

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91677; File No. SR-NASDAQ-2021-021)

April 26, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend The Nasdaq Options Market's Pricing Schedule at Options 7, Section 1, General Provisions, and Options 7, Section 2, 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 April 13, 2021, 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 The Nasdaq Options Market's (“NOM”) Pricing Schedule at Options 7, Section 1, General Provisions, and Options 7, Section 2, Nasdaq Options Market—Fees and Rebates.

The Exchange originally filed the proposed pricing changes on April 1, 2021 (SR-NASDAQ-2021-016). On April 9, 2021, the Exchange withdrew SR-NASDAQ-2021-016 and filed SR-NASDAQ-2021-019. The Exchange is withdrawing SR-NASDAQ-2021-019 and filing this rule change on April 13, 2021.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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's Pricing Schedule at Options 7, Section 1, General Provisions. The Exchange proposes to relocate certain rule text concerning equity tier calculations from current Options 7, Section 2(4) to Options 7, Section 1 and add a new defined term to Options 7, Section 1. The Exchange proposes to amend Options 7, Section 2(1) to add rule text to make clear the applicable pricing and also amend the Tier 3 NOM Market Maker Rebate to Add Liquidity in Penny Symbols. The Exchange proposes to amend Options 7, Section 2(2) to amend a title. Finally, the Exchange proposes to amend Options 7, Section 2(3) regarding Nasdaq BX Inc.'s ("BX") Routing Fees. Each change shall be described below.

Options 7, Section 1

The Exchange proposes to define the term "Non-Customer" within Options 7, Section 1. The Exchange proposes to provide, "The term "Non-Customer" applies to transactions for the accounts of NOM Market Makers, Non-NOM Market Makers, Firms, Professionals, Broker-

Dealers and JBOs.” This defined term will bring greater clarity to NOM’s Options 7 Rules. The term “Non-Customer” is currently utilized within the fees for routing at Options 7, Section 2(3). The addition of this defined term does not amend the manner in which the Exchange currently applies the term with respect to its Routing Fees. The term “Customer”³ is currently defined and this term applies to Participants that are not customers. This change would be non-substantive.

Options 7, Section 2

Currently, the below rule text is located within Options 7, Section 2(4).

(a) For purposes of determining equity tier calculations under this section, any day that the market is not open for the entire trading day will be excluded from such calculation.

(b) Removal of Days for Purposes of Options Pricing Tiers:

(i)

(A) Any day that the Exchange announces in advance that it will not be open for trading will be excluded from the options tier calculations set forth in its Pricing Schedule; and (B) any day with a scheduled early market close ("Scheduled Early Close") may be excluded from the options tier calculations only pursuant to paragraph (iii) below.

(ii) The Exchange may exclude the following days ("Unanticipated Events") from the options tier calculations only pursuant to paragraph (iii) below, specifically any day that: (A) the market is not open for the entire trading day, (B) the

³ 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 (“OCC”) which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Options 1, Section 1(a)(47)).

Exchange instructs Participants in writing to route their orders to other markets, (C) the Exchange is inaccessible to Participants during the 30-minute period before the opening of trade due to an Exchange system disruption, or (D) the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours.

(iii) If a day is to be excluded as a result of paragraph (i)(B) or (ii) above, the Exchange will exclude the day from any Participant's monthly options tier calculations as follows:

(A) the Exchange may exclude from the ADV calculation any Scheduled Early Close or Unanticipated Event; and

(B) the Exchange may exclude from any other applicable options tier calculation provided for in its Pricing Schedule (together with (ii)(A), "Tier Calculations") any Scheduled Early Close or Unanticipated Event.

provided, in each case, that the Exchange will only remove the day for Participants that would have a lower Tier Calculation with the day included.

This rule text describes the equity tier calculations when excluding certain days. The Exchange is relocating this rule text, without change, to Options 7, Section 1, General Provisions. The Exchange believes that this information is better suited to Section 1 along with other general information because the rule applies to Options 7 pricing.

The Exchange proposes to amend the qualification for the Tier 3 Rebate to Add Liquidity in Penny Symbols. Fees and Rebates for Execution of Contracts on The Nasdaq Options Market are as follows:

³ The NOM Market Maker Rebate to Add Liquidity in Penny Symbols will be paid per the highest tier achieved below.

Monthly Volume

- Tier 1 Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of up to 0.10% of total industry customer equity and ETF option average daily volume (“ADV”) contracts per day in a month
- Tier 2 Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month
- Tier 3 Participant: (a) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month; or (b)(1) transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.70% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market, (2) transacts in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.18% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, and (3) executes greater than 0.01% of CV via Market-

on- Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross in the same month

Tier 4 Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month

Tier 5 Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month and transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.40% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market

Tier 6 Participant: (a)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.95% of total industry customer equity and ETF option ADV contracts per day in a month, (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 30,000 or more contracts per day in a month must be removing liquidity, and (3) adds Firm, Broker-Dealer and Non-NOM Market Maker liquidity in Non-Penny Symbols of 10,000 or more contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.50% of total

industry customer equity and ETF option ADV contracts per day in a month, and (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 15,000 or more contracts per day in a month must be removing liquidity

* “Total Volume” shall be defined as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Symbols and/or Non-Penny Symbols which either adds or removes liquidity on NOM.

NOM proposes to amend the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols to require:

Participant: (a) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month; or (b)(1) transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.80% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market, (2) transacts in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.15% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, and (3) executes greater than 0.01% of CV via Market-on-Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross in the same month.

This proposal would amend the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(1) by requiring Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.80% or more of Consolidated Volume (“CV”) which adds liquidity in the

same month on The Nasdaq Stock Market, an increase from 0.70%. Also, this proposal would amend the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(2) by requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.15% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, a decrease from 0.18%. The final portion of the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(3)⁴ is not being amended. Although the first component of the qualification requiring Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs is being increased and the second component requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs is being decreased, the Exchange believes that these amendments may incentivize additional Market Makers to transact greater volume on The Nasdaq Stock Market in order to qualify for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols. The Exchange believes that Tier 3 continues to incentivize Participants to direct additional order flow to NOM and The Nasdaq Stock Market.

NOM is not proposing to amend the corresponding Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols.

⁴ Part (b)(3) of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols requires that Market Makers execute greater than 0.01% of CV via Market-on-Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross in the same month.

The Exchange proposes to amend Options 7, Section 2(1) to add rule text after the title of Section 2(1), Fees and Rebates for Execution of Contracts on The Nasdaq Options Market.

Specifically, the Exchange proposes to add the following note:

Orders executed in the Opening Cross per Options 3, Section 8 are not subject to Options 7, Section 2(1) pricing, instead, these orders are subject to the pricing within Options 7, Section 2(2).

This note “*” will explain at the beginning of Options 7, Section 2(1) the pricing applicable to the transaction fees within Section 2(1). The Exchange believes the addition of this rule text will bring clarity to the Section 2 pricing and make clear that the transaction fees within Options 7, Section 2(1) apply intra-day. This new note “*” does not represent a substantive change. The proposed new note “*” is intended to serve as a guidepost to Participants referring to the NOM Pricing Schedule.

Currently, the Exchange’s Opening Cross pricing is contained within Options 7, Section 2(2). The Exchange proposes to add a citation to the title of Options 7, Section 2(2) to the Opening Cross rule. Options 7, Section 2(2) would state, “Opening Cross per Options 3, Section 8.”

Current Options 7, Section 2(3) provides the Fees for routing contracts to markets other than NOM. The Exchange proposes to amend the BX Routing Fees.

Currently, Non-Customers⁵ are assessed a \$0.99 per contract to any options exchange. Customers⁶ are currently assessed a Routing Fee to Phlx of \$0.13 per contract (“Fixed Fee”) in

⁵ As proposed within Options 7, Section 1, the term “Non-Customer” applies to transactions for the accounts of NOM Market Makers, Non-NOM Market Makers, Firms, Professionals, Broker-Dealers and JBOs.

⁶ 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 (“OCC”) which

addition to the actual transaction fee assessed. Customers are also currently assessed a Routing Fee to BX of \$0.13 per contract. In addition, as it relates to all other options exchanges, Customers are currently assessed a Routing Fee of \$0.23 per contract (“Fixed Fee”) in addition to the actual transaction fee assessed. If the away market pays a rebate, the Routing Fee is \$0.13 per contract.

The Exchange now proposes to amend the BX Routing Fee to include the actual transaction fee assessed in addition to the “Fixed Fee” of \$0.13 per contract. The proposed changes will align BX’s Routing Fee with the current Phlx Routing Fee.

The Exchange is proposing to recoup the actual transaction fee (in addition to the Fixed Fee) that is incurred by the Exchange in connection with routing orders, on behalf of its Participants, to BX. Previously, the Exchange retained the rebates paid by BX to recover the costs associated with providing its routing services, did not assess the actual transaction fees charged by BX for Customer orders, and only assessed such orders the \$0.13 per contract Fixed Fee. This is because when orders are routed to BX, such orders are considered as removing liquidity on BX, and BX previously assessed rebates to Customer orders for removing liquidity. In particular, prior to the Recent Rule Change,⁷ Customer orders executed on BX received Penny Symbol Rebates to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker, Customer or Firm that ranged from \$0.00 to \$0.35 per contract,⁸ depending on the volume tier achieved. Customers also previously received Non-

is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(a)(47)).

⁷ See Securities Exchange Act Release No. 91473 (April 5, 2021), 86 FR 18562 (April 9, 2021) (SR-BX-2021-009) (“Recent Rule Change”).

⁸ Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month would receive no Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry

Penny Rebates to Remove Liquidity of \$0.80 per contract, regardless of tier and contra-party. As part of the Recent Rule Change, the aforementioned rebates were removed from the BX Pricing Schedule and replaced with a maker/taker fee structure where market participants are assessed a rebate or fee for adding liquidity to the market, or charged a fee for removing liquidity from the market.⁹

With this recent change in the structure of BX's Pricing Schedule, the Exchange proposes to align the Routing Fees to BX with the current Routing Fees to Phlx. With this proposal, the Exchange will no longer retain rebates paid by BX as BX no longer provides rebates for Customer orders removing liquidity on BX and instead charges a taker fee for such orders. The Exchange will continue to assess the \$0.13 per contract Fixed Fee for routing Customer orders to BX, and will propose to also charge the actual transaction fee assessed by BX.

Technical Amendments

The Exchange proposes to amend Options 7, Section 2(3) to lowercase "PHLX" and add a space that was missing within the Routing Fees to Phlx. The Exchange also proposes to amend the name of the Exchange from "BX Options" to "BX" and add the words "per contract" within the Routing Fee to all other options exchanges. This amendment is not a substantive change, rather it is a clarification.

customer equity and ETF option ADV contracts per month would receive a \$0.25 per contract Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month will receive a \$0.35 per contract Penny Symbol Rebate to Remove Liquidity in Tier 3.

⁹ See note 3 [sic] above.

Finally, the Exchange proposes to renumber Options 7, Section 2(6), Market Access and Routing Subsidy (“MARS”), to Options 7, Section 2(4). The Exchange notes that the Pricing Schedule did not contain a Section 2(5).

Applicability to and Impact on Participants¹⁰

With respect to the NOM Market Maker Tier 3 rebate within Options 7, Section 2(1), the Exchange believes that amending the second part of the qualification¹¹ will attract greater volume to both NOM and The Nasdaq Stock Market.¹² Any NOM Market Maker may obtain the Tier 3 rebate provided the qualifications are met. Furthermore, NOM Market Maker Tier 3 provides two ways to achieve the NOM Tier 3 rebate of \$0.30 per contract.¹³

¹⁰ On May 21, 2019, the SEC Division of Trading and Markets (the “Division”) issued fee filing guidance titled “Staff Guidance on SRO Rule Filings Relating to Fees” (“Guidance”). Within the Guidance, the Division noted, among other things, that the purpose discussion should address “how the fee may apply differently (e.g., additional cost vs. additional discount) to different types of market participants (e.g., market makers, institutional brokers, retail brokers, vendors, etc.) and different sizes of market participants.” See Guidance (available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>). The Guidance also suggests that the purpose discussion should include numerical examples. Where possible, the Exchange is including numerical examples. In addition, the Exchange is providing data to the Commission in support of its arguments herein. The Guidance covers all aspects of a fee filing, which the Exchange has addressed throughout this filing.

¹¹ With this proposal, the Exchange is amending the second part of the tier qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(1) by requiring Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.80% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market, an increase from 0.70%. Also, the Exchange is proposing to amend the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(2) by requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.15% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, a decrease from 0.18%.

¹² All NOM Participants are required to become members of The Nasdaq Stock Market pursuant to General 3 Membership and Access rules.

¹³ NOM Participants may also add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF

Market Makers have certain obligations¹⁴ on NOM, unlike other market participants. Market Maker [sic] are a source of liquidity. The proposed amendments are generally designed to attract additional order flow to the Exchange by incentivizing NOM Market Makers. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by market makers. An increase in the activity of these market participants in turn facilitates tighter spreads. These incentives are intended to benefit all NOM market participants who will be able to interact with additional liquidity which this incentive attracts to the Exchange.

Today, no NOM Market Maker has earned the Tier 3 NOM Market Maker Rebate to Add Liquidity in Penny Symbols a Market Maker based on the second part of the qualification in the last two months. The Exchange notes that other NOM Market Makers could have qualified for this Tier 3 rebate, although they have qualified for different NOM Market Maker Rebate to Add Liquidity in Penny Symbols. NOM Market Maker Rebate to Add Liquidity in Penny Symbols are paid per the highest tier achieved, so if a NOM Market Maker qualifies for Tiers 4-6, that NOM Market Maker would receive the highest rebate they qualify for even if they qualified for Tier 3. With this proposal, the Exchange seeks to attract additional NOM Market Maker order

option ADV contracts per day in a month to achieve the Tier 3 rebate. See Options 7, Section 2(1). Also, Participants who achieve the Tier 3 rebate will receive \$0.40 per contract to add liquidity in the following symbols: AAPL, SPY, QQQ, IWM, and VXX. See Options 7, Section 2(1)

¹⁴ See Options 2, Section 5. Also, 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. See also Options 2, Section 4.

flow in Penny Symbols from Participants that currently qualify for NOM Market Maker Rebate to Add Liquidity in Penny Symbols Tiers 1 and 2.

With respect to the amendments to NOM's Routing Fees to BX, the Exchange notes that the proposed Routing Fee would apply to all NOM Participants uniformly.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁶ 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities. Moreover, the Exchange believes that its proposal complies with Commission guidance on SRO fee filings that the Commission Staff issued on May 21, 2019.¹⁷

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' ... As the SEC explained, '[i]n the U.S.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4) and (5).

¹⁷ See Guidance, supra note 7 [sic]. Although the Exchange believes that this filing complies with the Guidance, the Exchange does not concede that the standards set forth in the Guidance are consistent with the Exchange Act and reserves its right to challenge those standards through administrative and judicial review, as appropriate.

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’....”¹⁸

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.”¹⁹

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective

¹⁸ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹⁹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.²⁰

Options 7, Section 1

The Exchange's proposal to define the term "Non-Customer" within Options 7, Section 1 is reasonable, equitable and not unfairly discriminatory as the amendment will bring greater clarity to NOM's Options 7 Rules. The term "Non-Customer" is currently utilized within the fees for routing at Options 7, Section 2(3). The addition of this defined term does not amend the manner in which the Exchange currently applies the term with respect to its routing fees. The term "Customer"²¹ is currently defined and this term applies to Participants that are not customers. This change would be non-substantive.

The Exchange's proposal to relocate the rule text relating to tier calculations from Options 7, Section 2(4), without change, to Options 7, Section 1, General Provisions is reasonable, equitable and not unfairly discriminatory. The Exchange believes that this information is better suited to Section 1 along with other general information because the rule applies to Options 7 pricing and all Participants transacting on BX.

Options 7, Section 2

The Exchange's proposal to amend the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols is reasonable. Amending the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(1), by requiring

²⁰ The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it as a result of this rule change.

²¹ 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 ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(a)(47)).

Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.80% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market, is an increase from 0.70%. Amending the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(2), by requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.15% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, is a decrease from 0.18%.²² Although the first component of the part (b) qualification requiring Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs is being increased and the second component of the part (b) qualification requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs is being decreased, the Exchange believes that these amendments may incentivize additional Market Makers to qualify for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols by transact greater volume on The Nasdaq Stock Market. The Tier 3 qualification requires Market Makers to qualify for either Part (a) or (b) of the qualification. The Exchange believes that the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols will continue to incentivize Market Makers to direct additional order flow to NOM and The Nasdaq Stock Market and, in turn, market participants will benefit from the opportunity to interact with such order flow. The Exchange notes that this proposal is designed as a means to improve market quality by providing Participants with an incentive to increase their provision of liquidity on the Exchange's equity and options markets. Further, any

²² Part (b)(3) of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols requires that Market Makers execute greater than 0.01% of CV via Market-on-Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross in the same month is not being amended.

NOM Market Maker may obtain the Tier 3 rebate provided the qualifications are met. NOM Market Maker Tier 3 provides two ways to achieve the NOM Tier 3 rebate of \$0.30 per contract.²³ These incentives are intended to benefit all NOM market participants who will be able to interact with additional liquidity which this incentive attracts to the Exchange. Market Makers have certain obligations²⁴ on NOM, unlike other market participants. Market Maker are a source of liquidity. The proposed amendments are generally designed to attract additional order flow to the Exchange by incentivizing NOM Market Makers. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by market makers. An increase in the activity of these market participants in turn facilitates tighter spreads.

The Exchange's proposal to amend the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols is equitable and not unfairly discriminatory as the Exchange will uniformly pay the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols to any qualifying Market Maker. NOM Market Makers add value through continuous quoting and the commitment of capital.²⁵ Because NOM Market Makers have these obligations to the market and regulatory requirements that normally do not apply to other market participants, the

²³ NOM Participants may also add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month to achieve the Tier 3 rebate. See Options 7, Section 2(1). Also, Participants who achieve the Tier 3 rebate will receive \$0.40 per contract to add liquidity in the following symbols: AAPL, SPY, QQQ, IWM, and VXX. See Options 7, Section 2(1).

²⁴ See Options 2, Section 5. Also, 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. See also Options 2, Section 4.

²⁵ See Options 2, Sections 4 and 5.

Exchange believes that offering these rebates to only NOM Market Makers is equitable and not unfairly discriminatory in light of their obligations. Finally, encouraging NOM Market Makers to add greater liquidity benefits all market participants, on both NOM and The Nasdaq Stock Market, in the quality of order interaction.

The Exchange's proposal to amend Options 7, Section 2(1) to add rule text after the title of Section 2(1), Fees and Rebates for Execution of Contracts on The Nasdaq Options Market, which explains the pricing applicable to the transaction fees within Section 2(1) is reasonable, equitable and not unfairly discriminatory. The Exchange believes the addition of this rule text will bring clarity to the Options 7, Section 2 pricing by making clear that the transaction fees within Options 7, Section 2(1) apply intra-day. This new note "*" does not represent a substantive change. The proposed new note "*" is intended to serve as a guidepost to Participants referring to the NOM Pricing Schedule.

The Exchange's proposal to add a citation to the title of Options 7, Section 2(2) to the Opening Cross rule is reasonable, equitable and not unfairly discriminatory. This amendment will add clarity to the rule text.

The Exchange's proposal to amend the BX Customer Routing Fee within Options 7, Section 2(3) to start charging the actual transaction fee assessed by BX in addition to the current \$0.13 per contract Fixed Fee is reasonable. As a general matter, the Exchange notes that use of the Exchange's routing services is completely voluntary. In the alternative, member organizations may submit orders to the Exchange as ineligible for routing or "DNR" to avoid Routing Fees.²⁶ Furthermore, the Exchange operates in a highly competitive market in which market participants can readily select between various providers of routing services with

²⁶ See Options 5, Section 4(a)(iii)(A).

different pricing. In this instance, proposing to assess the actual transaction fee, in addition to the current Fixed Fee of \$0.13 per contract, is reasonable in light of the Recent Rule Change described above where BX no longer provides rebates to Customer orders that are routed to and executed on BX, and instead charges them a taker fee.²⁷ As proposed, the Exchange would recoup the actual transaction cost it incurs when routing Customer orders to BX in lieu of collecting any rebate paid by BX. Today, the Exchange similarly assesses orders routed to Phlx a Fixed Fee of \$0.13 per contract plus the actual transaction fee. As such, the proposal would align the BX Routing Fee with the Phlx Routing Fee.

The Exchange's proposal to amend the BX Customer Routing Fee within Options 7, Section 2(3) is equitable and not unfairly discriminatory because the Exchange would uniformly assess the same transaction fee assessed by BX for the Customer order routed to BX plus a Fixed Fee of \$0.13 per contract.

The Exchange's proposal to amend Options 7, Section 2(3) to lowercase "PHLX," add a space that was missing within the Routing Fees to Phlx, amend the name "BX Options" to "BX," and add the words "per contract" within the Routing Fee to all other options exchanges and the proposal to renumber Options 7, Section 2(6), Market Access and Routing Subsidy ("MARS"), to Options 7, Section 2(4)²⁸ are reasonable, equitable and not unfairly discriminatory. These non-substantive amendments will bring greater clarity to the Rulebook.

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.

²⁷ See note 7 above.

²⁸ The Exchange notes that the Pricing Schedule did not contain a Section 2(5).

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 options 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 Exchange believes that the proposed changes will enable the Exchange to recover the costs it incurs to route orders to away markets, particularly BX, while also passing along savings realized by leveraging Nasdaq's infrastructure and scale to market participants when those orders are routed to Nasdaq-affiliated options markets, as further discussed above.

The Exchange also does not believe its proposal will impose an undue burden on intra-market competition.

Options 7, Section 1

The Exchange's proposal to define the term "Non-Customer" within Options 7, Section 1 does not impose an undue burden on competition as the amendment will bring greater clarity to NOM's Options 7 Rules.

The Exchange's proposal to relocate the rule text from Options 7, Section 2(4), without change, to Options 7, Section 1, General Provisions does not impose an undue burden on competition. The Exchange believes that this information is better suited to Section 1 along with other general information because the rule applies to Options 7 pricing and all Participants transacting on BX.

The Exchange's proposal to amend the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols does not impose an undue burden on competition as the Exchange will uniformly pay the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols to any qualifying Market Maker. NOM Market Makers add value through continuous quoting and the commitment of capital.²⁹ Because NOM Market Makers have these obligations to the market and regulatory requirements that normally do not apply to other market participants, the Exchange believes that offering these rebates to only NOM Market Makers is equitable and not unfairly discriminatory in light of their obligations. Finally, encouraging NOM Market Makers to add greater liquidity benefits all market participants, on both NOM and The Nasdaq Stock Market, in the quality of order interaction.

Options 7, Section 2

The Exchange's proposal to amend Options 7, Section 2(1) to add rule text after the title of Section 2(1), Fees and Rebates for Execution of Contracts on The Nasdaq Options Market, which explains the pricing applicable to the transaction fees within Section 2(1) does not impose an undue burden on competition. The Exchange believes the addition of this rule text will bring clarity to the Section 2 pricing, which is applicable to all Participants.

The Exchange's proposal to add a citation to the title of Options 7, Section 2(2) to the Opening Cross rule does not impose an undue burden on competition. This amendment will add clarity to the rule text.

The Exchange's proposal to amend the BX Customer Routing Fee within Options 7, Section 2(3) does not impose an undue burden on competition. In this instance, the Exchange is proposing to charge Customer orders that are routed to BX the actual transaction fee assessed by

²⁹ See Options 2, Sections 4 and 5.

BX in addition to the current Fixed Fee of \$0.13 per contract in light of the fee changes under the Recent Rule Change described above where BX no longer provides rebates to Customer orders that are routed to and executed on BX, and instead charges them a taker fee.³⁰ The proposed changes reflect the need to recover the Exchange's costs associated with providing its routing services. Furthermore, as noted above, the use of the Exchange's routing services is completely voluntary and optional, and the Exchange operates in a highly competitive market in which market participants can readily select between various providers of routing services with different pricing. As such, it is likely that the Exchange will lose market share as a result of the changes proposed herein if they are unattractive to market participants.

The Exchange also does not believe its proposal will impose an undue burden on intra-market competition. As discussed above, the Exchange would uniformly assess the same transaction fee assessed by BX for the Customer order routed to BX plus a Fixed Fee of \$0.13 per contract. Under this proposal, Non-Customer orders would continue to be assessed the \$0.99 per contract routing fee and not be assessed the actual BX transaction fee. The Exchange does not believe its pricing proposal will place any market participant at a relative disadvantage compared to other market participants because the proposed routing fee for Customer orders will actually narrow the difference between the routing fees assessed to Customer and Non-Customer orders routed to BX.

The Exchange's proposal to amend Options 7, Section 2(3) to lowercase "PHLX," add a space that was missing within the Routing Fees to Phlx, amend the name "BX Options" to "BX," and add the words "per contract" within the Routing Fee to all other options exchanges and the proposal to renumber Options 7, Section 2(6), Market Access and Routing Subsidy ("MARS"),

³⁰ See note 7 above.

to Options 7, Section 2(4) do not impose an undue burden on competition. These non-substantive amendments will bring greater clarity to the Rulebook.

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.³¹

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. Please include File Number SR-NASDAQ-2021-021 on the subject line.

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2021-021. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NASDAQ-2021-021, 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.³²

J. Matthew DeLesDernier
Assistant Secretary

³² 17 CFR 200.30-3(a)(12).