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 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–CBOE–2013–033, and should be submitted on or before April 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06239 Filed 3–18–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69132; File No. SR–NASDAQ–2013–041]

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

March 13, 2013.

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 March 1, 2013, 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 NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASDAQ proposes to modify Chapter XV, entitled ''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 certain Penny Pilot Options[3] Rebates to Add Liquidity and certain Non-Penny Pilot Options[4] Fees for Adding and Removing Liquidity.

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 the 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 Customer,[5] Professional,[6] Non-NOM Market Maker[7] and NOM Market Maker[8] Penny Pilot Options Rebates to Add Liquidity and the NOM Market Maker Non-Penny Pilot Options Fees for Adding and Removing Liquidity.

The Exchange proposes to reduce the current Non-NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options from $0.25 to $0.10 per contract in order that a Non-NOM Market Maker would be paid the same rebates as a Firm[9] and Broker-Dealer.[10] The Exchange also proposes to amend the Tier 6 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options and add a new Tier 7 rebate. Currently, the

[16] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through June 30, 2013. *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); 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); and 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR–NASDAQ–2012–143) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2013). *See also* NOM Rules, Chapter VI, Section 5.

[4] Non-Penny Pilot Pricing includes NDX. For transactions in NDX, a surcharge of $0.10 per contract is added to the Fee for Adding Liquidity and the Fee for Removing Liquidity in Non-Penny Pilot Options, except for a Customer who will not be assessed a surcharge.

[5] 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)).

[6] 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.

[7] The term ''Non-NOM Market Maker'' or (''O'') is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

[8] 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.

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

[10] 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.

Exchange offers Customers and Professionals a Rebate to Add Liquidity if they qualify for a tier based on their monthly volume. The Exchange has a six tier rebate structure as follows:

	Monthly volume	Rebate to add liquidity
Tier 1	Participant adds Customer and Professional liquidity of up to 24,999 contracts per day in a month	$0.26
Tier 2	Participant adds Customer and Professional liquidity of 25,000 to 34,999 contracts per day in a month	0.40
Tier 3	Participant adds Customer and Professional liquidity of 35,000 to 74,999 contracts per day in a month	0.43
Tier 4	Participant adds Customer and Professional liquidity of 75,000 or more contracts per day in a month	0.44
Tier 5	Participant adds (1) Customer and Professional liquidity of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014; and (3) the Participant executed at least one order on NASDAQ's equity market	0.42
Tier 6	Participant has Total Volume of 130,000 or more contracts per day in a month	0.46

The Exchange proposes to amend Tier 6 to qualify the current requirement that a Participant with Total Volume of 130,000 or more contacts per day in a month will receive a rebate of $0.46 per contract to require that 25,000 or more of the Total Volume to qualify for Tier 6 must be Customer or Professional liquidity. In addition, the Exchange also proposes to add a new Tier 7 which would pay an increased rebate of $0.48 per contract if a Participant has Total Volume of 325,000 or more contracts per day in a month, or (2) adds Customer and Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month [11] or (3) adds Customer and Professional liquidity of 60,000 or more contracts per day in a month and NOM Market Maker liquidity of 30,000 or more per day per month. Similar to Tier 6, the Exchange shall define Total Volume as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and Non-Penny Pilot Options which either adds or removes liquidity on NOM.[12] For purposes of Tier 7, the Exchange would allow NOM Participants under Common Ownership [13] to aggregate their volume to qualify for the rebate. The Exchange believes that the amendment to Tier 6 and the addition of Tier 7 will incentivize Participants to transact additional Customer and Professional volume. The addition of Tier 7 will also incentivize Participants to post NOM Market Maker liquidity on NOM.

The Exchange proposes to amend the NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options from $0.30 per contract to a four tier rebate structure. The Exchange proposes to pay a Tier 1 rebate of $0.25 per contract for Participants that add NOM Market Maker liquidity in Penny Pilot and Non-Penny Pilot Options of up to 39,999 contracts per day in a month. The Exchange proposes to pay a Tier 2 rebate of $0.30 per contract for Participants that add NOM Market Maker liquidity in Penny Pilot and Non-Penny Pilot Options of 40,000 to 89,999 contracts per day in a month. The Exchange proposes to pay a Tier 3 rebate of $0.32 per contract for Participants and its affiliates under Common Ownership [14] that qualify for the Tier 7 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options. The Exchange proposes to pay a Tier 4 rebate of $0.32 [15] or $0.38 per contract in the following symbols, iShares MSCI Emerging Markets Index (''EEM''), SPDR Gold Shares (''GLD''), iShares Russell 2000 Index (''IWM''), PowerShares QQQ (''QQQ''), SPDR S&P 500 (''SPY''), iPath S&P 500 VIX ST Futures ETN (''VXX'') and Financial Select Sector SPDR (''XLF''), if Participants add NOM Market Maker liquidity of 90,000 or more contracts per day in a month. The Exchange believes that offering NOM Market Makers the ability to obtain higher rebates will encourage NOM Market Makers to post greater liquidity on NOM.

The Exchange also proposes to increase the NOM Market Maker Non-Penny Pilot Fee for Adding Liquidity from $0.25 to $0.35 per contract and the Fee for Removing Liquidity from $0.82 to $0.85 per contract. The Exchange proposes to increase these fees in order to offer NOM Market Makers an opportunity to earn higher rebates in Penny Pilot Options for transacting both Penny and Non-Penny Pilot Options.

The Exchange also proposes technical amendments to capitalize the term ''common ownership'' as that term is defined in Chapter XV and add the words ''on NOM'' to the definition of Total Volume as described herein.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[16] in general, and with Section 6(b)(4) of the Act,[17] 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 its proposal to reduce the Non-NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options from $0.25 to $0.10 per contract is reasonable because the Exchange proposes to offer Non-NOM Market Makers the same rebate as Firms and Broker Dealers. The Exchange believes that offering Customers, Professionals and NOM Market Makers the opportunity to earn higher rebates is reasonable because by incentivizing Participants to select the Exchange as a venue to post Customer and Professional liquidity will attract additional order flow to the benefit of all market participants and incentivizing NOM Market Makers to

[11] The reference to national volume refers to volume on all options markets. NASDAQ OMX PHLX LLC (''Phlx'') and the Chicago Board Options Exchange Incorporated (''CBOE'') utilize a similar national volume number to calculate rebates. Phlx pays customer rebates based on relative contracts per month as a percentage of total national customer volume in multiply-listed options transacted on Phlx. *See* Phlx's Pricing Schedule at Section A. CBOE offers each Trading Permit Holder (''TPH'') a credit for each public customer order transmitted by the TPH which is executed electronically in all multiply-listed option classes, excluding QCC trades and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan, provided the TPH meets certain percentage thresholds in a month as described in the Volume Incentive Program. *See* CBOE's Fees Schedule.

[12] The Exchange is proposing to add the words ''on NOM'' to the Total Volume definition solely to clarify that this volume refers to transactions on the Exchange.

[13] Common ownership is defined in Chapter XV as Participants under 75% common ownership or control.

[14] *See* note 12.

[15] The Exchange would pay $0.32 per contract rebate for all other qualifying Penny Pilot Options excluding EEM, GLD, IWM, QQQ, SPY, VXX and XLF.

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(4).

post liquidity will also benefit participants through increased order interaction. Today, the Exchange assesses Non-NOM Market Makers, Firms and Broker-Dealers the same fees for adding and removing liquidity in all symbols. The Exchange is proposing to likewise pay these market participants the same rebates.

The Exchange believes that the amendments to the Penny Pilot Options Rebates to Add Liquidity are equitable and not unfairly discriminatory for various reasons. The Exchange believes that paying Customers and Professionals a tiered Rebate to Add Liquidity in Penny Pilot Options, as proposed herein, is equitable and not unfairly discriminatory as compared to other market participants. Pursuant to this proposal, the Exchange would pay the highest Tier 1 Rebate to Add Liquidity in Penny Pilot Options of $0.26 per contract to Customers and Professionals for transacting one qualifying contract as compared to other market participants.[18] The Exchange believes that Customers are entitled to higher rebates because Customer order flow brings unique benefits to the market through increased liquidity which benefits all market participants. The Exchange believes that continuing to offer Professional the same Penny Pilot Options Rebates to Add Liquidity as Customers is equitable and not unfairly discriminatory because the Exchange is offering Professionals the same rebates as today, with the exception of Tier 6, which is being amended, and Tier 7, which is new. The Exchange believes that offering Professionals the opportunity to earn the same rebates as Customers, as is the case today, and higher rebates as compared to Firms, Broker-Dealers and Non-NOM Market Makers, and in some cases NOM Market Makers, is equitable and not unfairly discriminatory because the Exchange does not believe that the amount of the rebate offered by the Exchange has a material impact on a Participant's ability to execute orders in Penny Pilot Options. The Exchange has been assessing the impact of rebates since it first began to offer them and has also observed the impact of fees and rebates on other options exchanges in terms of quoting and liquidity. The Exchange believes that the Fees for Adding Liquidity in Penny Pilot Options, as compared to Rebates to Add Liquidity, impact a market participant's decision-making more prominently with respect to posting order flow on different venues and price. In modifying its rebates and offering Professionals, as well as Customers, higher rebates, the Exchange hopes to simply remain competitive with other venues so that it remains a choice for market participants when posting orders and the result may be additional Professional order flow for the Exchange, in addition to increased Customer order flow. In addition, a Participant may not be able to gauge the exact rebate tier it would qualify for until the end of the month because Professional volume would be commingled with Customer volume in calculating tier volume. A Professional could only otherwise presume the Tier 1 rebate would be achieved in a month when determining price. Further, the Exchange initially established Professional pricing in order to ''* * * bring additional revenue to the Exchange.''[19] The Exchange noted in the Professional Filing that it believes ''* * * that the increased revenue from the proposal would assist the Exchange to recoup fixed costs.''[20] The Exchange also noted in that filing that it believes that establishing separate pricing for a Professional, which ranges between that of a customer and market maker, accomplishes this objective.[21] The Exchange does not believe that providing Professionals with the opportunity to obtain higher rebates equivalent to that of a Customer creates a competitive environment where Professionals would be necessarily advantaged on NOM as compared to NOM Market Makers, Firms, Broker-Dealers or Non-NOM Market Makers. Also, a Professional is assessed the same fees as other market participants, except Customers.[22] For these reasons, the Exchange believes that continuing to offer Professionals the same rebates as Customers is equitable and not unfairly discriminatory. Finally, the Exchange believes that NOM Market Makers should be offered the opportunity to earn higher rebates as compared to Non-NOM Market Makers, Firms and Broker Dealers because NOM Market Makers add value through continuous quoting[23] and the commitment of capital.

The Exchange believes the amended Tier 6 rebate and new Tier 7 Customer and Professional Rebates to Add Liquidity in Penny Pilot Options are reasonable, equitable and not unfairly discriminatory because the Exchange is offering Participants meaningful incentives to increase their participation on NOM in terms of higher Penny Pilot Options Rebates to Add Liquidity and fee reductions which reduce costs. The Exchange's proposal to amend the Tier 6 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options is reasonable because the Exchange believes that requiring a certain amount of the Total Volume to consist of Customer or Professional liquidity will continue to attract liquidity to the Exchange to the benefit of all market participants. The Exchange believes the amendment to the Tier 6 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options is equitable and not unfairly discriminatory because all Participants may qualify for the rebate and such incentives will benefit other market participants through the increased liquidity that such Customer and Professional order flow will bring to the Exchange.

The Exchange's proposal to add a new Tier 7 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options and pay an increased rebate of $0.48 per contract to Participants that transact Total Volume of 325,000 contracts or more per day, in a month, add Customer and Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month or add Customer and Professional liquidity of 60,000 or more contracts per day in a month and NOM Market Maker liquidity of 30,000 or more per day per month is reasonable,

[18] The NOM Market Maker Tier 1 Rebate to Add Liquidity in Penny Pilot Options would be $0.25 per contract pursuant to this proposal and all [sic] other market participants would receive a $0.10 per contract rebate.

[19] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066) (''Professional Filing''). In this filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.

[20] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066).

[21] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066). The Exchange noted in this filing that it believes the role of the retail Customer in the marketplace is distinct from that of the Professional and the Exchange's fee proposal at that time accounted for this distinction by pricing each market participant according to their roles and obligations.

[22] The Fee for Removing Liquidity in Penny Pilot Options is $0.47 per contract for all market participants, except Customers. Customers are assessed $0.45 per contract.

[23] 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.

equitable and not unfairly discriminatory because the Exchange believes that Participants will be incentivized to execute an even greater number of orders on the Exchange, add a greater amount of Customer and Professional liquidity on NOM and post a greater amount of NOM Market Maker liquidity, which in turn benefits all market participants. The Exchange believes the existing monthly volume thresholds have incentivized Participants to increase Customer and Professional order flow to the Exchange. The Exchange desires to continue to encourage Participants to route Customer and Professional orders, and post NOM Market Maker orders, to the Exchange by offering increased Customer and Professional Rebates to Add Liquidity in Penny Pilot Options. All Participants that transact Customer and Professional orders in Penny Pilot Options are and will continue to be eligible for the Customer and Professional rebates.[24]

The Exchange's proposal to permit Participants to qualify for Tier 7 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options by adding Customer and Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month is reasonable because measuring Customer and Professional liquidity as a percentage of national customer volume in the industry relative to those contracts executed on NOM allows the Exchange to control and account for changes in national industry-wide multiply-listed options volume. Further, allowing Participants to combine equity options volume with that of ETFs will provide Participants an opportunity to qualify for this rebate tier. The Exchange's proposal to permit Participants to qualify for Tier 7 by adding Customer and Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month is equitable and not unfairly discriminatory because it will be applied to all Participants in a uniform matter. Any Participant is eligible to receive the rebate provided they transact a qualifying amount of electronic Customer and Professional volume as required. The Exchange believes that permitting Participants to otherwise qualify for Tier 7 by transacting Total Volume of 325,000 contracts or more per day, in a month, or adding Customer and Professional liquidity of 60,000 or more contracts per day in a month and NOM Market Maker liquidity of 30,000 or more per day per month is reasonable because the Exchange already allows Participants to obtain rebates today based on Total Volume and offering to allow Participants to qualify for Tier 7 by adding a certain mix of Customer, Professional and NOM Market Maker liquidity provides Participants additional opportunities to obtain a higher rebate and benefit other market participants by the liquidity and order interaction that such order flow will bring to NOM. As stated previously, the other means to qualify for Tier 7 (other than adding Customer and Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month), transacting Total Volume of 325,000 contracts or more per day, in a month, or adding Customer and Professional liquidity of 60,000 or more contracts per day in a month and NOM Market Maker liquidity of 30,000 or more per day per month, is equitable and not unfairly discriminatory because all Participants may achieve this rebate by transacting the appropriate level of volume required by Tier 7.

The Exchange believes that the new NOM Market Maker Penny Pilot Options Rebates to Add Liquidity tiers are reasonable because the Exchange is offering NOM Market Makers the ability to obtain higher rebates by posting liquidity on NOM. The Exchange proposes to pay NOM Market Makers a Tier 1 Rebate to Add Liquidity of $0.25 per contract in Penny Pilot Options for adding up to 39,999 contracts per day in a month of Penny or Non-Penny Pilot Options. While the Exchange is paying Customers and Professionals higher rebates for adding Penny Pilot Options Customer and Professional liquidity in Tiers 1 and 2 for volume up to 39,999 contracts,[25] the NOM Market Maker can achieve that volume by aggregating Penny and Non-Penny Pilot Options in order to obtain a $0.25 per contract Tier 1 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options and may be able to achieve the $0.30 per contract Tier 2 rebate, as is the case today, by adding Penny and Non-Penny Pilot Options contract volume. The highest rebate a NOM Market Maker can achieve with the proposed tier structure is $0.38 per contract, which is higher than the current NOM Market Maker rebate of $0.30 per contract and remains lower than the Customer and Professional Tier 2 rebate, as is the case today. The Exchange believes that the proposed NOM Market Maker rebate tier structure is reasonable because the Exchange is incentivizing NOM Market Makers to earn higher rebates by posting a greater number of contracts on NOM. NOM Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs unlike other market participants. The Exchange believes that encouraging NOM Market Makers to be more aggressive when posting liquidity benefits all market participants through increased liquidity. The Exchange believes that the NOM Market Maker rebate proposal is equitable and not unfairly discriminatory because it does not misalign the current rebate structure because NOM Market Makers will continue to earn higher rebates as compared to Firms, Non-NOM Market Makers and Broker-Dealers and will continue to earn lower rebates as compared to Customers and Professionals for most rebate tiers except as described herein, a NOM Market Maker will earn a lower Tier 1 rebate as compared to the current $0.30 rebate.

With respect to the rebate tiers, the Exchange believes that the tiers are reasonable because although Tier 1 pays a lower rebate of $0.25 per contract as compared to today's NOM Market Maker rebate, as mentioned herein, Participants may add NOM Market Maker liquidity in either Penny Pilot or Non-Penny Pilot Options, up to 39,999 contracts per day in a month, to obtain that rebate. Today, the Exchange similarly allows Customers and Professionals to obtain rebates by transacting Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker or NOM Market Maker volume in Penny Pilot Options or Non-Penny Pilot Options which either adds or removes liquidity on NOM (known as ''Total Volume'') to qualify for a rebate. Likewise, the Exchange is proposing that NOM Market Makers may qualify for Rebates to Add Liquidity in Penny Pilot Options by transacting either Penny or Non-Penny Pilot Options. The Exchange believes that incentivizing NOM Market Makers to post liquidity in Penny and Non-Penny Pilot Options in

[24] Pursuant to this proposal, Tier 1 pays a rebate of $0.26 per contract to Participants that add Customer and Professional liquidity of up to 24,999 contracts per day in a month of Penny Pilot Options. There is no required minimum volume of Customer and Professional orders to qualify for the Customer or Professional Rebate to Add Liquidity in Penny Pilot Options.

[25] The Exchange pays $0.26 per contract for Customer and Professional Penny Pilot Options liquidity up to 24,999 contracts per day in a month (Tier 1), $0.40 per contract for Customer and Professional Penny Pilot Options liquidity between 25,000 and 34,999 contracts per day in a month (Tier 2) and $0.43 per contract for Customer and Professional Penny Pilot Options liquidity between 35,000 to 74,999 contracts per day in a month (Tier 3).

order to obtain a rebate is reasonable, equitable and not unfairly discriminatory because participants will benefit through increased order interaction and all NOM Market Makers have a similar opportunity to obtain the rebate. As mentioned, the Exchange believes that NOM Market Makers are provided an opportunity to qualify for a Tier 2 rebate, and obtain the same $0.30 per contract rebate as today, because they can aggregate Penny and Non-Penny Pilot Options volume. A Participant that adds NOM Market Maker liquidity in either Penny Pilot or Non-Penny Pilot Options of 40,000 to 89,999 contracts per day in a month would achieve the same $0.30 per contract rebate as NOM Market Makers receive today. The Exchange believes that these first two NOM Market Maker rebate tiers are reasonable because NOM Market Makers will be incentivized to be more aggressive in posting liquidity on NOM to achieve higher rebates or the same rebate. The Exchange believes that rebate Tiers 1 and 2 are equitable and not unfairly discriminatory because all NOM Market Makers may qualify for the tiers and every NOM Market Maker is entitled to a rebate solely by adding one contract of NOM Market Maker liquidity on NOM. Also, as mentioned, the NOM Market Maker would receive a higher rebate in Tier 1 as compared to a Firm, Non-NOM Market Maker or Broker-Dealer because of the obligations borne by NOM Market Makers as compared to other market participants.

The Exchange's proposal to pay a Tier 3 NOM Market Maker rebate of $0.32 per contract for Participants and its affiliates under Common Ownership that qualify for the Tier 7 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options is reasonable because as mentioned herein, NOM Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs unlike other market participants. A NOM Market Maker has the obligation to make continuous markets, engage in a 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 a course of dealings. Encouraging NOM Market Makers to add greater liquidity benefits all Participants in the quality of order interaction. By further incentivizing Participants to achieve the Tier 7 Customer and Professional Rebate to Add Liquidity, the Exchange is seeking to add a greater amount of Customer and Professional liquidity to the marketplace which benefits all Participants as well as reduce costs not only to Professionals and Customers in paying the Tier 7 Customer and Professional rebate, but also NOM Market Makers by offering the Tier 3 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options. The Exchange's proposal to pay a Tier 3 rebate of $0.32 per contract for Participants and its affiliates under Common Ownership that qualify for the Tier 7 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options is equitable and not unfairly discriminatory because all NOM Market Makers may qualify for the Tier 3 NOM Market Maker rebate provided they are able to qualify for the Tier 7 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options. As mentioned herein, there are various opportunities to achieve a Tier 7 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options.

The Exchange's proposal to pay a Tier 4 NOM Market Maker rebate of $0.32[26] or $0.38 per contract in EEM, GLD, IWM, QQQ, SPY, VXX and XLF if the Participant adds NOM Market Maker liquidity of 90,000 or more contracts per day in a month is reasonable because the Exchange believes that offering NOM Market Makers the ability to obtain higher rebates will encourage additional order interaction. The Exchange's proposal to pay a Tier 4 NOM Market Maker rebate of $0.32[27] or $0.38 per contract in EEM, GLD, IWM, QQQ, SPY, VXX and XLF if the Participant adds NOM Market Maker liquidity of 90,000 or more contracts per day in a month is equitable and not unfairly discriminatory because all NOM Market Makers may qualify for the Tier 4 NOM Market Maker rebate.

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to adopt specific pricing for EEM, GLD, IWM, QQQ, SPY, VXX and XLF because pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in the most actively traded options classes, in this case actively traded Penny Pilot Options.[28] The Exchange notes that EEM, GLD, IWM, QQQ, SPY, VXX and XLF are some of the most actively traded options in the U.S. The Exchange believes that this pricing will incentivize members to transact options on EEM, GLD, IWM, QQQ, SPY, VXX and XLF on NOM in order to obtain the higher $0.38 per contract rebate.

The Exchange believes that its proposal to increase the NOM Market Maker Non-Penny Pilot Fee for Adding Liquidity from $0.25 to $0.35 per contract and the Fee for Removing Liquidity from $0.82 to $0.85 per contract is reasonable because the Exchange desires to offer NOM Market Makers the opportunity to earn higher rebates by transacting Penny and Non-Penny Pilot Options, which order flow benefits other market participants. These fees will assist the Exchange in offering such rebates. The Exchange believes that its proposal to increase the NOM Market Maker Non-Penny Pilot Fee for Adding Liquidity from $0.25 to $0.35 per contract and the Fee for Removing Liquidity from $0.82 to $0.85 per contract is equitable and not unfairly discriminatory because the Exchange would continue to assess lower fees to NOM Market Makers, as compared to all other Participants except Customers,[29] as is the case today, because NOM Market Makers add value through continuous quoting[30] and the commitment of capital.

With respect to Tier 3, the Exchange proposes to pay the $0.32 per contract rebate to Participants or its affiliates under Common Ownership that qualify for Tier 7. The Exchange proposes to allow Participants to aggregate their volume with affiliates in order to qualify for this Tier of the NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options. The Exchange also proposes to permit Participants to allow NOM Participants under Common Ownership to aggregate their volume to qualify for the rebate. The Exchange believes that its proposal to permit Participants under Common Ownership to aggregate their volume is reasonable, equitable and not unfairly discriminatory because the Exchange would permit all Participants

[26] The Exchange would pay $0.32 per contract rebate for all other qualifying Penny Pilot Options excluding EEM, GLD, IWM, QQQ, SPY, VXX and XLF.

[27] The Exchange would pay $0.32 per contract rebate for all other qualifying Penny Pilot Options excluding EEM, GLD, IWM, QQQ, SPY, VXX and XLF.

[28] See Phlx's Pricing Schedule. *See also* the International Securities Exchange LLC's Fee Schedule. Both of these markets segment pricing by symbol.

[29] Customers do not pay Non-Penny Pilot Fees for Adding Liquidity and today are assessed an $0.82 per contract Non-Penny Pilot Fee for Removing Liquidity.

[30] 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.

the ability to aggregate for purposes of the rebates if certain Participants chose to operate under separate entities.

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. Customers have traditionally been paid the highest rebates offered by options exchanges. While the Exchange's proposal results in a Professional receiving a higher rebate as compared to a NOM Market Maker, in certain circumstances, the Exchange does not believe the proposed rebate tiers would result in any burden on competition as between market participants. The Exchange's proposal also aligns the Non-NOM Market Maker Penny Pilot Rebate to Add Liquidity with that of a Firm and Broker-Dealer. The Exchange's proposal to increase Non-Penny Pilot Options Fees for Adding and Removing Liquidity does not misalign the current fees as NOM Market Makers will continue to be assessed lower fees as compared to a Non-NOM Market Maker, Firm or Broker-Dealer because of the additional obligations that are required of NOM Market Makers as compared to these market participants. Customers continue to pay a lower Fee for Removing Liquidity in Non-Penny Pilot Options, which is currently the case for most fees on NOM which are either not assessed to a Customer or where a Customer is assessed the lowest fee because of the liquidity such order flow brings to the Exchange.

The Exchange believes that offering Customers and Professionals the proposed tiered rebates creates competition among options exchanges because the Exchange believes that the rebates may cause market participants to select NOM as a venue to send Customer and Professional order flow. The Exchange believes that incentivizing NOM Market Makers to post liquidity on NOM benefits market participants through increased order interaction.

The Exchange operates in a highly competitive market comprised of eleven U.S. options exchanges in which sophisticated and knowledgeable market participants can readily send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed rebate structure and tiers are competitive with rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace impacts the rebates present on the Exchange today and substantially influences the proposals set forth above.

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the 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 email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–041 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–2013–041. 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 such 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–2013–041, and should be submitted on or before April 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69130; File No. SR–C2–2013–012]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

March 13, 2013.

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 March 1, 2013, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') 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.

[31] 15 U.S.C. 78s(b)(3)(A)(ii).

[32] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.