SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68029; File No. SR–NASDAQ–2012–114]

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

October 10, 2012.

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 October 1, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The NASDAQ Stock Market LLC proposes to modify Chapter XV, entitled ''Options Pricing,'' at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend the Non-Penny Pilot Options and Penny Pilot[3] Options pricing.

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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

NASDAQ proposes to modify Chapter XV, entitled ''Options Pricing,'' at Section 2(1) governing the rebates and fees assessed for option orders entered into NOM. The Exchange is proposing to amend the Non-Penny Pilot pricing and the Penny Pilot Options pricing. This proposal seeks to incentivize NOM Participants to send additional Customer order flow to the Exchange in both Penny Pilot Options and Non-Penny Pilot Options in order to obtain rebates.

The Exchange proposes to assess fees and pay rebates on options overlying the Nasdaq 100 Index traded under the symbol NDX (''NDX'') as a Non-Penny Pilot Option. Today, NDX has its own pricing separate and apart from other Non-Penny Pilot pricing. The Exchange proposes to eliminate the separate NDX pricing and instead assess fees and pay rebates for NDX as a Non-Penny Pilot Option. In addition, the Exchange proposes to assess a surcharge to all market participants, except Customers, for transactions in NDX of $0.10 per contract. The surcharge would be in addition to both the Fee for Adding Liquidity and the Fee for Removing Liquidity in Non-Penny Pilot Options. Customers would not be assessed a surcharge for transactions in NDX.

The Exchange also proposes to amend the Non-Penny Pilot Option pricing (including NDX) to be equivalent to the rebates and fees currently in place for options overlying Facebook, Inc. (''FB''), Google Inc. (''GOOG'') and Groupon, Inc. (''GRPN''), except for the proposed changes to the Customer Rebate to Add Liquidity, which the Exchange is amending as described herein.[4] The Exchange would also eliminate the FB, GOOG and GRPN separate pricing as those symbols would be subject to the Non-Penny Pilot Option pricing pursuant to this proposal.

The Exchange proposes to amend the Non-Penny Pilot Option Pricing, which will include NDX, FB, GOOG and GRPN, by increasing the Professional Fee for Adding Liquidity from $0.30 to $0.45 per contract and decreasing the NOM Market Maker Fee for Adding Liquidity from $0.30 to $0.25 per contract. Pursuant to this proposal, a Professional transacting NDX would be assessed a decreased Fee for Adding Liquidity, from $0.70 to $0.45 per contract,[5] and a NOM Market Maker would be assessed an increased or decreased fee depending on the market participant that was on the contra-side of the order. For example, today, if a NOM Market Maker transacts an order in NDX and the contra-party is a Professional, Firm, NOM Market Maker or Non-NOM Market Maker, the NOM Market Maker is paid a Rebate to Add Liquidity of $0.20 per contract or would be assessed a $0.65 per contract Fee to Add Liquidity if the contra-party is a Customer. The Exchange proposes to assess a NOM Market Maker a $0.25 per contract Fee for Adding Liquidity in Non-Penny Pilot Options, regardless of the contra-party and proposes to not pay a NOM Market Maker a Rebate to Add Liquidity.

Likewise, a Customer today receives a Rebate to Add Liquidity of $0.20 per contra when the contra-party is a Professional, Firm, NOM Market Maker or Non-NOM Market Maker, and is assessed a Fee to Add Liquidity of $0.65 per contract when contra to another Customer. Under this proposal, a Customer would be assessed no Fee for Adding Liquidity in Non-Penny Pilot Options and would receive a Rebate to Add Liquidity of $0.75 per contract or $0.77 per contract as described more fully below.

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

[2] 17 CFR 240.19b-4.

[3] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2012. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR–NASDAQ–2009–097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR–NASDAQ–2010–013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR–NASDAQ–2011–169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot); and 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR–NASDAQ–2012–075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012). *See also* NOM Rules, Chapter VI, Section 5.

[4] The Exchange currently assesses FB, GOOG and GRPN the following Fees for Adding Liquidity: Customers are not assessed a fee, Professionals, Firms and Non-NOM Market Makers are assessed a $0.45 per contract fee and NOM Market Makers are assessed a $0.25 per contract fee. The Fees for Removing Liquidity are as follows: Customers and NOM Market Makers are assessed a $0.79 per contract fee and Professionals, Firms and Non-NOM Market Makers are assessed an $0.85 per contract fee. FB, GOOG and GRPN Customer transactions receive a Rebate to Add Liquidity of $0.77 per contract. This rebate is being amended by this proposal for the Non-Penny Pilot Options.

[5] Today a Professional is assessed a Fee to Add Liquidity of $0.70 per contract in NDX.

The Exchange is proposing to increase the current Customer Rebate to Add Liquidity in Non-Penny Pilot Options (including NDX) from $0.20 to $0.75 per contract, unless a market participant adds Customer liquidity in either or both Penny or Non-Penny Pilot Options of 115,000 contracts per day in a month, in which case the rebate would be increased to $0.77 per contract. The Exchange also proposes to permit NOM Participants under 75 percent common ownership or control to aggregate their Customer volume to obtain the higher rebate.[6] The Exchange is also proposing to eliminate the Customer Rebate to Remove Liquidity in NDX along with other NDX pricing. The Exchange is not proposing to offer a Rebate to Remove Liquidity in Non-Penny Pilot Options.[7]

The Exchange proposes to eliminate note 1 which relates to the NDX Rebate to Add Liquidity and Fee to Add Liquidity, which pricing is eliminated with this proposal. The Exchange also proposes to rename note ''+'' as note 1. The Exchange also proposes to add a new note 2 to describe the $0.10 per contract NDX surcharge described herein as well as a new note 3 to reflect the Customer Rebates to Add Liquidity applicable to Non-Penny Pilot Options described herein. The Exchange also proposes to delete the pricing for options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX (''MNX''). This option was delisted on September 13, 2012 from NOM. The Exchange is proposing to eliminate the MNX pricing from Sec. 2, Chapter XV of the NOM Rules because the pricing is no longer necessary.

The Exchange also proposes to amend the Non-Penny Pilot Option (including NDX) Fee for Removing Liquidity by increasing those fees as follows: a Customer that is today assessed $0.45 per contract would be assessed an increased fee of $0.79 per contract; a Professional, Firm and Non-NOM Market Maker that today is assessed a $0.50 per contract fee would be assessed an increased fee of $0.85 per contract; and a NOM Market Maker that today is assessed $0.50 per contract fee would be assessed a $0.79 per contract fee. With respect to NDX, a Customer transacting NDX today is not assessed a Fee for Removing Liquidity. The Customer would now be assessed an increased Fee for Removing Liquidity of $0.79 per contract in Non-Penny Pilot Options (including NDX). A Professional, Firm or Non-NOM Market Maker that today pays $0.70 per contract would pay an increased Fee for Removing Liquidity of $0.85 per contract in Non-Penny Pilot Options (including NDX). Finally, a NOM Market Maker that today pays a $0.70 Fee for Removing Liquidity in NDX would pay a $0.79 per contract fee in Non-Penny Pilot Options (including NDX).

The Exchange also proposes to amend its Penny Pilot Option Customer Rebate to Add Liquidity. The Exchange proposes to amend Tier 1 which currently pays a $0.26 per contract rebate to market participants that add Customer liquidity of up to 14,999 contracts per day in a month. The Exchange would continue to pay a $0.26 per contract rebate, but would increase the level of contracts from 14,999 to 34,999 contracts per day. The Exchange proposes to eliminate current Tier 2 which pays a $0.38 per contract rebate for market participants that add Customer liquidity of 15,000 to 49,999 contracts per day in month. The Exchange proposes to renumber Tier 3 as Tier 2. Tier 3 today pays market participants $0.43 per contract for market participants that add Customer liquidity between 50,000 and 74,999 contracts per day in a month. The Exchange would continue to pay $0.43 per contract for newly named Tier 2 but would lower the level of contracts to between 35,000 to 74,999 contracts per day in a month. The Exchange proposes to renumber Tier 4 as Tier 3, Tier 5 as Tier 4 and Tier 6 as Tier 5 and not otherwise amend these tiers.[8] The Exchange also proposes to conform notes a, b and c to the new tiers by reassigning the proper letters to coordinate to the same tiers as today.

The Exchange also proposes to amend the Penny Pilot Option Fee for Removing Liquidity which today provides that Professionals, Firms, Non-NOM Market Makers and NOM Market Makers Penny Pilot Options Fees for Removing Liquidity will be reduced by $0.01 per contract for transactions in which the same NOM Participant is the buyer and seller. The Exchange proposes to also permit NOM Participants under common ownership to also receive the $0.01 per contract reduction if a NOM Participant under common ownership is the buyer and seller. The Exchange is not amending the Penny Pilot Option Fees for Removing Liquidity otherwise.[9]

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[10] in general, and with Section 6(b)(4) of the Act,[11] in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that the proposed elimination of separate fees and rebates for NDX and inclusion of NDX in the Non-Penny Pilot Options is reasonable, equitable and not unfairly discriminatory because the Exchange is proposing to amend the Non-Penny Pilot Options fees and rebates to approximate those fees and rebates currently subject to FB, GOOG and GRPN pricing. The Exchange believes that it is reasonable to assess NDX the amended Non-Penny Pilot Option fees which are substantially similar to the fees assessed today for FB, GOOG and GRPN[12] because NDX has the same minimum trading increments as other Non-Penny Pilot Options. Additionally, the Exchange believes that it is reasonable to pay Customers transacting options in NDX the amended Non-Penny Pilot Options Rebate to Add Liquidity because the higher Customer Rebate to Add Liquidity of $0.75 per contract with the possibility of qualifying for a $0.77 per contract rebate approximates the rebates currently offered for FB, GOOG and GRPN.[13] The Exchange would also not assess Customers a Fee for Adding Liquidity,

[6] As noted previously, the NDX pricing would be removed from Section 2(1) of Chapter XV. Today, a Customer receives a Rebate to Remove Liquidity of $0.40 per contract.

[7] No other market participant, other than a Customer receives a Customer Rebate to Remove Liquidity today.

[8] Tier 4 today pays $0.44 per contract for market participants that add Customer liquidity of 75,000 or more contract per day in a month. Tier 5 today pays market participants $0.42 per contact if they (1) add Customer liquidity of 25,000 or more contracts per day in a month, (2) have certified for the Investor Support Program set forth in Rule 7014; and (3) executed at least one order on NASDAQ's equity market. Tier 6 today pays market participants $0.45 per contract if they have total volume of 130,000 contracts per day in a month. The Exchange is simply proposing to renumber these last three tiers.

[9] Today, the Exchange assesses the following Penny Pilot Option Fees for Removing Liquidity: Customers pay $0.45 per contract and Professionals, Firms, Non-NOM Market Makers and NOM Market Makers pay a $0.47 per contract fee.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] The Exchange currently assesses FB, GOOG and GRPN the following Fees for Adding Liquidity: Customers are not assessed a fee, Professionals, Firm and Non-NOM Market Makers are assessed a $0.45 per contract fee and NOM Market Makers are assessed a $0.25 per contract fee. The Fees for Removing Liquidity are as follows: Customers and NOM Market Makers are assessed a $0.79 per contract fee and Professionals, Firms and Non-NOM Market Makers are assessed an $0.85 per contract fee. FB, GOOG and GRPN Customer transactions receive a Rebate to Add Liquidity of $0.77 per contract. This rebate is being amended by this proposal for the Non-Penny Pilot Options.

[13] Today, FB, GOOG and GRPN pay a Customer Rebate to Add Liquidity of $0.77 per contract.

as is the case today with FB, GOOG and GRPN and would also not continue to pay a Rebate to Remove Liquidity as that rebate would be eliminated. The Exchange believes that it is reasonable to assess Non-Penny Pilot Option fees and pay rebates similar to FB, GOOG and GRPN today, with the amended Customer Rebate to Add Liquidity, and eliminate NDX, FB, GRPN and GOOG pricing, as well as the delisted MNX pricing which is no longer necessary from Section 2, Chapter XV.

The Exchange believes that it is equitable and not unfairly discriminatory to assess/pay the Non-Penny Pilot Option pricing to the various market participants as noted in this proposal and not assess/pay separate pricing for NDX, FB, GRPN and GOOG. All market participants transacting Non-Penny Pilot Options would be subject to the fees and rebates noted herein. The Exchange would no longer pay a Rebate to Remove Liquidity to any market participant under the proposal. Customers would be subject to a $0.79 per contract Fee to Remove Liquidity in Non-Penny Pilot Options as compared to no fee today in NDX. Also, NOM Market Makers would be assessed a $0.25 per contract Fee for Adding Liquidity regardless of the contra-party and would no longer be entitled to a Rebate to Add Liquidity as is the case with NDX today.[14] Professionals would be subject to the same decreased $0.45 per contract Fee for Adding Liquidity as Firms and Non-NOM Market Makers.[15] Also, the elimination of the MNX pricing is equitable and not unfairly discriminatory because no market participant is subject to this pricing as of the date it was delisted. In summary, the Exchange believes that assessing all Non-Penny Pilot Options securities the amended Non-Penny Pilot Option pricing is reasonable, equitable and not unfairly discriminatory for the reasons discussed hereafter which describes the basis for the amendments to that pricing. These amendments conform the pricing for all Non-Penny Pilot options symbols. Also, the additional $0.10 per contact NDX surcharge that will be added to the Fees for Adding and Removing Liquidity in Non-Penny Pilot Options for transactions in NDX, except for Customers, is reasonable, equitable and not unfairly discriminatory because the Exchange currently pays a license fee[16] to list NDX on NOM and is seeking to recoup a portion of that fee.[17]

The Exchange believes that increasing the Professional Fee for Adding Liquidity and the Fees for Removing Liquidity in Non-Penny Pilot Options is reasonable because the higher fees would enable the Exchange to reward Customers that remove liquidity with higher Customer Rebates to Add Liquidity in Non-Penny Pilot Options. The Exchange believes that its success at attracting Customer order flow benefits all market participants by improving the quality of order interaction and executions at the Exchange. Additionally, the proposed fees and rebates for Non-Penny Pilot Options are similar to fees and rebates currently in place at the BATS Exchange, Inc. (''BATS'').[18] The Exchange also believes that decreasing the NOM Market Maker Fee for Removing [sic] Liquidity in Non-Penny Pilot Options is reasonable because the Exchange seeks to encourage NOM Market Makers to post liquidity on NOM.

The Exchange believes that increasing the Professional Fee for Adding Liquidity in Non-Penny Pilot Options is equitable and not unfairly discriminatory because Professionals, Firms and Non-NOM Market Makers will be assessed the same $0.45 per contract fee. The Exchange also believes that not assessing a Customer a Fee for Adding Liquidity in Non-Penny Pilot Options and assessing a NOM Market Maker a lower Fee for Adding Liquidity of $0.25 per contract, as compared to Professionals, Firms and Non-NOM Market Makers is equitable and not unfairly discriminatory because Customers and NOM Market Makers differ from other market participants. Customer order flow benefits all market participants by improving liquidity, the quality of order interaction and executions at the Exchange. Also, NOM Market Makers have obligations to the market and regulatory requirements,[19] which normally do not apply to other market participants. A NOM Market Maker has the obligation to make continuous markets, engage in course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with course of dealings. The proposed differentiation as between Customers and NOM Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by Customers and NOM Market Makers, as well as the differing mix of orders entered. The Exchange believes that increasing the Professional, Firm and Non-NOM Market Maker Fees for Removing Liquidity in Non-Penny Pilot Options to $0.85 per contract is equitable and not unfairly discriminatory because Professionals, Firms and Non-NOM Market Makers will be assessed the same fee. Customers and NOM Market Makers would be assessed a lower Fee for Removing Liquidity in Non-Penny Pilot Options as compared to Professionals, Firms and Non-NOM Market Makers because as mentioned herein the fees recognize the differing contributions made to the liquidity and trading environment on the Exchange by Customers and NOM Market Makers, as well as the differing mix of orders entered.

The Exchange also believes that overall the higher Fees for Removing Liquidity are equitable and not unfairly discriminatory because in the current U.S. options market, many of the contracts are quoted in pennies. Under this pricing structure, the minimum penny tick increment equates to a $1.00 economic value difference per contract, given that a single standardized U.S. option contract covers 100 shares of the underlying stock. Where contracts are quoted in $0.05 increments (non-pennies), the value per tick is $5.00 in proceeds to the investor transacting in these contracts. Liquidity rebate and

[14] Today, NOM Market Makers are assessed a $0.65 per contract Fee to Add Liquidity when transacting an order in NFX [sic] contra a Customer and are paid a Rebate to Add Liquidity of $0.20 per contract when transacting an order in NDX contra a Professional, Firm, Non-NOM Market Maker or NOM Market Maker.

[15] Professionals currently are assessed a $0.70 per contract Fee to Add Liquidity in NDX similar to Firms and Non-NOM Market Makers.

[16] NOM is assessed a license fee of $0.22 per contract to list NDX.

[17] Non-Penny Pilot Options, other than NDX, are not subject to a license fee.

[18] *See* BATS BZX Exchange Fee Schedule. BATS assesses a Non-Penny Pilot Option Fee for Accessing Liquidity of $0.80 per contract for a Professional, Firm or Market Maker order that removes liquidity from the BATS Options order book and a $0.75 per contract rebate for a Customer order that remove liquidity from the BATS Options order book. Additionally, BATS pays a $0.70 per contract rebate for a Professional, Firm or Market Maker order that adds liquidity to the BATS Options order book and a $0.75 rebate per contract for a Customer order that adds liquidity to the BATS Options order book. Also, the Fees for Removing Liquidity for FB, GOOG and GRPN as well as the Fees for Adding Liquidity are the same as those proposed for Non-Penny Pilot Options.

[19] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. 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. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

access fee structures on the make-take exchanges, including NOM, for securities quoted in penny increments are commonly in the $0.30 to $0.45 per contract range.[20] A $0.30 per contract rebate in a penny quoted security is a rebate equivalent to 30% of the value of the minimum tick. A $0.45 per contract fee in a penny quoted security is a charge equivalent to 45% of the value of that minimum tick. In other words, in penny quoted securities, where the price is improved by one tick with an access fee of $0.45 per contract, an investor paying to access that quote is still $0.55 better off than trading at the wider spread, even without the access fee ($1.00 of price improvement—$0.45 access fee = $0.55 better economics). This computation is equally true for securities quoted in wider increments. Rebates and access fees near the $0.85 per contract level equate to only 17% of the value of the minimum tick in Non-Penny Pilot Options, less than the experience today in Penny Pilot Options. For example, a retail investor transacting a single contract in a non-penny quoted security quoted a single tick tighter than the rest of the market, and paying an access fee of $0.79 per contract, is receiving an economic benefit of $4.21 ($0.05 improved tick = $5.00 in proceeds − $0.79 access fee = $4.21). The Exchange believes that encouraging NOM Market Makers to quote more aggressively by reducing transaction fees [21] and incentivizing Customer orders to post on NOM will narrow the spread in Non-Penny Pilot Options to the benefit of investors and all market participants by improving the overall economics of the resulting transactions that occur on the Exchange, even if the access fee paid in connection with such transactions is higher. Accordingly, the Exchange believes that the proposed fees and rebates for the Non-Penny Pilot Options are reasonable, equitable and not unfairly discriminatory.

The Exchange believes that its proposal to offer a higher Customer Rebate to Add Liquidity in Non-Penny Pilot Options (from $0.20 to $0.75 per contract) is reasonable, equitable and not unfairly discriminatory because other market participants will benefit from the increased order flow to the Exchange. The proposal to offer an even higher Customer Rebate to Add Liquidity in Non-Penny Pilot Options ($0.77 per contract), provided a market participant adds Customer liquidity of 115,000 contracts per day in a month in either or both a Penny Pilot or Non-Penny Pilot Option, is reasonable, equitable and not unfairly discriminatory because the benefits to the Exchange of increased liquidity will benefit all market participants because market participants will strive to post and remove liquidity on NOM to achieve the higher rebate.

The Exchange believes that the proposed amendments to the notes associated with the Penny and Non-Penny Pilot Options Pricing, specifically renumbering note ''+'' as note 1, eliminating current note 1 and adding notes 3 and 4, are reasonable, equitable and not unfairly discriminatory because the notes add more clarity to the rule.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to permit NOM Participants with 75 percent common ownership to aggregate their volume for purposes of obtaining a higher Customer Rebate to Add Liquidity in Non-Penny Pilot Options. Certain NOM Participants chose to segregate their businesses into different legal entities for purposes of conducting business. The Exchange believes that these NOM Participants should be treated as one entity for purposes of qualifying for the increased Customer Rebate to Add Liquidity in Non-Penny Pilot Options as long as there is at least 75% common ownership or control among the NOM Participants. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to provide that Professionals, Firms, Non-NOM Market Makers, and NOM Market Makers Penny Pilot Option Fees will be reduced by $0.01 per contract for transactions in which the same NOM Participant *or a NOM Participant under common ownership* is the buyer and the seller. For the reasons mentioned herein, the Exchange believes that NOM Participants that chose to segregate their businesses into different legal entities should still be afforded the opportunity to receive the discount as if they were the same NOM Participant on both sides of the transaction.

The Exchange's proposed amendments to the Customer Rebate to Add Liquidity in Penny Pilot Options are reasonable because the Exchange is attempting to incentivize market participants to send additional Customer order flow to the Exchange. By increasing the Tier 1 to encompass up to 34,999 contracts per day in a month and amending new Tier 2 to between 35,000 and 74,999 contracts, the Exchange is attempting to encourage market participants that are receiving rebates by qualifying for Tiers 1 and 2 to send additional orders to the Exchange to continue to qualify for those rebates. The Customer liquidity that the Exchange attracts by offering Customer rebates benefits all market participants. The Exchange believes that the amendments to the Customer Rebate to Add Liquidity in Penny Pilot Options are equitable and not unfairly discriminatory because there is no required minimum volume of Customer orders to qualify for a Customer Rebate to Add Liquidity. Tier 1 will pay a rebate for NOM Participants that add Customer liquidity from 1 contract to 34,999 contracts under the proposal. All NOM Participants that transact Customer orders in Penny Pilot Options are eligible for the Customer rebates.

The Exchange believes that the technical amendments to the Customer Rebate to Add Liquidity in Penny Pilot Options which assign a new letter to the tiers to coordinate with the amended rule are reasonable, equitable and not unfairly discriminatory because they clarify the Rule.

The Exchange operates in a highly competitive market comprised of ten 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 and fees are competitive and similar to other fees, rebates and tier opportunities in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts rebates and fees present on the Exchange today and substantially influences the proposal set forth above.

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

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, NASDAQ has designed its rebates and fees to compete effectively for the execution and routing of options contracts and to reduce the overall cost to investors of options trading. The Exchange believes that

[20] NOM is proposing to only pay a Customer a Rebate to Add Liquidity in Non-Penny Pilot Options. Other market participants would not be entitled to a rebate.

[21] The Exchange notes that the proposed $0.25 per contract NOM Market Maker Fee for Adding in FB, GOOG and GRPN is significantly less than transaction fees plus payment for order flow fees assessed by other options exchanges. For example, on NASDAQ OMX PHLX LLC (''Phlx''), the combined payment for order flow fee plus the transaction fee is $0.92 per contract. *See* Phlx's Pricing Schedule. Unlike Penny Pilot Options, the Exchange believes this significant reduction in fees for adding liquidity will have the same effect as a rebate in non-Penny Pilot Options in terms of a narrower spread.

incentivizing NOM Participants to transact greater Customer volume on the Exchange benefits all market participants because of the increased liquidity to the market.

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.[22] 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–2012–114 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2012–114. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–114 and should be submitted on or before November 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–25357 Filed 10–15–12; 8:45 am]

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[22] 15 U.S.C. 78s(b)(3)(A)(ii).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68024; File No. SR–NYSE–2012–51]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 902.03 of the New York Stock Exchange LLC Listed Company Manual To Amend Annual Fees and Certain Other Listing Fees Included Therein and To Make Technical and Conforming Changes

October 10, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on September 28, 2012, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''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.

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

[2] 17 CFR 240.19b–4.

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

The Exchange proposes to amend Section 902.03 of its Listed Company Manual to amend certain of the fees included therein and to make technical and conforming changes. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

The Exchange proposes to amend Section 902.03 of its Listed Company Manual to amend certain of the fees included therein and to make technical and conforming changes. The Exchange proposes to immediately reflect the proposed changes in the Listed Company Manual, but not to implement the proposed changes until January 1, 2013.[3]

The Exchange proposes to amend Section 902.03 of the Listed Company Manual, which currently provides, in part, for minimum Listing Fees for subsequent listing of additional equity securities. The Exchange proposes to increase the minimum Listing Fee from $5,000 to $7,500. Section 902.03 also currently provides, in part, for a fee for applications for changes that involve modifications to Exchange records (*e.g.,* changes of name, par value, title of security or designation) and for applications relating to poison pills. The

[3] The Exchange has proposed changes to the Listed Company Manual, as reflected in the Exhibit 5 attached hereto, in a manner that would permit readers of the Listed Company Manual to identify the changes that would be implemented on January 1, 2013.