

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 28	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2016 - * 113	Amendment No. (req. for Amendments *)
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Filing by NASDAQ Stock Market  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			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 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"/>
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**Description**

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

Proposed rule change to amend Chapter XV, entitled Options Pricing, at Section 2, which governs pricing for Exchange members using the NASDAQ Options Market LLC, the Exchange facility for executing and routing standardized equity and index options.

**Contact Information**

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

First Name \* Angela Last Name \* Dunn

Title \* Associate General Counsel

E-mail \* Angela.Dunn@nasdaq.com

Telephone \* (215) 496-5692 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 08/09/2016

By Edward S. Knight

Executive Vice President and General Counsel

edward.knight@nasdaq.com

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

Add Remove View

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

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

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

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

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

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

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

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

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend Chapter XV, entitled “Options Pricing,” at Section 2, which governs pricing for Exchange members using the NASDAQ Options Market LLC (“NOM”), the Exchange’s facility for executing and routing standardized equity and index options. The Exchange proposes to amend certain Penny Pilot Options<sup>3</sup> pricing.

A notice of the proposed rule change for publication in the Federal Register is at Exhibit 1. The text of the proposed rule change is at Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on July 1, 2015.

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

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

<sup>3</sup> The Penny Pilot was established in March 2008 and was last extended in 2016. 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); and 78037 (June 10, 2016), 81 FR 39299 (June 16, 2016) (SR-NASDAQ-2016-052) (notice of filing and immediate effectiveness extending the Penny Pilot through December 31, 2016). All Penny Pilot Options listed on the Exchange can be found at <http://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2016-15>

Exchange staff will advise the Board of any action taken pursuant to delegated authority.

No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Angela Saccomandi Dunn  
Associate General Counsel  
Nasdaq, Inc.  
215-496-5692.

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

a. Purpose

The Exchange proposes to amend NOM pricing at Chapter XV, Section 2(1) to increase the Customer<sup>4</sup> or Professional<sup>5</sup> Penny Pilot Options Fee for Removing Liquidity in SPY Options.<sup>6</sup> The proposed change is discussed below.

**Change 1 –Penny Pilot Options: Change Fee for Removing Customer and Professional Liquidity in SPY Options**

The Exchange currently assesses Customers, Professionals, Firms,<sup>7</sup> Non-NOM

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<sup>4</sup> The term “Customer” or (“C”) applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation 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)).

<sup>5</sup> The term “Professional” or (“P”) 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.

<sup>6</sup> Options overlying Standard and Poor’s Depository Receipts/SPDRs (“SPY”) are based on the SPDR exchange-traded fund (“ETF”), which is designed to track the performance of the S&P 500 Index.

<sup>7</sup> The term “Firm” or (“F”) applies to any transaction that is identified by a Participant for clearing in the Firm range at The Options Clearing Corporation.

Market Makers,<sup>8</sup> NOM Market Makers,<sup>9</sup> and Broker-Dealers<sup>10</sup> a \$0.50 per contract Penny Pilot Options Fee for Removing Liquidity in all NOM Penny Pilot Options, except SPY options. Today, the Exchange assesses a Customer or Professional that removes liquidity in SPY options a Penny Pilot Options Fee for Removing Liquidity of \$0.47 per contract.<sup>11</sup> The Exchange proposes to amend note “3” of Chapter XV, Section 2(1) to increase the Customer or Professional Penny Pilot Options Fee for Removing Liquidity in SPY options from \$0.47 to \$0.48 per contract. While the Exchange is proposing to increase this fee, the Exchange believes that the lower fee, as compared to \$0.50 per contract in other Penny Pilot Options, will continue to incentivize Participants to send Customer and Professional order flow in SPY.<sup>12</sup>

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<sup>8</sup> The term “Non-NOM Market Maker” or (“O”) is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

<sup>9</sup> The term “NOM Market Maker” or (“M”) is 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.

<sup>10</sup> The term “Broker-Dealer” or (“B”) applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

<sup>11</sup> Firms, Non-NOM Market Makers, NOM Market Makers and Broker-Dealers are assessed a \$0.50 per contract Penny Pilot Options Fee for Removing Liquidity in SPY options, similar to other Penny Pilot Options.

<sup>12</sup> SPY options are the largest volume Penny Pilot Options traded on the Exchange.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>14</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>15</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>16</sup> (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>17</sup> As the court emphasized, the Commission

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>15</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>16</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>17</sup> See NetCoalition, at 534 - 535.

“intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>18</sup>

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . . .”<sup>19</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

**Change 1 –Penny Pilot Options: Change Fee for Removing Customer and Professional Liquidity in SPY Options**

The Exchange’s proposal to amend note “3” of Chapter XV, Section 2(1) to increase the Customer or Professional Penny Pilot Options Fee for Removing Liquidity in SPY from \$0.47 to \$0.48 per contract is reasonable because the Customer and Professional Penny Pilot Options Fee for Removing Liquidity continues to be lower for SPY as compared to other Penny Pilot Options. The lower fee of \$0.48 in SPY, as compared to \$0.50 per contract in other Penny Pilot Options, will continue to incentivize Participants to send Customer and Professional order flow in SPY.

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<sup>18</sup> Id. at 537.

<sup>19</sup> Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

The Exchange's proposal to amend note "3" of Chapter XV, Section 2(1) to increase the Customer or Professional Penny Pilot Options Fee for Removing Liquidity in SPY options from \$0.47 to \$0.48 per contract is equitable and not unfairly discriminatory because the Customer and Professional Penny Pilot Options Fee for Removing Liquidity continues to be lower for SPY as compared to other Penny Pilot Options. This lower fee for these market participants is equitable and not unfairly discriminatory because Customer liquidity benefits all market participants by providing more trading opportunities, which attracts 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 believes that offering a lower fee to Professionals is equitable and not unfairly discriminatory because it serves to attract more liquidity to NOM to the benefit of other market participants. By offering Professionals, as well as Customers, lower fees, 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, in addition to increased Customer order flow. Further, the Exchange initially established Professional pricing in order to "...bring additional revenue to the Exchange."<sup>20</sup> The Exchange noted in the Professional Filing that it believes "...that the increased revenue from the proposal would assist the Exchange

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<sup>20</sup> See Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR-NASDAQ-2011-066) ("Professional Filing"). In this filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.

to recoup fixed costs.”<sup>21</sup> The Exchange does not believe that providing Professionals with the opportunity to obtain lower remove fee in SPY, equivalent to that of a Customer, creates a competitive environment where Professionals would be necessarily advantaged on NOM as compared to NOM Market Makers, Firms, Broker-Dealers or Non-NOM Market Makers.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed fee changes are competitive and do not impose a burden on inter-market competition. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of

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<sup>21</sup> See Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR-NASDAQ-2011-066).

members or competing order execution venues to maintain their competitive standing in the financial markets.

**Change 1 –Penny Pilot Options: Change Fee for Removing Customer and Professional Liquidity in SPY Options**

The Exchange’s proposal to amend note “3” of Chapter XV, Section 2(1) to increase the Customer or Professional Penny Pilot Options Fee for Removing Liquidity in SPY options from \$0.47 to \$0.48 per contract does not create an undue burden on intra-market competition, rather the proposal will incentivize market participants to send additional SPY order flow to NOM, because Participants sending Customer and Professional order flow will continued to be charged a lower rate of \$0.48 in SPY as compared to \$0.50 per contract in other Penny Pilot Options. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts 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 believes that offering a lower fee to Professionals does not create an undue burden on intra-market competition because it serves to attract more liquidity to NOM to the benefit of other market participants. By offering Professionals, as well as Customers, lower fees, 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, in addition to increased Customer order flow. Further, the Exchange initially established Professional pricing in order to “...bring additional revenue to the Exchange.”<sup>22</sup> The

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<sup>22</sup> See Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR-NASDAQ-2011-066) (“Professional Filing”). In this filing,

Exchange noted in the Professional Filing that it believes “...that the increased revenue from the proposal would assist the Exchange to recoup fixed costs.”<sup>23</sup> The Exchange does not believe that providing Professionals with the opportunity to obtain lower remove fee in SPY, equivalent to that of a Customer, creates a competitive environment where Professionals would be necessarily advantaged on NOM as compared to NOM Market Makers, Firms, Broker-Dealers or Non-NOM Market Makers. .

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)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>24</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the

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

<sup>23</sup> See Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR-NASDAQ-2011-066).

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2016-113)

August \_\_, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Exchange's Options Pricing

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 9, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Chapter XV, entitled "Options Pricing," at Section 2, which governs pricing for Exchange members using the NASDAQ Options Market LLC ("NOM"), the Exchange's facility for executing and routing standardized equity and index options. The Exchange proposes to amend certain Penny Pilot Options<sup>3</sup> pricing.

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

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

<sup>3</sup> The Penny Pilot was established in March 2008 and was last extended in 2016. 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); and 78037 (June 10, 2016), 81 FR 39299

The text of the proposed rule change is available on the Exchange's Website at <http://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 and discussed any comments it received on 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

The Exchange proposes to amend NOM pricing at Chapter XV, Section 2(1) to increase the Customer<sup>4</sup> or Professional<sup>5</sup> Penny Pilot Options Fee for Removing Liquidity

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(June 16, 2016) (SR-NASDAQ-2016-052) (notice of filing and immediate effectiveness extending the Penny Pilot through December 31, 2016). All Penny Pilot Options listed on the Exchange can be found at <http://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2016-15>

<sup>4</sup> The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation 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)).

<sup>5</sup> The term "Professional" or ("P") 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.

in SPY Options.<sup>6</sup> The proposed change is discussed below.

**Change 1 –Penny Pilot Options: Change Fee for Removing Customer and Professional Liquidity in SPY Options**

The Exchange currently assesses Customers, Professionals, Firms,<sup>7</sup> Non-NOM Market Makers,<sup>8</sup> NOM Market Makers,<sup>9</sup> and Broker-Dealers<sup>10</sup> a \$0.50 per contract Penny Pilot Options Fee for Removing Liquidity in all NOM Penny Pilot Options, except SPY options. Today, the Exchange assesses a Customer or Professional that removes liquidity in SPY options a Penny Pilot Options Fee for Removing Liquidity of \$0.47 per contract.<sup>11</sup> The Exchange proposes to amend note “3” of Chapter XV, Section 2(1) to increase the Customer or Professional Penny Pilot Options Fee for Removing Liquidity in SPY options from \$0.47 to \$0.48 per contract. While the Exchange is proposing to

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<sup>6</sup> Options overlying Standard and Poor’s Depository Receipts/SPDRs (“SPY”) are based on the SPDR exchange-traded fund (“ETF”), which is designed to track the performance of the S&P 500 Index.

<sup>7</sup> The term “Firm” or (“F”) applies to any transaction that is identified by a Participant for clearing in the Firm range at The Options Clearing Corporation.

<sup>8</sup> The term “Non-NOM Market Maker” or (“O”) is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

<sup>9</sup> The term “NOM Market Maker” or (“M”) is 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.

<sup>10</sup> The term “Broker-Dealer” or (“B”) applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

<sup>11</sup> Firms, Non-NOM Market Makers, NOM Market Makers and Broker-Dealers are assessed a \$0.50 per contract Penny Pilot Options Fee for Removing Liquidity in SPY options, similar to other Penny Pilot Options.

increase this fee, the Exchange believes that the lower fee, as compared to \$0.50 per contract in other Penny Pilot Options, will continue to incentivize Participants to send Customer and Professional order flow in SPY.<sup>12</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>14</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>15</sup>

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<sup>12</sup> SPY options are the largest volume Penny Pilot Options traded on the Exchange.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>15</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>16</sup> (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>17</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>18</sup>

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”<sup>19</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

**Change 1 –Penny Pilot Options: Change Fee for Removing Customer and Professional Liquidity in SPY Options**

The Exchange’s proposal to amend note “3” of Chapter XV, Section 2(1) to increase the Customer or Professional Penny Pilot Options Fee for Removing Liquidity in

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<sup>16</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>17</sup> See NetCoalition, at 534 - 535.

<sup>18</sup> Id. at 537.

<sup>19</sup> Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

SPY from \$0.47 to \$0.48 per contract is reasonable because the Customer and Professional Penny Pilot Options Fee for Removing Liquidity continues to be lower for SPY as compared to other Penny Pilot Options. The lower fee of \$0.48 in SPY, as compared to \$0.50 per contract in other Penny Pilot Options, will continue to incentivize Participants to send Customer and Professional order flow in SPY.

The Exchange's proposal to amend note "3" of Chapter XV, Section 2(1) to increase the Customer or Professional Penny Pilot Options Fee for Removing Liquidity in SPY options from \$0.47 to \$0.48 per contract is equitable and not unfairly discriminatory because the Customer and Professional Penny Pilot Options Fee for Removing Liquidity continues to be lower for SPY as compared to other Penny Pilot Options. This lower fee for these market participants is equitable and not unfairly discriminatory because Customer liquidity benefits all market participants by providing more trading opportunities, which attracts 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 believes that offering a lower fee to Professionals is equitable and not unfairly discriminatory because it serves to attract more liquidity to NOM to the benefit of other market participants. By offering Professionals, as well as Customers, lower fees, 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, in addition to increased Customer order flow. Further, the Exchange initially established Professional pricing in order to "...bring

additional revenue to the Exchange.”<sup>20</sup> The Exchange noted in the Professional Filing that it believes “...that the increased revenue from the proposal would assist the Exchange to recoup fixed costs.”<sup>21</sup> The Exchange does not believe that providing Professionals with the opportunity to obtain lower remove fee in SPY, equivalent to that of a Customer, creates a competitive environment where Professionals would be necessarily advantaged on NOM as compared to NOM Market Makers, Firms, Broker-Dealers or Non-NOM Market Makers.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing

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<sup>20</sup> See Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR-NASDAQ-2011-066) (“Professional Filing”). In this filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.

<sup>21</sup> See Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR-NASDAQ-2011-066).

practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed fee changes are competitive and do not impose a burden on inter-market competition. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

**Change 1 –Penny Pilot Options: Change Fee for Removing Customer and Professional Liquidity in SPY Options**

The Exchange's proposal to amend note "3" of Chapter XV, Section 2(1) to increase the Customer or Professional Penny Pilot Options Fee for Removing Liquidity in SPY options from \$0.47 to \$0.48 per contract does not create an undue burden on intra-market competition, rather the proposal will incentivize market participants to send additional SPY order flow to NOM, because Participants sending Customer and Professional order flow will continued to be charged a lower rate of \$0.48 in SPY as compared to \$0.50 per contract in other Penny Pilot Options. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts 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 believes that offering a lower fee to Professionals does not create an undue burden on intra-market competition because it serves to attract more liquidity to NOM to the benefit of other market participants. By offering Professionals, as well as Customers, lower fees, 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, in addition to increased Customer order flow. Further, the Exchange initially established Professional pricing in order to “...bring additional revenue to the Exchange.”<sup>22</sup> The Exchange noted in the Professional Filing that it believes “...that the increased revenue from the proposal would assist the Exchange to recoup fixed costs.”<sup>23</sup> The Exchange does not believe that providing Professionals with the opportunity to obtain lower remove fee in SPY, equivalent to that of a Customer, creates a competitive environment where Professionals would be necessarily advantaged on NOM as compared to NOM Market Makers, Firms, Broker-Dealers or Non-NOM Market Makers.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>24</sup>

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<sup>22</sup> See Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR-NASDAQ-2011-066) (“Professional Filing”). In this filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.

<sup>23</sup> See Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR-NASDAQ-2011-066).

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2016-113 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2016-113. 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-2016-113 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

Robert W. Errett  
Deputy Secretary

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<sup>25</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**NASDAQ Stock Market Rules**

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**Options Rules**

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**Chapter XV Options Pricing**

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**Sec. 2 NASDAQ Options Market—Fees and Rebates**

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

**(1) Fees for Execution of Contracts on the NASDAQ Options Market****Fees and Rebates (per executed contract)**

	<b>Customer</b>	<b>Professional</b>	<b>Firm</b>	<b>Non-NOM Market Maker</b>	<b>NOM Market Maker</b>	<b>Broker- Dealer</b>
<b>Penny Pilot Options:</b>						
Rebate to Add Liquidity	*** d	*** d	\$0.10	\$0.10	#	\$0.10
Fee for Removing Liquidity	\$0.50 <sup>3, 4</sup>	\$0.50 <sup>3, 4</sup>	\$0.50	\$0.50 <sup>2</sup>	\$0.50 <sup>2</sup>	\$0.50
<b>Non-Penny Pilot Options:</b>						
Fee for Adding Liquidity	N/A	N/A	\$0.45	\$0.45	\$0.35	\$0.45
Fee for Removing Liquidity	\$0.85	\$0.85	\$1.10	\$1.10	\$1.10	\$1.10
Rebate to Add Liquidity	\$0.80 <sup>1</sup>	\$0.80 <sup>1</sup>	N/A	N/A	N/A	N/A

<sup>1</sup>A Participant that qualifies for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 2, 3, 4, 5 or 6 in a month will receive an additional \$0.10 per contract Non-Penny Pilot Options Rebate to Add Liquidity for each transaction which adds liquidity in Non-Penny Pilot Options in that month. A Participant that qualifies for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 7 or 8 in a month will receive an additional \$0.20 per contract Non-Penny Pilot Options Rebate to

Add Liquidity for each transaction which adds liquidity in Non-Penny Pilot Options in that month.

<sup>2</sup>Participants that add 1.30% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month will be subject to the following pricing applicable to executions: a \$0.48 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and the seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.

Participants that add 1.50% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month and meet or exceed the cap for the NASDAQ Stock Market Opening Cross during the month will be subject to the following pricing applicable to executions less than 10,000 contracts: a \$0.32 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.

Participants that add 1.75% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month will be subject to the following pricing applicable to executions less than 10,000 contracts: a \$0.32 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.

<sup>3</sup> A Customer or Professional that removes liquidity in SPY Options will be assessed a fee of \$0.4[7]8 per contract.

<sup>4</sup> NOM Participants that qualify for MARS Payment Tiers 1, 2 or 3 will be assessed a Customer or Professional Penny Pilot Options Fee for Removing Liquidity of \$0.48 per contract, excluding SPY.

\*\*\* 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, unless otherwise stated, the Participant's Penny Pilot and Non-Penny Pilot Customer and/or Professional volume that adds liquidity will be included.

<b>Monthly Volume</b>	<b>Rebate to Add Liquidity</b>
<b>Tier 1</b> Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.10% of total industry customer equity and ETF option average daily volume ("ADV") contracts per day in a month	\$0.20

<b>Tier 2</b>	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month	\$0.25
<b>Tier 3</b>	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer 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
<b>Tier 4</b>	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer 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
<b>Tier 5</b>	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.40% to 0.75% of total industry customer equity and ETF option ADV contracts per day in a month	\$0.45
<b>Tier 6<sup>b</sup></b>	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
<b>Tier 7<sup>b</sup></b>	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
<b>Tier 8</b>	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more 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 0.25% or more of total industry customer equity and ETF option ADV contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS (defined below)	\$0.48 <sup>c</sup>

<sup>a</sup>Reserved.

<sup>b</sup>For purposes of Tiers 6 and 7, "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.

<sup>c</sup> Participants that: (1) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.15% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional \$0.02 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds

liquidity in Penny Pilot Options in that month; or (2) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.30% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional \$0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (3) (a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer 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, (b) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options above 0.15% of total industry customer equity and ETF option ADV contracts per day in a month, and (c) execute greater than 0.04% of Consolidated Volume ("CV") via Market-on-Close/Limit-on-Close ("MOC/LOC") volume within the NASDAQ Stock Market Closing Cross within a month will receive an additional \$0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in a month.

Consolidated Volume shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of an equity member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity.

<sup>d</sup> NOM Participants that qualify for MARS Payment Tiers 1, 2 or 3 will receive an additional \$0.03 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month, in addition to qualifying Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tiers 1-8. NOM Participants that qualify for a note "c" incentive will receive the greater of the note "c" or note "d" incentive.

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

<b>Monthly Volume</b>	<b>Rebate to Add Liquidity</b>
<b>Tier 1</b> Participant adds 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 average daily volume ("ADV") contracts per day in a month	\$0.20
<b>Tier 2</b> Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above	\$0.25

0.10% to 0.25% of total industry customer equity and ETF option ADV contracts per day in a month

<b>Tier 3</b>	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.25% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month	\$0.30 or \$0.40 in the following symbols AAPL, QQQ, IWM, SPY and VXX
<b>Tier 4</b>	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of above 0.60% to 0.90% of total industry customer equity and ETF option ADV contracts per day in a month	\$0.32 or \$0.40 in the following symbols AAPL, QQQ, IWM, VXX and SPY
<b>Tier 5</b>	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of above 0.30% 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	\$0.40
<b>Tier 6</b>	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 or Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.90% of total industry customer equity and ETF option ADV contracts per day in a month	\$0.42

(2) – (6) No change.

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