

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79809; File No. SR-NASDAQ-2017-001)

January 17, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Transaction Fees to Implement New Incentive

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 January 3, 2017, 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 Exchange’s transaction fees at Chapter XV, Section 2, entitled “NASDAQ Options Market – Fees and Rebates,” which governs pricing for Nasdaq members using the NASDAQ Options Market (“NOM”), Nasdaq’s facility for executing and routing standardized equity and index options. Nasdaq proposes to implement a new incentive for NOM Participants that add liquidity for Customer and Professional orders in Penny and Non-Penny Pilot Options as described further below.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 create an alternative method for earning a rebate for adding liquidity for both Customers³ and Professionals⁴ in Penny Pilot⁵ and Non-Penny Pilot Options. For Customers and Professionals transacting in Penny Pilot Options, the Exchange currently pays a volume-based tiered rebate to add liquidity. That rebate consists of 8 tiers, ranging from \$0.20 per contract to \$0.48 per contract, with the volume requirements increasing with each tier. Thus, a NOM Participant would qualify for a rebate of \$0.20 per contract in Tier 1 for Customers and Professionals if it added Customer, Professional, Firm, Non-NOM Market Maker and/or

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 Chapter I, Section 1(a)(48)).

⁴ 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.

⁵ The Penny Pilot was established in March 2008. See Securities Exchange Act Release No. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR-NASDAQ-2008-026) (notice of filing and immediate effectiveness establishing Penny Pilot). Since that date, the Penny Pilot has been expanded and is currently extended through December 31, 2016 or the date of permanent approval, if earlier. See Securities Exchange Act Release No. 78037 (June 10, 2016), 81 FR 39299 (June 16, 2016) (SR-NASDAQ-2016-052).

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. In comparison, a Participant would qualify for a rebate of \$0.48 in Tier 8 for Customers and Professionals if it 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 if the 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.⁶

Currently, Customers and Professionals transacting in Non-Penny Pilot Options on NOM receive a \$0.80 per contract Rebate to Add Liquidity. In addition, a Participant that qualifies for a Customer or Professional Penny Pilot Options Rebate to Add Liquidity in 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 a Customer or Professional Penny Pilot Options Rebate to Add Liquidity in 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.

⁶ MARS refers to the Market Access and Routing Subsidy, which is set forth in Chapter XV, Section 6 [sic]. The MARS payment comprises four volume-based tiers, and is paid to NOM Participants that route eligible contracts to NOM through a participating NOM Participant’s System. The MARS Payment will be paid on all executed Eligible Contracts that add liquidity. See NOM Rules at Chapter XV, Section 6 [sic].

Furthermore, a Participant that may receive a \$0.53 per contract Rebate to Add Liquidity in Penny Pilot Options as a Customer or Professional, and \$1.00 per contract Rebate to Add Liquidity in Non-Penny Pilot Options as a Customer or Professional, if that NOM Participant transacts on the NASDAQ Stock Market through one or more of its Nasdaq Market Center MPIDs in the same month, and such transactions in all securities on the NASDAQ Stock Market that month through all of its Nasdaq Market Center MPIDs represent 3.00% or more of Consolidated Volume.⁷ Participants that qualify for this rebate would not be eligible for any other rebates in Tiers 1 through 8 or other rebate incentives on NOM for Customer and Professional order flow in Chapter XV, Section 2(1) of NOM Rules.⁸

The Exchange proposes an additional incentive to a Participant that adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 1.45% of total industry customer equity and ETF option ADV contracts per day in a month, (b) executes greater than 0.04% of Consolidated Volume (“CV”)⁹ via Market-on-Close/Limit-on-Close (“MOC/LOC”)¹⁰ volume within the NASDAQ Stock Market Closing Cross within a month, and (c) adds greater than 1.5 million shares per day of non-displayed volume within the NASDAQ Stock Market within a month. The

⁷ Consolidated Volume would be determined as set forth in Nasdaq Rule 7018(a).

⁸ In calculating total volume, the Exchange will add the NOM Participant’s total volume transacted on the NASDAQ Stock Market in a given month across its Nasdaq Market Center MPIDs, and will divide this number by the total industry Consolidated Volume.

⁹ See note 7 above.

¹⁰ MOC/LOC, as set forth in NASDAQ Rule 4754, represents the volume in the NASDAQ Stock Market Closing Cross that allows market participants to contribute order flow that will result in executions at the official closing price for the day in the NASDAQ listed security. A “MOC Order” is an order type entered without a price that may be executed only during the NASDAQ Closing Cross, which refers to the equity closing cross. A “LOC Order” is an order type entered with a price that may be executed only in the NASDAQ Closing Cross.

Participant would receive a \$0.55 per contract rebate to add liquidity in Penny Pilot Options as Customer or Professional and \$1.05 per contract rebate to add liquidity in Non-Penny Pilot Options as Customer or Professional. Participants that qualify for this rebate would not be eligible for any other rebates in Tiers 1-8 or other rebate incentives on NOM for Customer and Professional order flow in Chapter XV, Section 2(1). The Exchange believes that the new incentives will attract a greater amount of order flow on NOM by offering a discounted rate.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² 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 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.”¹³

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

¹³ 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 Commission¹⁴ (“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.¹⁵ 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.”¹⁶

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’”¹⁷ 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.

The Exchange notes that the purpose of the proposed rebates is to incentivize NOM Participants to transact greater volume on NOM and the NASDAQ Stock Market in order to qualify for a higher rebate on NOM. The Exchange believes that the amount of the rebate (\$0.55 per contract for Penny Pilot Options and \$1.05 per contract for Non-Penny Pilot Options) along with the various criteria for qualifying for the rebate ((a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny

¹⁴ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁵ See NetCoalition, at 534 - 535.

¹⁶ Id. at 537.

¹⁷ 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)).

Pilot Options above 1.45% of total industry customer equity and ETF option ADV contracts per day in a month, (b) 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, **and** (c) add greater than 1.5 million shares per day of non-displayed within the NASDAQ Stock Market within a month) are reasonable. With respect to the rebate for Penny Pilot Options, the Exchange notes that the proposed \$0.55 per contract rebate is higher than the currently highest rebate available (\$0.53 per contract) to Customers and Professionals for adding liquidity in Penny Pilot Options.¹⁸ The Exchange believes the proposed rebate of \$0.55 per

¹⁸ As noted above, a NOM Participant will receive a rebate of \$0.48 per contract for adding liquidity as a Customer or Professional in Penny Pilot Options if it qualifies for Tier 8. In addition, as noted in footnote c of Chapter XV, Section 2, a NOM Participant may receive an additional rebate of up to \$0.05 per contract in Penny Pilot Options, for a total rebate of \$0.53 per contract. Specifically, 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

contract is reasonable because the proposed rebate requires three components ((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 1.45% of total industry customer equity and ETF option ADV contracts per day in a month, (b) 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, and (c) add greater than 1.5 million shares per day of non-displayed volume within the NASDAQ Stock Market within a month) to be met by NOM Participants in order to qualify for that rebate. These requirements require more volume to be submitted on NOM than the current highest rebate requires today. Similarly, the Exchange believes the proposed \$1.05 rebate per contract for Non-Penny Pilot Options is reasonable for similar reasons. The requirements to obtain this rebate require more volume to be submitted on NOM.

The Exchange believes that the requirement that a NOM Participant add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 1.45% of total industry customer equity and ETF option ADV contracts per day in a month, 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, and add greater than 1.5 million shares per day of non-displayed volume within the NASDAQ Stock Market within a month is reasonable because the Exchange is offering to pay a rebate of \$0.55 per contract, the highest rebate. These more stringent volume-based requirements bring a greater amount of volume to both NOM and the

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.

NASDAQ Stock Market. The first volume requirement, which requires volume to be added to NOM, is reasonable because it is similar to that required to qualify for certain NOM Market Maker discounted remove fees.¹⁹ The second volume requirement to 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 is reasonable because it is one of the same requirements to qualify for note “c” in Chapter XV, Section 2 of NOM Rules.²⁰ The

¹⁹ See note “2” of Chapter XV, Section 2 of NOM Rules. The note “2” rebate is offered to Non-NOM Market Makers and NOM Market Makers 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. In the alternative, 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. Finally, 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.

²⁰ Note “c” of Chapter XV, Section 2 pays an additional \$0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity, in addition to the Tier 8 rebate of \$0.48 per contract if a Participant: (1) adds 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) adds 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

third volume requirement to add greater than 1.5 million shares per day of non-displayed volume within the NASDAQ Stock Market within a month is a new requirement, which must be met in addition to the first and second volume requirements. The Exchange believes that this requirement is reasonable because linking rebates on NOM to activity on the NASDAQ Stock Market is not novel. The Exchange believes that requiring Participants to add non-displayed volume within the NASDAQ Stock Market is reasonable because this type of liquidity benefits all market participants by way of interacting with that liquidity on the equity market.²¹ By encouraging market participants to increase their participation on the equities market by delivering non-displayed volume, the Exchange is rewarding Participants with an opportunity to earn an additional options incentive, provided all requirements are met. The Exchange notes that previous and current rebates offered by NOM relate to activity on the NASDAQ Stock Market.²² Similarly, the NASDAQ Stock Market offers enhanced rebates that are based on activity on

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) adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month, (b) adds 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) **executes 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.**

²¹ Orders that are non-displayed would not be disseminated on the NASDAQ Stock Market Order Book feed. A Participant may be incentivized to increase their participation on the NASDAQ Stock Market, which may result in interacting with such non-displayed volume. Increased order interaction benefits all market participants.

²² See current note “e” of Chapter XV, Section IV [sic] of NOM Rules which provides a rebate to NOM Participants that transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 3.00% or more of Consolidated Volume in the same month on the NASDAQ Stock Market.

NOM.²³ Moreover, the Exchange notes that any NOM Options Participant may trade equities on the NASDAQ Stock Market because they are approved members.²⁴

Further, the Exchange believes it is reasonable to make this rebate exclusive of any other rebates in Tiers 1 through 8 or other rebate incentives on NOM for Customer and Professional order flow in Chapter XV, Section 2(1) of NOM Rules. As noted above, the proposed rebates are higher, and in some cases significantly higher, than the rebates that a NOM Participant may currently receive for adding liquidity in Penny Pilot and Non-Penny Pilot Options as a Customer or Professional. Given the size of the proposed rebates, the Exchange believes it is reasonable to make these rebates exclusive of other rebates on NOM for Customer and Professional order flow. Finally, the Exchange also believes the proposal is reasonable because the proposed rebates apply to both transactions in Penny Pilot and Non-Penny Pilot Options.

The Exchange believes that the amount of the rebate (\$0.55 per contract for Penny Pilot Options and \$1.05 per contract for Non-Penny Pilot Options) along with the various criteria for qualifying for the rebate ((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 1.45% of total industry customer equity and ETF option ADV contracts per day in a month, (b) 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, **and** (c) add greater than 1.5 million shares per day of non-displayed within the NASDAQ Stock

²³ For example, Nasdaq provides an enhanced rebate on the NASDAQ Stock Market of \$0.00295 if the member adds 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 ADV in the customer clearing range for Equity and ETF option contracts per day in a month on NOM. See Nasdaq Rule 7018.

²⁴ Although a NOM Participant may incur additional labor and/or costs to establish connectivity to the NASDAQ Stock Market, there are no additional membership fees for NOM Participants that want to transact on the NASDAQ Stock Market.

Market within a month) is equitable and not unfairly discriminatory because any Participant that qualifies for this rebate will be uniformly paid \$0.55 per contract for Penny Pilot Options and \$1.05 per contract for Non-Penny Pilot Options. The requirements for earning this rebate will be applied uniformly to all market participants. The Exchange believes that requiring Participants to add non-displayed volume is equitable and not unfairly discriminatory because the Exchange will pay the incentive, in a uniform manner, to Participants that have met all criteria required for the rebate.

The Exchange believes that the requirement that a NOM Participant add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 1.45% of total industry customer equity and ETF option ADV contracts per day in a month, 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, and add greater than 1.5 million shares per day of non-displayed volume within the NASDAQ Stock Market within a month is equitable and not unfairly discriminatory because while the requirements for qualifying for the proposed rebates may be more stringent than other requirements for qualifying for other rebates currently offered by NOM, the Exchange believes that these requirements are proportionate to the amount of the proposed rebates and equitably reflect the purpose of the proposed rebates, which is to incentivize NOM Participants to transact greater volume on NOM and the NASDAQ Stock Market. Moreover, all similarly-situated NOM Participants, e.g., those that add liquidity in either Penny Pilot or Non-Penny Pilot Options as either Customers or Professionals and also transact on the NASDAQ Stock Market, are equally capable of qualifying for the proposed rebates, and the same rebates will be paid to all NOM Participants that qualify for them. Further,

the Exchange believes that it is equitable and not unfairly discriminatory to offer this rebate to NOM Participants that add liquidity as Customers or Professionals, and not to offer this rebate to NOM Participants that add liquidity as Firms,²⁵ NOM Market Makers,²⁶ Non-NOM Market Makers, or Broker-Dealers.²⁷ Nasdaq notes that Customer liquidity offers unique benefits to the market which benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that encouraging Participants to add Professional liquidity is similarly beneficial, as the rebates may cause market participants to select NOM as a venue to send Professional order flow, increasing competition among the exchanges. As with Customer liquidity, the Exchange believes that increased Professional additional order flow should benefit other market participants.

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

²⁵ The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

²⁶ 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.

²⁷ 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.

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 Exchange does not believe that the proposed rebates will impose any burden on competition that is not necessary or appropriate. The Exchange notes that the purpose of the proposed rebate is to incentivize NOM Participants to transact on NOM and the NASDAQ Stock Market. All similarly-situated NOM Participants, e.g., those that add liquidity in either Penny Pilot or Non-Penny Pilot Options as either Customers or Professionals and also transact the requisite volumes on the NASDAQ Stock Market, are equally capable of qualifying for the proposed rebates. Additionally, the Exchange will pay the same rebates, in a uniform manner, to all NOM Participants that qualify for them. The Exchange believes that Customer and Professional order flow provides unique benefits to all participants on the Exchange and may even facilitate inter-market competition, and is therefore offering the proposed rebates to NOM Participants that add liquidity as either a Customer or a Professional accordingly. With respect to linking the proposed rebates to a participant's activity on the NASDAQ Stock Market, NOM currently offers rebates that are based on activity on the NASDAQ Stock Market.²⁸ Similarly, the NASDAQ Stock Market currently offers reduced transaction fees that are based on activity on NOM.²⁹ Finally, because they are approved members, any NOM Options Participant may

²⁸ See note 22 above.

²⁹ See note 23 above.

trade equities on the NASDAQ Stock Market and therefore attempt to qualify for the proposed rebates.³⁰

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-2017-001 on the subject line.

³⁰ See note 24 above.

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2017-001. 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-2017-001 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

Eduardo A. Aleman
Assistant Secretary

³² 17 CFR 200.30-3(a)(12).