SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66768; File No. SR-NASDAQ-2012-048)

April 6, 2012

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

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 April 2, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("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 "Option Pricing," at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend the Penny Pilot[3] Options ("Penny Options") Customer

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

2 17 CFR 240.19b-4.

3 The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through June 30, 2012. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008)(SR-NASDAQ-2008-026)(notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009)(SR-NASDAQ-2009-091)(notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009)(SR-NASDAQ-2009-097)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010)(SR-NASDAQ-2010-013)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR-NASDAQ-2010-053)(notice of filing and immediate

Rebates to Add Liquidity and Penny Options Customer Fee for Removing Liquidity. The Exchange also proposes to make other minor amendments to the Section 2.

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 modify Chapter XV, entitled "Option Pricing," at Section 2 governing the rebates and fees assessed for option orders entered into NOM. Specifically, the Exchange is proposing to modify the five tier structure for paying Customer Rebates to Add Liquidity in Penny Options. The Exchange proposes to amend various rebate tiers to further incentivize NOM Participants to route Customer orders in Penny Options to the Exchange by paying additional rebates for certain orders after the NOM Participant has met a volume criteria and also removing certain criteria to qualify for a rebate. The Exchange believes that

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). See also Exchange Rule Chapter VI, Section 5.

incentivizing NOM Participants to send additional Customer orders in Penny Options to the Exchange will benefit all market participants by adding liquidity to the market.

Specifically, the Exchange currently pays a Customer Rebate to Add Liquidity in Penny Options based on the following tier structure:

*** The Customer Rebate to Add Liquidity in Penny Pilot Options will be paid as noted below. Each Customer order of 5,000 or more, displayed or non-displayed contracts, which adds liquidity in Penny Pilot Options, will qualify for an additional rebate of $0.01 per contract provided the NOM Participant has qualified for a rebate in Tier 2, 3, 4 or 5 for that month.

Monthly Volume		**Rebate to Add Liquidity**
Tier 1	Participant adds Customer liquidity of up to 14,999 contracts per day in a month	$0.26
Tier 2	Participant adds Customer liquidity of 15,000 to 49,999 contracts per day in a month	$0.38
Tier 3	Participant adds Customer liquidity of 50,000 or more contracts per day in a month	$0.42
Tier 4 a	Participant adds (1) Customer liquidity of 100,000 or more contracts per day in a month, and (2) NOM Market Maker liquidity of 40,000 or more contracts per day in a month	$0.43
Tier 5 b	Participant adds (1) Customer liquidity of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014; and (3) the Participant executed at least one order on NASDAQ's equity market	$0.41

a For purposes of Tier 4, the Exchange will aggregate the trading activity of separate NOM Participants when computing average daily volumes where 75 percent common ownership or control exists between NOM Participants.

b For 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. Common ownership is defined as 75 percent common ownership or control.

The Exchange proposes to amend the tier structure for Customer Rebates to Add Liquidity in Penny Options as follows:

*** The Customer Rebate to Add Liquidity in Penny Pilot Options will be paid as noted below. Each Customer order of 5,000 or more, displayed or non-displayed contracts, which adds liquidity in Penny Pilot Options, will qualify for an additional rebate of $0.01 per contract provided the NOM Participant has qualified for a rebate in Tier 2, 3, 4 or 5 for that month.

Monthly Volume		**Rebate to Add Liquidity**
Tier 1	Participant adds Customer liquidity of up to 14,999 contracts per day in a month	$0.26
Tier 2	Participant adds Customer liquidity of 15,000 to 49,999 contracts per day in a month	$0.38
Tier 3	Participant adds Customer liquidity of 50,000 to 74,999 contracts per day in a month	$0.43
Tier 4	Participant adds Customer liquidity of 75,000 or more contracts per day in a month	$0.44
Tier 5[a]	Participant adds (1) Customer liquidity of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014; and (3) the Participant executed at least one order on NASDAQ's equity market	$0.42

[a] For 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. Common ownership is defined as 75 percent common ownership or control.

Currently, Tier 3 firms that add 50,000 or more contracts per day in a month of Customer liquidity, in Penny Options, receive a rebate of $0.42 per contract. The Exchange is proposing to increase the Tier 3 Customer rebate from $0.42 per contract to $0.43 per contract. The Exchange also proposes to amend the number of contracts required to qualify for Tier 3 from 50,000 or more contracts per day in a month to require NOM Participants to add between 50,000 to 74,999 contracts per day in a month of Customer liquidity in Penny Options to qualify for the increased $0.43 Customer rebate.

Currently, Tier 4 firms that (1) add Customer liquidity of 100,000 or more contracts per day in a month of Customer order liquidity in Penny Options, and (2) provide 40,000 or more contracts per day of NOM Market Maker liquidity per day in a month receive a rebate of $0.43 per contract if both criteria are met. For purposes of determining qualification for this tier, the Exchange currently aggregates[4] the trading activity of separate NOM Participants in calculating the average daily volume if there is at least 75% common ownership or control between the NOM Participants. The Exchange proposes to amend the criteria to qualify for Tier 4 from 100,000 or more contracts per day in a month to 75,000 or more contracts per day in a month of Customer liquidity in Penny Options and also remove the second criteria to qualify for Tier 4. The Exchange would therefore remove the requirement that a NOM Market Maker add liquidity of 40,000 or more contracts per day in a month. In addition the Exchange proposes to increase the current Tier 4 Customer rebate of $0.43 per contract to $0.44 per contract. The Exchange would also remove note "(a)", which was associated with the second criteria of Tier 4, which is no longer necessary as the NOM Marker Maker requirement would no longer be a condition to receive the Tier 4 Customer rebate.

Currently, Tier 5 firms that (1) provide 25,000 or more contracts per day in a month of Customer order liquidity in Penny Options, (2) where the Participant has certified for the Investor Support Program ("ISP") as set forth in Rule 7014[5]; and (3) where the Participant

4 Aggregation is necessary and appropriate because certain NOM participants conduct Customer and NOM Market Maker trading activity through separate but related broker-dealers.

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

executed at least one order on NASDAQ's equity market receive a $0.41 per contract Customer rebate. The Exchange proposes to amend Tier 5 to increase the Customer rebate in Penny Options from $0.41 per contract to $0.42 per contract. The Exchange would also renumber the current note "(b)" as note "(a)." The Exchange is not proposing any changes to current Tiers 1 and 2.[6]

The Exchange also proposes to subsidize the proposed increased Customer Rebates to Add Liquidity in Penny Options by increasing the Customer Fee for Removing Liquidity in Penny Options from $0.44 per contract to $0.45 per contract. The Exchange believes that this increase will allow the Exchange to compete more effectively by subsidizing rebates offered on Customer orders.

The Exchange also proposes to make minor amendments to Section 2 including amending the title of Section 2 from "NASDAQ Options Market –Fees" to "NASDAQ Options Market –Fees and Rebates." to more specifically describe the Rule. The Exchange also proposes to correct a cross-reference to the NASDAQ OMX PHLX LLC ("Phlx") "Fee Schedule." The Exchange proposes to update the title of the "Fee Schedule" to the "Pricing Schedule" in accordance with a recent amendment filed by Phlx.[7]

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of

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3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ-2010-154) (notice of filing and immediate effectiveness).

6 The Exchange currently pays an additional rebate of $0.01 per contract for each Customer order of 5,000 or more, displayed or non-displayed contracts, which adds liquidity in Penny Options as long as the NOM Participant qualified for a rebate in Tier 2, 3, 4 or 5 for that month. This is not being amended in this proposal.

7 See SR-Phlx-2012-35.

Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that the proposed new pricing tiers are reasonable, equitable and not unfairly discriminatory because they continue an existing program[10] to encourage broker-dealers acting as agent for Customer orders to select the Exchange as a venue to post Customer orders. The Exchange believes that its success at attracting Customer order flow benefits all market participants by improving the quality of order interaction and executions at the Exchange. The Exchange believes the existing monthly volume thresholds have incentivized firms that route Customer orders to the Exchange to increase Customer order flow to the Exchange. The Exchange desires to continue to encourage firms that route Customer orders to increase Customer order flow to the Exchange by offering greater Customer rebates for greater liquidity added to the Exchange.

Specifically, the Exchange believes that the increased Customer rebates in Penny Options would further incentivize firms to continue to send more Customer volume to the Exchange. By increasing the Customer rebates in Tiers 3, 4 and 5 by $0.01 per contract each, the Exchange would further encourage NOM Participants to transact a greater number of Customer rebates in Penny Options. With respect to Tier 3, NOM Participants that qualify for these Customer

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8 15 U.S.C. 78f.

9 15 U.S.C. 78f(b)(4).

10 The Exchange adopted these monthly volume achievement tiers in September 2011. See Securities Exchange Act Release Nos. 65317 (September 12, 2011), 76 FR 57778 (September 16, 2011) (SR-NASDAQ-2011-124), 65317 (September 12, 2011), 76 FR 61129 (October 3, 2011) (SR-NASDAQ-2011-127), 66126 (January 10, 2012), 77 FR 2335 (January 17, 2012) (SR-NASDAQ-2012-003) and 66360 (February 8, 2012), 77 FR 8312 (February 14, 2012) (SR-NASDAQ-2012-022).

rebates today should qualify for the increased rebate which continues to require at least 50,000 contracts per day in a month of Customer liquidity, but also amends the criteria to between 50,000 and 74,999 contracts of Customer liquidity in Penny Options to qualify for the increased rebate of $0.43 per contract. NOM Participants who currently transact greater than 74,999 contracts per day in a month today would be entitled to an even greater rebate because they would qualify for the increased Tier 4 rebate of $0.44 per contract. The Exchange is amending Tier 4 to lower the first criteria from 100,000 or more contracts of Customer liquidity to 75,000 or more contracts of Customer liquidity in Penny Options and remove the second criteria to qualify for the Customer rebate.[11] Therefore NOM Participants would only be required to add 75,000 or more contracts per day in a month of Customer liquidity in Penny Options to receive the increased Customer rebate of $0.44 per contract. The lower criteria in Tier 4 would allow NOM Participants that currently qualify for Tier 3, because they add greater than 75,000 contracts per day in a month of Customer liquidity in Penny Options, to qualify for the $0.44 per contract rebate and also encourage other NOM Participants to add more Customer liquidity to qualify for an even greater rebate than that offered for Tier 3.

The Exchange's proposal to increase the rebates in Tiers 3, 4 and 5 and amend the Tier 3 and 4 criteria as described herein is reasonable because it should further encourage NOM Participants to qualify for Customer rebates in Penny Options by transacting a greater number of Customer contracts in Penny Options and increase liquidity on NOM. Increased liquidity benefits all market participants on the Exchange. In addition, the increased Tier 5 Customer rebate should further encourage increased activity in both the NASDAQ Options Market and in the ISP of the NASDAQ equity market. The Exchange's proposal to increase the rebates in

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11 As previously mentioned, the Exchange would no longer require 40,000 or more contracts per day in a month of NOM Market Maker liquidity.

Tiers 3, 4 and 5 as well as amend the criteria for Tiers 3 and 4 is equitable and not unfairly discriminatory because all NOM Participants that transact Customer orders in Penny Options are eligible for the Customer rebates.[12] In addition, the proposals to amend the Tier 3 criteria to between 50,000 and 74,999 contracts of Customer liquidity in Penny Options and lower the Tier 4 criteria to 75,000 or more contracts of Customer liquidity in Penny Options and eliminate the second criteria are equitable and not unfairly discriminatory because they should encourage NOM Participants that currently qualify for Tier 3 today to obtain the increased Tier 4 rebate and encourage other NOM Participants to transact additional Customer orders in Penny Options to obtain the increased rebates.

The Exchange's proposal to increase the Customer Fee for Removing Liquidity in Penny Options is reasonable because the Exchange is seeking to recoup costs associated with offering Customer rebates in Penny Options to attract greater liquidity to the Exchange. The increased liquidity benefits all market participants. The Exchange's proposal to increase the Customer Fee for Removing Liquidity in Penny Options is equitable and not unfairly discriminatory because all market participants would uniformly be assessed a $0.45 per contract Customer Fee for Removing Liquidity in Penny Options. Currently, Professionals, Firms, Non-NOM Market Makers and NOM Market Makers are assessed a $0.45 per contract Fee for Removing Liquidity in Penny Options. The Exchange believes that increasing the Customer Fee for Removing Liquidity by $0.01 per contract ($0.44 per contract to $0.45 per contract) allows the Exchange to recoup costs and offer even greater Customer rebates, thereby benefitting all market participants by attracting Customer order flow to NOM.

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12 Tier 1 pays a rebate for NOM Participants that add Customer liquidity of up to 14,999 contracts per day in a month of Penny Options. There is no required minimum volume of Customer orders to qualify for a Customer Rebate to Add Liquidity.

The Exchange's proposals to amend the title of Section 2 to reflect the rebates offered and also update a cross-reference to the Phlx fees are reasonable, equitable and not unfairly discriminatory because these amendments provide greater clarity and accuracy to the Rule text.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive or rebate opportunities to be inadequate. The Exchange believes that the proposed fee and rebate scheme are competitive and similar to other fees, rebates and tier opportunities in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts the fees and rebates present on the Exchange today and substantially influences the proposal set forth above.

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.

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

No written comments were either solicited or received.

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

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

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

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-2012-048 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2012-048. 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 website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2012-048 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Kevin M. O'Neill
Deputy Secretary

[14] 17 CFR 200.30-3(a)(12).