site for the Funds will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the IOPV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the IOPV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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 that is 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 solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be 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 email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–85 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–NYSEArca–2011–85. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site 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 a.m. and 3 p.m. Copies of the filing will also 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 No. SR–NYSEArca–2011–85 and should be submitted on or before December 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31335 Filed 12–6–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65858; File No. SR–NASDAQ–2011–162]

Self-Regulatory Organizations; NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Customer Rebate To Add Liquidity

December 1, 2011.

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 November 29, 2011, 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 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 modify Exchange Rule 7050 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 applicability of the Customer

[29] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

Rebate to Add Liquidity for the Penny Pilot [3] Options (''Penny Options'').

While changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions on December 1, 2011.

The text of the proposed rule change is available on the Exchange's Web site 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 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

NASDAQ is proposing to modify Exchange Rule 7050 governing the rebates and fees assessed for option orders entered into NOM. Specifically, the Exchange is proposing to allow NOM Participants to qualify for the Customer Rebate to Add Liquidity in Penny Options, at Tier 6, if a NASDAQ member [4] under common ownership with a NOM Participant qualifies for credit under the Investor Support Program (''ISP'') set forth in Rule 7014.[5] 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 an opportunity for NOM Participants to qualify for the Customer rebate in Tier 6 by allowing a NASDAQ member under common ownership with the NOM Participant to qualify for the credit under ISP as required by Tier 6. Common ownership shall mean 75% common ownership between the NOM Participant and the NASDAQ member who qualifies for the ISP.

The Exchange currently pays a Customer Rebate to Add Liquidity in Penny Options based on six volume tiers as follows: [6]

	Monthly volume	Rebate to add liquidity
Tier 1	Participant adds Customer liquidity of up to 24,999 contracts per day in a month.	$0.26
Tier 2	Participant adds Customer liquidity of 25,000—59,999 contracts per day in a month.	0.36
Tier 3	Participant adds Customer liquidity of 60,000—124,999 contracts per day in a month.	0.38
Tier 4	Participant adds Customer liquidity of 125,000 or more contracts per day in a month.	0.40
Tier 5[a]	Participant adds (1) Customer liquidity of 60,000 or more contracts per day in a month, and (2) NOM Market Maker liquidity of 60,000 or more contracts per day in a month.	0.40
Tier 6	Participant adds Customer liquidity of 25,000 or more contracts per day in a month, and (2) the Participant simultaneously qualifies for credit under the Investor Support Program set forth in Rule 7014.	0.37

Currently, a NOM Participant may qualify for Tier 6 by adding Customer liquidity of 25,000 or more contracts per day in a month and also qualifying for credit under the ISP in the equity market. This would be true of a NASDAQ member who conducts both an options and equities business. There are some NASDAQ members today who separate their business in such a way that they conduct activity through separate but related broker-dealers. The Exchange proposes to permit a NOM Participant, who is transacting 25,000 or more Customer contracts per day in a month, to qualify for Tier 6 if a separate but related broker-dealer under 75% common ownership conducts an equities business and qualifies for credit under the ISP.

The Exchange is not otherwise amending the Customer Rebates to Add Liquidity. While changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions on December 1, 2011.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] 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.

NASDAQ believes that it is reasonable to allow NOM Participants with a certain amount of Customer orders, as

[3] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2011. *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); and 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot). *See also* Exchange Rule Chapter VI, Section 5.

[4] All NOM Participants are required to be [sic] members of the NASDAQ Stock Market LLC.

[5] For a detailed description of the Investor Support Program, *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 3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ–2010–154) (notice of filing and immediate effectiveness).

[6] The Exchange adopted these monthly volume achievement tiers in September 2011. *See* Securities Exchange Act Release No. 65317 (September 12, 2011) (SR–NASDAQ–2011–127). The Exchange subsequently offered a monthly volume target for NOM Participants that qualified for Tiers 2 and 6. *See* Securities Exchange Act Release No. 65318 (September 12, 2011) (SR–NASDAQ–2011–124). The Exchange amended the monthly tiers to eliminate certain tiers thereafter. *See* Securities Exchange Act Release No. 65381 (September 22, 2011), 76 FR 60103 (September 28, 2011) (SR–NASDAQ–2011–128).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

specified in Tier 6, to qualify for a Customer rebate by allowing a related NASDAQ member to qualify for the ISP. NASDAQ is proposing to accommodate NASDAQ members who prefer to separate their equities and options businesses into separate but related broker-dealers.

NASDAQ believes that the proposal to allow NOM Participants to qualify for the Customer Rebate to Add Liquidity in Penny Options at Tier 6, if a NASDAQ member under common ownership with the NOM Participant qualified for the ISP is equitable and not unfairly discriminatory because it would allow NOM Participants to achieve higher rebates and encourage NASDAQ members who conduct an equities business to add significant liquidity as part of the ISP. It would therefore both encourage greater Customer orders into NOM and greater Customer order flow into the NASDAQ's equity market. The goal of the Investor Support Program is to incentivize members to provide liquidity from individual equity investors to the NASDAQ Market Center.[9] Permitting commonly owned NASDAQ members to qualify for a credit under the ISP in order that the related NOM Participant may qualify for the Customer rebate will bring increased Customer order liquidity and will benefit all Exchange members that participate in those markets. NASDAQ Rule 7018(a) already provides incentives for firms to participate in both NASDAQ's equity market and its options market.

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 rebate scheme is competitive and similar to other rebates and tiers opportunities in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts the rebates present on the Exchange today and substantially influenced 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 [10] and paragraph (f)(2) of Rule 19b–4 [11] thereunder. 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.

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 email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–162 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–2011–162. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site 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 a.m. and 3 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–2011–162 and should be submitted on or before December 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31334 Filed 12–6–11; 8:45 am]

BILLING CODE 8011–01–P

[9] The Commission has expressed its concern that a significant percentage of the orders of individual investors are executed at over the counter ("OTC") markets, that is, at off-exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. *See* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, "Concept Release"). In the Concept Release, the Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. The Commission published the Concept Release to invite public comment on a wide range of market structure issues, including high frequency trading and un-displayed, or "dark," liquidity. *See also* Mary L. Schapiro, *Strengthening Our Equity Market Structure* (Speech at the Economic Club of New York, Sept. 7, 2010) ("Schapiro Speech," available on the Commission Web site) (comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0454]

Emergence Capital Partners SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection