity and ETF options classes in a month. | \$0.48
(Customer)
and \$0.47
(Professional) |

The Exchange is proposing to make amendments to Customer and Professional Rebate to Add Liquidity Tiers 1 through 5 as noted below.

The Exchange proposes to amend the Tier 1 Customer and Professional Penny Pilot Options Rebates to Add Liquidity by modifying the percentage of volume from

0.20% to 0.10% of the total industry customer equity and ETF option ADV contracts per day in a month (generally known in this proposal as the “percentage eligibility metric”). The Exchange proposes to also reduce from \$0.25 to \$0.20 per contract the Tier 1 Customer and Professional Rebates to Add Liquidity. This amendment simultaneously modifies the percentage eligibility metric and the rebate for Tier 1. With this amendment, the Exchange would pay a Tier 1 \$0.20 per contract rebate to Participants that add Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.10% of total industry customer equity and ETF option ADV contracts per day in a month.

The Exchange proposes to amend the Tier 2 Customer and Professional Penny Pilot Options Rebates to Add Liquidity by modifying the percentage of volume from above 0.20% to 0.30% to above 0.10% to 0.20% of the total industry customer equity and ETF option ADV contracts per day in a month. The Exchange proposes to also reduce from \$0.42 to \$0.25 per contract the Customer and Professional Tier 2 Rebates to Add Liquidity. This amendment simultaneously modifies the percentage eligibility metric and the rebate for Tier 2. With this amendment, the Exchange would pay a Tier 2 \$0.25 per contract rebate to Participants that add Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.10% to 20% of total industry customer equity and ETF option ADV contracts per day in a month.

The Exchange proposes to amend the Tier 3 Customer and Professional Penny Pilot Options Rebates to Add Liquidity by modifying the percentage of volume from above 0.30% to 0.40% to above 0.20% to 0.30% of the total industry customer equity and ETF option ADV contracts per day in a month. The Exchange proposes to also reduce

from \$0.43 to \$0.42 per contract the Customer and Professional Tier 3 Rebates to Add Liquidity. This amendment simultaneously modifies the percentage eligibility metric and the rebate for Tier 3. With this amendment, the Exchange would pay a Tier 3 \$0.42 per contract rebate to Participants that add Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.20% to 30% of total industry customer equity and ETF option ADV contracts per day in a month.

The Exchange proposes to amend the Tier 4 Customer and Professional Penny Pilot Options Rebates to Add Liquidity by changing the percentage eligibility metric from above 0.40% to above 0.30% to 0.40% of the total industry customer equity and ETF option ADV contracts per day in a month. The Exchange proposes to also reduce from \$0.45 to \$0.43 per contract the Customer and Professional Tier 4 Rebates to Add Liquidity. This amendment simultaneously modifies the percentage eligibility metric and the rebate for Tier 4. The Exchange believes that deleting the words “or more” brings greater clarity to the rule text as proposed. With this amendment, the Exchange would pay a Tier 4 rebate of \$0.43 per contract to Participants that add Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options from above 0.40% to above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month.

The Exchange proposes to amend the Tier 5 Customer and Professional Penny Pilot Options Rebates to Add Liquidity to add an alternative to the current contracts per day metric. Specifically, the Exchange proposes to add the alternative metric of above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month to the requirements to qualify for Tier 5. With this amendment, the Exchange

would pay a Tier 5 \$0.45 per contract rebate where Participants add Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds liquidity per the current Tier 5 metric where Participant adds (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options 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. The Exchange is not amending the current qualification for the Tier 5 Customer and Professional rebate, but is adding an alternate method to qualify for the tier to provide Participants another opportunity to earn a rebate.

The Exchange would continue to incentivize Participants, with Customer and Professional Tiers 1 through 5 rebates, as amended, to direct liquidity to the Exchange by paying the specified rebates to those Participants that add Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options according to metrics keyed to industry customer equity and ETF option average ADV contracts per day in a month.

There are also four explanatory *notes* applicable to Customer and Professional Tiers 5 through 8, notes b:

^aFor purposes of Tier 5, the Exchange will allow a NOM Participant to qualify for the rebate if a NASDAQ member under Common Ownership with the NOM Participant has certified for the Investor Support Program and executed at least one order on NASDAQ's equity market.

^bFor purposes of Tiers 6, 7 and 8, "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/or Non-Penny

Pilot Options which either adds or removes liquidity on NOM.

^cFor purposes of Tiers 6, 7 and 8, the Exchange will allow NOM Participants under Common Ownership to aggregate their volume to qualify for the rebate.

^dParticipants that qualify for Customer or Professional Rebate to Add Liquidity Tiers 7 or 8 in a given month will be assessed a Professional, Firm, Non-NOM Market Maker or Broker-Dealer Fee for Removing Liquidity in Penny Pilot Options of \$0.48 per contract.

The Exchange is proposing to amend *note d*, which is applicable to Tiers 7 and 8, and to adopt *note e*, which would be applicable to Tier 8.

In particular, the Exchange proposes to amend *note d* to indicate that it is applicable to Participants under Common Ownership.⁷ As such, *note d* would be applicable not only to individual Participants but also to Participants under 75% common ownership or control. The Exchange also proposes to add NOM Market Makers to the list of participants to which a Fee for Removing Liquidity in Penny Pilot Options will be assessed. With this amendment, *note d* would state that “Participants or Participants under Common Ownership that qualify for Customer or Professional Rebate to Add Liquidity Tiers 7 or 8 in a given month will be assessed a Professional, Firm, Non-NOM Market Maker, NOM Market Maker or Broker-Dealer Fee for Removing Liquidity in Penny Pilot Options of \$0.48 per contract.”⁸

⁷ The term “Common Ownership” shall mean Participants under 75% common ownership or control. See Chapter XV definitions.

⁸ Commensurate with adding a reference to NOM Market Maker in *note d* as amended, the Exchange proposes to add a reference to *note d* in the line reflecting a NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options, and to amend the Fee for Removing Liquidity from \$0.48 to \$0.49 per contract, as proposed herein.

The Exchange also proposes to adopt *note e* that would be applicable to Tier 8 Customer Rebates.⁹ The proposed note would add an additional \$0.02 per contract Penny Pilot Options Customer Rebate to Add Liquidity in addition to the Penny Pilot Option Customer rebate of \$0.48 per contract currently applicable to Tier 8. With this amendment, proposed *note e* would state that Participants that add Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.25% or more of national customer volume in multiply-listed equity and ETF options classes in a month will receive an additional \$0.02 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month. As such, Participants would continue to earn a \$0.47 per contract Professional Rebate per Tier 8, but, with this proposal, would be able to earn a \$0.50 per contract Customer Rebate per *note e*.

Rebates for Adding NOM Market Maker Liquidity

The Exchange currently pays NOM Market Maker Rebates to Add Liquidity based on a five tier rebate structure, which is found in Chapter XV Section 2(1), as follows:

Monthly Volume	Rebate to Add Liquidity
Tier 1 Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 29,999 contracts per day in a month	\$0.25

⁹ Tier 8 pays a \$0.48 per contract Customer Rebate to Add Liquidity in Penny Pilot Options and a \$0.47 per contract Professional Rebate to Add Liquidity in Penny Pilot Options.

Tier 2	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 30,000 to 59,999 contracts per day in a month	\$0.30
Tier 3	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 60,000 to 69,999 contracts per day in a month	\$0.32
Tier 4	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 70,000 or more contracts per day in a month	\$0.32 or \$0.38 in the following symbols BAC, GLD, IWM, QQQ and VXX or \$0.40 in SPY
Tier 5	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 40,000 or more contracts per day in a month and qualifies for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options.	\$0.40

For purposes of qualifying for a NOM Market Maker Penny Pilot Options Rebate to Add Liquidity tier, the Exchange today calculates the number of contracts per day in a month. Similarly to the metric used to calculate Customer and/or Professional Rebates to add Liquidity in Penny Pilot Options, the Exchange proposes to make certain amendments to the NOM Market Maker Rebate to Add Liquidity Tiers 1 through 5, and add a new Tier 6, to establish a metric of total industry customer equity and ETF option ADV contracts per day in a month.

The Exchange proposes to modify the Tier 1 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of 29,999 contracts per day in a month to 0.10% of total industry customer equity and ETF option ADV contracts per day in a month. The Exchange proposes to also reduce the Tier 1 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options from \$0.25 to \$0.20 per contract. This amendment simultaneously establishes a percentage eligibility metric and modifies the Tier 1 rebate. With this amendment, the Exchange would pay a \$0.20 per contract rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.10% of total industry customer equity and ETF option ADV contracts per day in a month.

The Exchange proposes to modify the Tier 2 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of 30,000 to 59,999 contracts per day in a month to above 0.10% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month. The Exchange proposes to also reduce the Tier 2 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity from \$0.30 to \$0.25 per contract. This amendment simultaneously establishes a percentage eligibility metric and modifies the Tier 2 rebate. With this amendment, the Exchange would pay a \$0.25 per contract Tier 2 rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.10% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month.

The Exchange proposes to modify the Tier 3 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric from 60,000 to 69,999 contracts per day in a month to above 0.30% to 0.60% of total industry customer equity and ETF

option ADV contracts per day in a month. The Exchange proposes to also reduce the Tier 3 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity from \$0.32 to \$0.30 per contract. This amendment simultaneously establishes a percentage eligibility metric and modifies the Tier 3 rebate. With this amendment, the Exchange would pay a \$0.30 per contract rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.30% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month.

The Exchange proposes to modify the Tier 4 NOM Market Maker Rebate to Add Liquidity by amending the metric of 70,000 or more contracts per day in a month to above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month. The Exchange would continue to pay a Tier 4 rebate of \$0.32 or \$.38 per contract in symbols BAC, GLD, IWM, QQQ and VXX or \$0.38 per contract in SPY; the rebate would be paid to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month.

The Exchange proposes to modify the Tier 5 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of 40,000 or more contracts per day in a month to above 0.30% of total industry customer equity and ETF option ADV contracts per day in a month, and qualify for the Tier 7 or 8 Customer and/or Professional Rebate. The Exchange would continue to pay a Tier 5 rebate of \$.40 per contract rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.30% of total industry customer equity and ETF option ADV

contracts per day in a month and qualify for the Tier 7 or 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options.

The Exchange also proposes to adopt a new Tier 6 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by offering Participants that add the highest level of NOM Market Maker liquidity a rebate. Proposed Tier 6 would have a format similar to other NOM Market Maker liquidity rebate tiers. With this amendment, the Exchange would pay a \$0.42 per contract rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options.

The Exchange would continue to incentivize Participants, with NOM Market Maker rebate Tiers 1 through 6 as amended, to provide liquidity by paying specified rebates to those Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options according to percentage metrics keyed to industry customer equity and ETF option average ADV contracts per day in a month. The proposed percentage metrics are dynamic in that they reference total industry options contracts per day rather than a static number of contracts, and thereby make the NOM Market Maker rebate structure similar for Customer and/or Professional Penny Pilot Options as well as for NOM Market Makers for similar products (e.g. Penny Pilot Options and Non-Penny Pilot Options).¹⁰

2. Statutory Basis

¹⁰ The Exchange notes that if a Participant qualifies for two tiers, the higher rebate will be paid in a given month.

NASDAQ believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act¹² 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's goal is to modify or institute percentage eligibility thresholds and adjust Penny Pilot Options Rebates to Add Liquidity in order to continue to encourage market participants to direct a greater amount of Customer, Professional and NOM Market Maker liquidity to the Exchange. The Exchange's proposal does not eliminate rebates or the ability for market participants to earn rebates, but rather is modifying and explaining the methodology to earn rebates as noted herein.

Rebates for Adding Customer and/or Professional Liquidity

The Exchange proposes to amend Tiers 1, 2, 3, 4, and 5 regarding Customer and Professional Penny Pilot Options Rebates to Add Liquidity by modifying the applicable percentage metric and amending certain rebates. This proposal is reasonable, equitable and not unfairly discriminatory for the reasons noted below.

The Exchange's proposal to amend the Tier 1 Customer and Professional Penny Pilot Options Rebate to Add Liquidity rebates from \$0.25 to \$0.20 per contract and also reduce the percentage eligibility metric from 0.20% to 0.10% is reasonable because while Participants may get a moderately smaller rebate, they would qualify for the rebate at a

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4), (5).

significantly lower percentage metric. Thus, the Exchange is still paying a rebate to incentivize Participants to transact a qualifying number of Customer and/or Professional contracts on the Exchange and receive a rebate. While certain Participants that currently qualify for certain rebate tiers may receive lower rebates with this proposal, the Exchange believes that the rebates will continue to incentivize NOM Participants to direct Customer and Professional order flow to the Exchange to receive these rebates. However, for those Participants as for all NOM Participants, there are no barriers to earning greater Penny Pilot Options rebates by adding further liquidity on NOM in Penny Pilot Options and Non-Penny Pilot Options. A NOM Participant may choose to earn greater or lower rebates dependent on the amount of order flow directed to NOM. It also worth noting that the Exchange is under no obligation to offer rebates and does so to provide incentives to market participants to choose NOM over other similarly positioned options exchanges.

The Exchange's proposal to amend the Tier 1 Customer and Professional Penny Pilot Options Rebate to Add Liquidity rebates from \$0.25 to \$0.20 per contract and also reduce the percentage eligibility metric from 0.20% to 0.10% is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 1 Customer and Professional Penny Pilot Options Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange's proposal to amend the Tier 2 Customer and Professional Penny Pilot Options Rebate to Add Liquidity rebates from \$0.42 to \$0.25 per contract and also reduce the percentage eligibility metric from above 0.20% to 0.30% to above 0.10% to 0.20% is reasonable because, while the rebate is being reduced, the Exchange is still

paying a rebate incentive to Participants to transact qualifying Customer and/or Professional volume on the Exchange. The Exchange believes that the amendment is reasonable because while there is a rebate reduction, the Exchange also proposes to significantly reduce the eligibility metric to achieve the rebate, and with corresponding drops in the metrics in this tier and other tiers, Participants may qualify for other rebates when directing liquidity to the Exchange. While the change in the Tier 2 rebate appears to be a steep reduction, the change was made to realign the rebate tier structure (e.g. the combination of Tiers 4 and 5 into a single Tier and the introduction of the amended Tier 1). It also important to note that no NOM Participant earned the Tier 2 \$0.42 rebate so far in 2014.

The Exchange's proposal to amend the Tier 2 Customer and Professional Penny Pilot Options Rebate to Add Liquidity rebates from \$0.42 to \$0.25 per contract and also reduce the percentage eligibility metric from above 0.20% to 0.30% to above 0.10% to 0.20% is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 2 Customer and Professional Penny Pilot Options Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange's proposal to amend the Tier 3 Customer and Professional Penny Pilot Options Rebate to Add Liquidity rebates from \$0.43 to \$0.42 per contract and also reduce the percentage eligibility metric from above 0.30% to 0.40% to above 0.20% to 0.30% is reasonable because, while the rebate is being reduced, the Exchange is still paying a rebate incentive to Participants to transact qualifying Customer and/or Professional volume on the Exchange. Participants may get a moderately smaller rebate, but they would qualify for the rebate at a significantly lower percentage metric. Thus, the

Exchange is still paying a rebate to incentivize Participants to transact a qualifying number of Customer and/or Professional contracts on the Exchange and receive a significant rebate. It also important to note that no NOM Participant earned the \$0.43 rebate in 2014.

The Exchange's proposal to amend the Tier 3 Customer and Professional Penny Pilot Options Rebate to Add Liquidity rebates from \$0.43 to \$0.42 per contract and also reduce the percentage eligibility metric from above 0.30% to 0.40% to above 0.20% to 0.30% is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 3 Customer and Professional Penny Pilot Options Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange's proposal to amend the Tier 4 Customer and Professional Penny Pilot Options Rebate to Add Liquidity rebates from \$0.45 to \$0.43 per contract and also reduce the percentage eligibility metric from above 0.40% to above 0.30% to 0.40% is reasonable because, while the rebate is being reduced, the Exchange is still paying a rebate incentive to Participants to transact qualifying Customer and/or Professional volume on the Exchange. Participants may get a moderately smaller rebate, but they would qualify for the rebate at a significantly lower percentage metric. Thus, the Exchange is still paying a rebate to incentivize Participants to transact a qualifying number of Customer and/or Professional contracts on the Exchange and receive a significant rebate. The criteria from Tier 4 today was merged into Tier 5 and current Tier 4 was amended as proposed above. It also important to note no NOM Participants earned rebate pursuant to the Tier 4 in place for February.

The Exchange's proposal to amend the Tier 4 Customer and Professional Penny Pilot Options Rebate to Add Liquidity rebates from \$0.45 to \$0.43 per contract and also reduce the percentage eligibility metric from above 0.40% to above 0.30% to 0.40% is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 4 Customer and Professional Penny Pilot Options Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange believes its proposal to amend Chapter XV, Section 2 to delete deleting the words "or more" in Tier 4 is reasonable, equitable and not unfairly discriminatory because it adds greater clarity to the rule text and this change would be applied uniformly in calculating the Tier 4 rebate. Also, the Exchange believes that this amendment is non-substantive and merely clarifies the rule text.

The Exchange's proposal to adopt an alternative percentage eligibility metric to the Tier 5 Customer and Professional Penny Pilot Options Tier 5 Rebate to Add Liquidity of above 0.40% of total is reasonable because the additional new metric will provide another method for Participants to qualify for the Customer and Professional Tier 5 rebate and will continue to incentivize Participants to transact an even greater number of qualifying Customer and/or Professional volume on the Exchange. Additionally, Participants that receive a Tier 5 rebate of \$0.45 per contract will continue to earn the rebate but will have an additional means to qualify for this rebate.

The Exchange's proposal to adopt an alternative percentage eligibility metric to the Tier 5 Customer and Professional Penny Pilot Options Tier 5 Rebate to Add Liquidity of above 0.40% of total is equitable and not unfairly discriminatory because all eligible

Participants that qualify for the Tier 5 Customer and Professional Penny Pilot Options Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange's proposal to amend *note d* is reasonable because today, Participants under Common Ownership and NOM Market Makers are not included in *note d*. This amendment provides that all Participants or Participants under Common Ownership that qualify for Customer or Professional Rebate to Add Liquidity Tiers 7 or 8 in a given month will be assessed a Professional, Firm, Non-NOM Market Maker, NOM Market Maker or Broker-Dealer Fee for Removing Liquidity in Penny Pilot Options of \$0.48 per contract uniformly. As is the case with the rebates proposed above and the fee discount provided in *note d*, competition among similarly positioned options exchanges (e.g., price/time priority) is the driver behind assessing NOM Market Makers the Fee for Removing Liquidity.

The Exchange's proposal to amend *note d* is equitable and not unfairly discriminatory because as amended the *note* would be uniformly applied to all Participants.

The Exchange's proposal to adopt *note e* is reasonable because Participants would have an opportunity to earn an additional \$0.02 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month¹³ and incentivize Participants to transact an even greater number of qualifying Customer volume.

¹³ The proposal would provide Participants an opportunity to earn a rebate of \$0.50 per contract, similar to the rebates offered at BATS Options Exchange.

The Exchange's proposal to adopt *note e* is equitable and not unfairly discriminatory because they will be uniformly applied to all Participants. All Participants will have an equal opportunity to benefit from the proposals if they qualify for the additional rebate.¹⁴

The Exchange's proposal to add a reference to *note d* in the line reflecting the NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options Liquidity, and to amend the NOM Market Maker Fee for Removing Liquidity from \$0.48 to \$0.49 per contract is reasonable because the proposed fee will be equal to the fees assessed to other non-Customers. Further, the Exchange's ability to offer increased Customer and Professional Penny Pilot Options Rebates to Add Liquidity is possible with a corresponding increase to the NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options. The Exchange believes that the rebate brings a greater amount of liquidity to the Exchange which benefits all market participants. As is the case with the rebates proposed above and the fee discount provided in *note d*, competition among similarly positioned options exchanges (e.g., price/time priority) is the driver behind the inclusion of NOM Market Makers into *note d*.

The Exchange's proposal to add a reference to *note d* in the line reflecting the NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options Liquidity, and to amend the NOM Market Maker Fee for Removing Liquidity from \$0.48 to \$0.49 per contract is equitable and not unfairly discriminatory because the Exchange is increasing

¹⁴ The Exchange believes that it is not unfair or unfairly discriminatory to offer Professionals an additional \$0.02 rebate because by offering Professionals slightly higher rebates as compared to other market participants, the Exchange hopes to simply remain competitive with other venues so that it remains a choice for market participants when posting orders and the result may be additional Professional order flow for the Exchange.

the NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options so that all non-Customer market participants are uniformly assessed this fee. Customers will continue to be assessed the lowest Fees for Removing Liquidity in Penny Pilot Options, as is the case today.¹⁵ Customer liquidity brings unique benefits to the market in terms of liquidity which benefits all market participants.

Rebates for Adding NOM Market Maker Liquidity

The Exchange's proposal to amend NOM Market Maker Rebate to Add Liquidity Tiers 1, 2, 3, 4, and 5, and add new Tier 6, in Penny Pilot Options and establish the applicable percentage metric is reasonable, equitable and not unfairly discriminatory for the reasons noted below.

The Exchange's proposal to modify the Tier 1 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of 29,999 contracts per day in a month to 0.10% of total industry customer equity and ETF option ADV contracts per day in a month, and to reduce the Tier 1 rebate from \$0.32 to \$0.30 per contract is reasonable because the decreased rebate, in light of establishment of the new percentage eligibility metric, would be the same for adding NOM Market Maker liquidity as for adding Customer and/or Professional Liquidity. This provides pricing/rebate consistency within the tiers and is continuing to incentivize Participants to transact an even greater number of qualifying Customer and/or Professional volume on NOM.

¹⁵ The Customer removal fee is \$0.47. Customer liquidity benefits all market participants by providing more trading opportunities, which attract Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to modify the Tier 1 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of 29,999 contracts per day in a month to 0.10% of total industry customer equity and ETF option ADV contracts per day in a month, and to reduce the Tier 1 rebate from \$0.32 to \$0.30 per contract is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 1 NOM Market Maker Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange's proposal to modify the Tier 2 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of 30,000 to 59,999 contracts per day in a month to above 0.10% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month, and to reduce the Tier 2 rebate from \$0.30 to \$0.25 per contract is reasonable because the decreased rebate, in light of establishment of the new percentage eligibility metric that would be the same for adding NOM Market Maker liquidity as for adding Customer and/or Professional Liquidity will provide pricing consistency and continue to incentivize Participants to transact an even greater number of qualifying Customer and/or Professional volume on NOM.

The Exchange's proposal to modify the Tier 2 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of 30,000 to 59,999 contracts per day in a month to above 0.10% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month, and to reduce the Tier 2 rebate from \$0.30 to \$0.25 per contract the Rebate to Add Liquidity, is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 2 NOM Market Maker Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange's proposal to modify the Tier 3 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of from 60,000 to 69,999 contracts per day in a month to above 0.30% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month, and to reduce the Tier 3 rebate from reduce from \$0.32 to \$0.30 per contract is reasonable because the decreased rebate, in light of establishment of the new percentage eligibility metric, would be the same for adding NOM Market Maker liquidity as for adding Customer and/or Professional Liquidity will provide pricing consistency and continue to incentivize Participants to transact an even greater number of qualifying Customer and/or Professional volume on NOM.

The Exchange's proposal to modify the Tier 3 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of from 60,000 to 69,999 contracts per day in a month to above 0.30% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month, and to reduce the Tier 3 rebate from reduce from \$0.32 to \$0.30 per contract is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 3 NOM Market Maker Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange's proposal to modify the Tier 4 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of from 70,000 or more contracts per day in a month to above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month and continue to pay a Rebate to Add Liquidity is reasonable because the amendment will provide pricing consistency and continue to

incentivize Participants to transact an even greater number of qualifying Customer and/or Professional volume on NOM.

The Exchange's proposal to modify the Tier 4 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of from 70,000 or more contracts per day in a month to above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month and continue to pay a \$0.32 or \$0.38 per contract Rebate to Add Liquidity as currently provided, is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 4 NOM Market Maker Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange's proposal to modify the Tier 5 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of 40,000 or more contracts per day in a month to above 0.30% of total industry customer equity and ETF option ADV contracts per day in a month and continue to pay a \$0.40 per contract Rebate to Add is reasonable because the amendment will provide pricing consistency and continue to incentivize Participants to transact an even greater number of qualifying Customer and/or Professional volume on NOM.

The Exchange's proposal to modify the Tier 5 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity by amending the metric of 40,000 or more contracts per day in a month to above 0.30% of total industry customer equity and ETF option ADV contracts per day in a month and continue to pay a \$0.40 Rebate to Add is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 5 NOM Market Maker Rebate to Add Liquidity will be uniformly paid the rebate.

The Exchange's proposal to adopt a new Tier 6 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity for Participants that add the highest level of NOM Market Maker liquidity that would pay a \$0.42 per contract rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month, and in addition qualify for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options¹⁶ is reasonable because the amendment will provide pricing consistency and continue to incentivize Participants to transact an even greater number of qualifying Customer and/or Professional volume on NOM.

The Exchange's proposal to adopt a new Tier 6 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity for Participants that add the highest level of NOM Market Maker liquidity that would pay a \$0.42 per contract rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month, and in addition qualify for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options¹⁷ is equitable and not unfairly discriminatory because all eligible Participants that qualify for the Tier 6 NOM Market

¹⁶ For purposes of Tier 7, Participants may add Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and/or Non-Penny Pilot Options and for purposes of Tier 8, Participants may add Customer or Professional liquidity in Penny Pilot or Non-Penny Pilot Options.

¹⁷ For purposes of Tier 7, Participants may add Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and/or Non-Penny Pilot Options and for purposes of Tier 8, Participants may add Customer or Professional liquidity in Penny Pilot or Non-Penny Pilot Options.

Maker Rebate to Add Liquidity will be uniformly paid the rebate. The Exchange notes that NOM Market Makers have obligations to the market and regulatory requirements,¹⁸ which normally do not apply to other market participants. A NOM Market Maker has the obligation, for example, 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 would continue to incentivize Participants, with Tiers 1 through 6 NOM Market Maker Penny Pilot Options Rebates to Add Liquidity, as amended, to provide liquidity by paying specified rebates to those Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options according to percentage metrics keyed to industry customer equity and ETF option average ADV contracts per day in a month. The proposed percentage metrics are dynamic in nature in that they reference total industry options contracts per day rather than a static number of contracts per day, and thereby make the Rebate structure similar for Customers and/or

¹⁸ 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.

Professionals as well as for NOM Market Makers for similar products (e.g. Penny Pilot Options and Non-Penny Pilot Options).¹⁹

In addition, the Exchange believes it is reasonable to use percentage metrics keyed to industry customer equity and ETF option average ADV contracts per day in a month because that is a benchmark that Participants are comfortable with in respect to Customer and Professional liquidity. Moreover, while the Exchange evaluated the continued use of industry market maker volume, the Exchange believes that industry customer volume is a fair metric because it does not have the periodic spikes that may occur due to floor trading. Because NOM is an electronic market place with no trading floor, the Exchange believes that an industry volume metric is fair and reasonable.

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

NASDAQ 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 believes that lowering percentage eligibility thresholds in Tiers 1 through 4 and adding a percentage eligibility metric in Tier 5 for Customer and Professional rebates, and amending Tiers 1 through 5 and adding Tier 6 to add percentage eligibility thresholds, will incentivize market participants to send additional order Customer and/or Professional flow to the Exchange. The attraction of additional order flow to the Exchange and should in turn promote competition. The Exchange's addition of percentage eligibility thresholds to the Tier 5 Customer and Professional liquidity rebate should encourage additional Customer and/or Professional order flow to the

¹⁹ The Exchange notes that if a Participant qualifies for two tiers, the higher rebate will be paid.

Exchange. The Exchange's addition of a new Tier 6 NOM Market Maker liquidity rebate for Participants that bring the largest amount of such liquidity should encourage Participants to direct additional NOM Market Maker order flow to the Exchange, and will dovetail with the amended rebate tiers below Tier 6.

Added liquidity benefits all market participants by providing more trading opportunities, which attracts market participants to the Exchange. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that encouraging Participants to add Customer, Professional, and NOM Market Maker liquidity creates competition among options exchanges because the Exchange believes that the rebates may cause market participants to select NOM as a venue to send order flow. The Exchange is continuing to offer rebates at specified, lower percentage metrics in exchange for additional add Customer, Professional, and NOM Market Maker order flow being executed at the Exchange, which additional order flow should benefit other market participants.

The Exchange believes that the increase to the NOM Market Maker Penny Pilot Options Fees for Removing Liquidity does not create an undue burden on competition as the Exchange will uniformly assess non-NOM Market Makers the same Fees for Removing Liquidity in Penny Pilot Options and offer these Participants the opportunity to reduce these fees by adding liquidity to the Exchange and qualifying for certain Customer and/or Professional and NOM Market Maker rebates. Thus, all but Customers will be assessed a uniform fee and Customers will continue to earn a lower fee because

Customer liquidity offers unique benefits to the market which benefits all market participants.

Finally, the Exchange's proposal to amend *note d* and adopt *note e* does not create an undue burden on competition but rather further clarifies the Exchange's structure of fees for removing liquidity and rebates for adding liquidity

The Exchange operates in a highly competitive market comprised of twelve U.S. options exchanges in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. These market forces support the Exchange belief that the proposed rebate structure and tiers proposed herein are competitive with rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace continues to impact the rebates present on the Exchange today and substantially influences the proposals set forth above.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²⁰ 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

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2014-023 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-2014-023. 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-2014-023 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.²¹

Kevin M. O'Neill
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

NASDAQ Stock Market Rules**Options Rules****Chapter XV Options Pricing**

* * * * *

Sec. 2 NASDAQ Options Market—Fees and Rebates

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

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

	Fees and Rebates (per executed contract)					
	Customer	Professional	Firm	Non-NOM Market Maker	NOM Market Maker	Broker- Dealer
Penny Pilot Options:						
Rebate to Add Liquidity	***	***	\$0.10 ²	\$0.10 ²	#	\$0.10 ²
Fee for Removing Liquidity	\$0.47	\$0.49 ^d	\$0.49 ^d	\$0.49 ^d	\$0.4[8]9 ^d	\$0.49 ^d
Non-Penny Pilot Options (including NDX¹):						
Fee for Adding Liquidity	N/A	\$0.45	\$0.45 ²	\$0.45 ²	\$0.35	\$0.45 ²
Fee for Removing Liquidity	\$0.85	\$0.89	\$0.89	\$0.89	\$0.89	\$0.89
Rebate to Add Liquidity	\$0.84 ³	N/A	N/A	N/A	N/A	
SOX, HGX and OSX:						
Fee for	\$0.40	\$0.89	\$0.89	\$0.89	\$0.40	\$0.89

Adding
Liquidity

Fee for	\$0.40	\$0.89	\$0.89	\$0.89	\$0.40	\$0.89
---------	--------	--------	--------	--------	--------	--------

Removing
Liquidity

¹For transactions in NDX, a surcharge of \$0.15 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.

²A Participant that adds Firm, Non-NOM Market Maker or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 15,000 contracts per day or more in a given month will receive a Rebate to Add Liquidity in Penny Pilot Options of \$0.20 per contract and will pay a Fee for Adding Liquidity in Non-Penny Pilot Options of \$0.36 per contract.

³A Participant that qualifies for Penny Pilot Options Customer or Professional Rebate to Add Liquidity Tiers 7 or 8 in a given month will receive an additional \$0.01 per contract Non-Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Non-Penny Pilot Options in that month.

***The Customer and Professional Rebate to Add Liquidity in Penny Pilot Options will be paid as noted below. To determine the applicable percentage of total industry customer equity and ETF option average daily volume, the Participant's Penny Pilot and Non-Penny Pilot Customer and/or Professional volume that adds liquidity will be included.

Monthly Volume	Rebate to Add Liquidity
Tier 1 Participant adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.[2]10% of total industry customer equity and ETF option average daily volume ("ADV") contracts per day in a month	\$0.2[5]0
Tier 2 Participant adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.[2]10% to 0.[3]20% of total industry customer equity and ETF option ADV contracts per day in a month	\$0.[42]25
Tier 3 Participant adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above	\$0.4[3]2

	0.[3]20% to 0.[4]30% of total industry customer equity and ETF option ADV contracts per day in a month	
Tier 4	Participant adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.[4]30% to 0.40% [or more] of total industry customer equity and ETF option ADV contracts per day in a month	\$0.4[5]3
Tier 5^a	<u>Participant adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options 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</u>	\$0.45
Tier 6^{b,c}	Participant has Total Volume of 100,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer and/or Professional liquidity in Penny Pilot Options	\$0.45
Tier 7^{b,c,d}	Participant has Total Volume of 150,000 or more contracts per day in a month, of which 50,000 or more contracts per day in a month must be Customer and/or Professional liquidity in Penny Pilot Options	\$0.47
Tier 8^{b,c,d}	Participant adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.75% or more of national customer volume in multiply-listed equity and ETF options classes in a month.	\$0.48 ^e (Customer) and \$0.47 (Professional)

^aFor purposes of Tier 5, the Exchange will allow a NOM Participant to qualify for the rebate if a NASDAQ member under Common Ownership with the NOM Participant has certified for the Investor Support Program and executed at least one order on NASDAQ's equity market.

^bFor purposes of Tiers 6, 7 and 8, "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/or Non-Penny Pilot Options which either adds or removes liquidity on NOM.

^cFor purposes of Tiers 6, 7 and 8, the Exchange will allow NOM Participants under Common Ownership to aggregate their volume to qualify for the rebate.

^dParticipants or Participants under Common Ownership that qualify for Customer or Professional Rebate to Add Liquidity Tiers 7 or 8 in a given month will be assessed a Professional, Firm, Non-NOM Market Maker, NOM Market Maker or Broker-Dealer Fee for Removing Liquidity in Penny Pilot Options of \$0.48 per contract.

^eParticipants that add Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.25% or more of national customer volume in multiply-listed equity and ETF options classes in a month will receive an additional \$0.02 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month.

The NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options will be paid as noted below.

Monthly Volume		Rebate to Add Liquidity
Tier 1	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to [29,999 contracts per day in a month] <u>0.10% of total industry customer equity and ETF option average daily volume ("ADV") contracts per day in a month</u>	\$0.2[5]0
Tier 2	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options [of 30,000 to 59,999 contracts per day in a month] <u>above 0.10% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month</u>	\$0.[30]25
Tier 3	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options [of 60,000 to 69,999 contracts per day in a month] <u>above 0.30% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month</u>	\$0.3[2]0
Tier 4	Participant adds NOM Market Maker liquidity in	\$0.32 or \$0.38 in

	Penny Pilot Options and/or Non-Penny Pilot Options of [70,000 or more contracts per day in a month] <u>above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month</u>	the following symbols BAC, GLD, IWM, QQQ and VXX or \$0.40 in SPY
Tier 5	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of [40,000 or more contracts per day in a month] <u>above 0.30% of total industry customer equity and ETF option ADV contracts per day in a month</u> and qualifies for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options.	\$0.40
<u>Tier 6</u>	<u>Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options</u>	<u>\$0.42</u>

* * * * *