meets or exceeds the proposed Incentive Program LMM performance standards for an assigned ETP, as determined by the Exchange. The Exchange further believes that the range of credits, which would be paid from the Exchange's general revenues, is fair and equitable in light of the LMM's obligations and proposed Incentive Program LMM performance standards, which would be higher than the standards for LMMs not participating in the Incentive Program.

Finally, for the reasons stated above, the Exchange believes that the Incentive Program would be designed to mitigate risks and concerns that FINRA Rule 5250 addresses and that the Commission should provide exemptive relief from Rule 102 of Regulation M for the Incentive Program.[38]

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. To the contrary, the Exchange believes that the Incentive Program, which is entirely voluntary, would encourage competition among markets for issuers' listings and among Market Makers for LMM assignments. The Incentive Program is designed to improve the quality of market for lower-volume ETPs, thereby incentivizing them to list on the Exchange. The competition for listings among the exchanges is fierce. The Exchange notes that BATS Exchange, Inc. (''BATS'') has already implemented a program similar to the Exchange's proposed Incentive Program,[39] and NASDAQ has received approval to do so as well.[40]

In addition, the Exchange believes that the Incentive Program will properly promote competition among Market Makers to seek assignment as the LMM for eligible ETPs. As described in detail above, the Exchange believes that market quality is significantly enhanced for ETPs with an LMM as compared to ETPs without an LMM. The Exchange believes that market quality would be even further enhanced as a result of the proposed Incentive Program LMM performance standards that the Exchange would impose on LMMs in the Incentive Program. The Exchange anticipates that the increased activity of these LMMs would attract other market participants to the Exchange, and could thereby lead to increased liquidity on the Exchange in such ETPs. For these reasons, the Exchange does not believe that the proposed rule change would impose any unnecessary or inappropriate burden on competition.

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 will:

(A) By order approve or disapprove the 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. The Commission previously received comments on SR–NYSEArca–2012–37, which proposed rule change was withdrawn by the Exchange,[41] and all such comments are available on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*.

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–2013–34 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–2013–34. 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 Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between 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–NYSEArca–2013–34 and should be submitted on or before May 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08444 Filed 4–10–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69321; File No. SR–NASDAQ–2013–062]

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

April 5, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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[38] *See supra* note 33.

[39] *See* Interpretation and Policy .02 of BATS Rule 11.8. *See also* Securities Exchange Act Release Nos. 66307 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR–BATS–2011–051) and 66427 (February 21, 2012), 77 FR 11608 (February 27, 2012) (SR–BATS–2012–011).

[40] *See* Securities Exchange Act Release No. 69195 (March 20, 2013), 78 FR 18393 (March 26, 2013) (SR–NASDAQ–2012–137).

[41] *See supra* note 4.

[42] 17 CFR 200.30–3(a)(12).

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 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 Fees for Removing Liquidity and the Customer Non-Penny Pilot Options [4] Rebate to Add Liquidity.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on April 1, 2013.

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. First, the Exchange proposes to amend the Customer,[5] Professional [6] and NOM Market Maker [7] Penny Pilot Options Rebates to Add Liquidity. Second, the Exchange proposes to increase the Professional, Firm,[8] Non-NOM Market Maker [9] and Broker-Dealer [10] Penny Pilot Options Fees for Removing Liquidity. Third, the Exchange proposes to amend the Customer Non-Penny Pilot Rebate to Add Liquidity.

Penny Pilot Rebates to Add Liquidity

The Exchange proposes to amend the Customer and Professional Rebates to Add Liquidity in Penny Pilot Options in order to continue to offer competitive Customer and Professional rebates to attract liquidity to the market. Currently, the Exchange has a seven tier Customer and Professional Rebate to Add Liquidity structure in Penny Pilot Options 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

[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'' 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'' 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 ''NOM Market Maker'' 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.

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

[9] The term ''Non-NOM Market Maker'' 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.

[10] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

	Monthly Volume	Rebate to Add Liquidity
Tier 6	Participant has Total Volume of 130,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer or Professional liquidity.	0.46
Tier 7	Participant (1) has Total Volume of 325,000 or more contracts per day in a month, or (2) adds Customer or Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month or (3) adds Customer or 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.	0.48

Today, the Exchange determines if a Participant qualifies for a Customer or Professional Rebate to Add Liquidity in Penny Pilot Options for purposes of Tiers 1 through 4 by totaling Customer and Professional contracts per day in month. The Exchange proposes to modify the manner in which Participants qualify for Tiers 1 through 4 of the Customer and Professional Rebate to Add Liquidity in Penny Pilot Options by amending the metric from a fixed average daily volume number to a percentage of total industry customer equity and ETF options average daily volume (''ADV'') in Tiers 1 through 4.[11] Currently, a Participant that adds Customer and Professional liquidity of up to 24,999 contracts per day in a month qualifies for the $0.26 per contract Tier 1 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options. The Exchange proposes to amend Tier 1 to require a Participant to add Customer and Professional liquidity of up to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month to earn a Tier 1 rebate. In addition, the Exchange proposes to lower the current Tier 1 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options from $0.26 to $0.25 per contract. Currently, a Participant that adds Customer and Professional liquidity of 25,000 to 34,999 contracts per day in a month qualifies for a $0.40 per contract Tier 2 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options. The Exchange proposes to amend Tier 2 to require a Participant to add Customer and Professional liquidity of 0.21% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month to receive a $0.40 per contract rebate. Currently, the Tier 3 Customer and Professional rebate pays $0.43 per contract to Participants that add Customer and Professional liquidity of 35,000 to 74,999 contracts per day in a month. The Exchange proposes to amend Tier 3 to require a Participant to add Customer and Professional liquidity of 0.31% to 0.49% of total industry customer equity and ETF option ADV contracts per day in a month to receive a rebate of $0.43 per contract. Currently, the Tier 4 Customer and Professional rebate pays $0.44 per contract to Participants that add Customer and Professional liquidity of 75,000 or more contracts per day in a month. The Exchange proposes to amend Tier 4 to require a Participant to add Customer and Professional liquidity of 0.5% or more of total industry customer equity and ETF option ADV contracts per day in a month. In addition, the Exchange proposes to increase the current Tier 4 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options from $0.44 to $0.45 per contract. The Exchange does not propose to amend the Customer and Professional Tier 5 rebate.[12] The Exchange proposes to lower the current Tier 6 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options, for Participants that have Total Volume[13] of 130,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer or Professional liquidity, from $0.46 to $0.45 per contract. The Exchange proposes to rename current Tier 7, which currently pays a $0.48 per contract rebate to Participants that have (1) Total Volume of 325,000 or more contracts per day in a month, or (2) add Customer or Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month or (3) add Customer or Professional liquidity of 60,000 or more contracts per day in a month and NOM Market Maker liquidity of 30,000 or more contracts per day per month, as Tier 8. The Exchange also proposes to amend the third prong of the qualifications for newly named Tier 8 to increase the amount of NOM Market Maker liquidity from 30,000 to 40,000 or more contracts per day per month.[14] The Exchange proposes to adopt a new Tier 7 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options which would pay $0.47 per contract to Participants that have Total Volume of 175,000 or more contracts per day in a month, of which 50,000 or more contracts per day in a month must be Customer or Professional liquidity. The Exchange also proposes to amend corresponding notes b and c to reflect the addition of new Tier 7 and renamed Tier 8 and refer to both tiers in the notes which describe the application of the Total Volume definition and Common Ownership aggregation.

The Exchange also proposes to amend the NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options to incentivize NOM Market Makers to post liquidity on the Exchange. Currently, the Exchange has a four tier NOM Market Maker Rebate to Add Liquidity structure in Penny Pilot Options as follows:

[11] Other options exchanges similarly utilize a number representative of the industry. *See* the Chicago Board Options Exchange, Incorporated's (''CBOE'') Fees Schedule. 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 also* NASDAQ OMX PHLX LLC (''Phlx'') which calculates Customer Rebates based on a certain number contracts transacted in a month with a tier structure based on relative contracts per month as a percentage of total national customer volume in multiply-listed options transacted on Phlx would serve to control and account for industry-wide movements. *See* Phlx's Pricing Schedule.

[12] The Tier 5 rebate pays a $0.42 per contract rebate to Participants that add (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.

[13] ''Total Volume'' is defined 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.

[14] The Exchange proposes to add the word ''contracts'' to the text of renamed Tier 8 for clarity.

	Monthly Volume	Rebate to Add Liquidity
Tier 1	Participant adds NOM Market Maker liquidity in Penny Pilot Options and Non-Penny Pilot Options of up to 39,999 contracts per day in a month.	$0.25
Tier 2	Participant adds NOM Market Maker liquidity in Penny Pilot Options and Non-Penny Pilot Options of 40,000 to 89,999 contracts per day in a month.	$0.30
Tier 3	Participant and its affiliate under Common Ownership qualifies for Tier 7 of the Customer and Professional Rebate to Add Liquidity in Penny Pilot Options.	$0.32
Tier 4	Participant adds NOM Market Maker liquidity of 90,000 or more contracts per day in a month	$0.32 or $0.38 in the following symbols EEM, GLD, IWM, QQQ, SPY, VXX and XLF

Currently, the Tier 1 NOM Market Maker Penny Pilot rebate pays $0.25 per contract to 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 amend the Tier 1 rebate to state that Participants that add NOM Market Maker liquidity in Penny Pilot Options of up to 39,999 contracts per day in a month qualify for the $0.25 per contract rebate. The Exchange would not include Non-Penny Pilot Options volume when calculating the rebate. Currently, the Tier 2 NOM Market Maker Penny Pilot rebate pays $0.30 per contract for Participants that add NOM Market Maker liquidity in Penny Pilot Options and Non-Penny Pilot Options of 40,000 to 89,999 contracts per day in a month. The Exchange proposes to amend the Tier 2 NOM Market Maker rebate to state that Participants that add NOM Market Maker liquidity in Penny Pilot Options of 40,000 to 109,999 contracts per day in a month qualify for the $0.30 per contract rebate. The Exchange would not include Non-Penny Pilot Options volume when calculating the rebate. The Exchange is proposing to amend the number of qualifying contracts in Tier 2 of the NOM Market Maker rebate from 40,000 to 89,999 contracts to 40,000 to 109,999 contracts. Today Participants that transact 90,000 or more Penny Pilot Options contracts qualify for the $0.32 per contract Tier 4 rebate, or in the case of certain symbols (BAC, GLD, IWM, QQQ, VXX and SPY) [15] a $0.38 per contract rebate. The proposed Tier 2 amendment would offer Participants that transact between 90,000 to 109,999 Penny Pilot Options contracts the Tier 2 rebate of $0.30 per contract. If a Participant transacts 110,000 or more Penny Pilot Options contracts the Participant would qualify for the proposed Tier 4 rebate as described more fully below. Currently, the Tier 3 NOM Market Maker Penny Pilot rebate pays $0.32 per contract to Participants and its affiliates under Common Ownership [16] that qualify for the Tier 7 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options. The Exchange proposes to amend Tier 3 to increase the rebate from $0.32 to $0.37 per contract and pay such a rebate to Participants and its affiliates under Common Ownership that qualify for the Tier 8 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options. The Exchange proposes to replace the reference to Tier 7 with renamed Tier 8. Finally, the Tier 4 NOM Market Maker rebate currently pays $0.32 [17] 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 proposes to amend Tier 4 to pay a rebate of $0.28 [18] or $0.38 in the following symbols, Bank of America Corporation (''BAC''),[19] SPDR Gold Shares (''GLD''), iShares Russell 2000 Index (''IWM''), PowerShares QQQ (''QQQ''), iPath S&P 500 VIX ST Futures ETN (''VXX''),[20] or $0.40 per contract in SPDR S&P 500 (''SPY'') [21] if Participants add NOM Market Maker liquidity in Penny Pilot Options of 110,000 or more contracts per day in a month. Today all NOM Market Maker liquidity counts toward qualifying for the Tier 4 NOM Market Maker rebate and the Exchange proposes to include only Penny Pilot Options as qualifying volume. Also, the number of contracts is increasing from 90,000 to 110,000 or more contracts per day in a month. As described above, Participants transacting between 90,000 to 109,999 Penny Pilot Options contracts would now qualify for the proposed NOM Market Maker Tier 2 rebate and would receive a $0.30 per contract rebate. The Exchange believes that offering NOM Market Makers the ability to obtain higher rebates in highly liquid symbols will encourage NOM Market Makers to post greater liquidity on NOM. In the instance that a Participant qualifies for both a Tier 3 and a Tier 4 NOM Market Maker Penny Pilot Option rebate, the Exchange would pay the Participant the Tier 3 rebate ($0.37 per contract) unless the Participant is eligible for an increased rebate in one of the following symbols: BAC, GLD, IWM, QQQ, VXX and SPY, then the Tier 4 rebate would be applied (either $0.38 or $0.40 per contract). The Exchange would not pay both rebates.

Penny Pilot Fees for Removing Liquidity

The Exchange proposes to amend the Fees for Removing Liquidity in Penny Pilot Options. Today, Professionals, Firms, Non-NOM Market Makers, NOM Market Makers and Broker-Dealers are currently assessed a $0.47 per contract Fee for Removing Liquidity in a Penny

[15] The Tier 4 symbols eligible for an increased NOM Market Maker rebate are described more fully below.

[16] The term ''Common Ownership'' shall mean Participants under 75% common ownership or control.

[17] Today, the Exchange pays a $0.32 per contract rebate for all other qualifying Penny Pilot Options excluding EEM, GLD, IWM, QQQ, SPY, VXX and XLF.

[18] The $0.28 per contract Tier 4 NOM Market Maker rebate would be paid on all qualifying Penny Pilot Options, excluding BAC, GLD, IWM, QQQ, VXX and SPY. This is a reduction from the current $0.32 per contract rebate paid on qualifying contracts. The Exchange proposes to amend the text of Tier 3 to change the word ''qualifies'' to ''qualify.''

[19] Participants transacting a qualifying number of BAC contracts today receive a $0.32 per contract Tier 4 NOM Market Maker rebate. Pursuant to this proposal, Participants transacting a qualifying number of BAC contracts would receive a $0.38 per contract Tier 4 NOM Market Maker rebate.

[20] The Exchange is eliminating EEM and XLF from the symbols eligible for the higher $0.38 per contract rebate for Participants that qualify for the Tier 4 NOM Market Maker Rebate to Add Liquidity. Participants that transact a qualifying number of EEM and XLF contracts would be entitled to the proposed $0.28 per contract Tier 4 NOM Market Maker rebate.

[21] The Exchange increased the rebate applicable for SPY for Participants qualifying for the Tier 4 NOM Market Maker Rebate to Add Liquidity from $0.38 to $0.40 per contract.

Pilot Option.[22] Today, this Penny Pilot Option Fee for Removing Liquidity is reduced by $0.01 per contract for Professionals, Firms, Non-NOM Market Makers, NOM Market Makers and Broker-Dealers for transactions in which the same NOM Participant or a NOM Participant under common ownership is the buyer and the seller. First, the Exchange proposes to increase the Penny Pilot Fee for Removing Liquidity for Professionals, Firms, Non-NOM Market Makers and Broker-Dealers from $0.47 to $0.48 per contract.[23] Second, the Exchange proposes to eliminate the $0.01 per contract reduction for Professionals, Firms, Non-NOM Market Makers, NOM Market Makers and Broker-Dealers for transactions in which the same NOM Participant or a NOM Participant under common ownership is the buyer and the seller.[24] The Exchange is increasing the Fees for Removing Liquidity in Penny Pilot Options so that it will be able to continue to offer additional rebates to Customers, Professionals and NOM Market Makers to attract liquidity and encourage order interaction on NOM.

Non-Penny Pilot Rebate to Add Liquidity

The Exchange proposes to amend the Customer Rebate to Add Liquidity in Non-Penny Pilot Options. Today, the Customer Rebate to Add Liquidity in Non-Penny Pilot Options, including NDX, is $0.80 per contract, unless a market participant adds Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month, then the Customer Rebate to Add Liquidity in Non-Penny Pilot Options is $0.81 per contract.[25] The Exchange proposes to eliminate the current Customer rebates that are specified for the Customer Rebate to Add Liquidity in Non-Penny Pilot Options in note 3 and instead pay a flat Customer Rebate to Add Liquidity in Non-Penny Pilot Options of $0.81 per contract. Today, no other market participant receives a Rebate to Add Liquidity in Non-Penny Pilot Options.

The Exchange also proposes to renumber note 2 as note 1 because current note 1 is being deleted from Chapter XV, Section 2 along with note 3, as described herein. The Exchange also made other technical amendments for grammatical purposes to the Chapter XV, Section 2 pricing.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[26] in general, and with Section 6(b)(4) of the Act,[27] 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 as described in detail below.

Penny Pilot Rebates to Add Liquidity

The Exchange's proposal to amend the Penny Pilot Rebates to Add Liquidity is reasonable because the Exchange will continue to offer competitive Customer and Professional rebates in order to attract liquidity to the market to the benefit of all market participants. The Exchange also 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 post liquidity will also benefit participants through increased order interaction.

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 continuing to pay Customers and Professionals tiered Rebates 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 Rebates to Add Liquidity in Penny Pilot Options of $0.25 per contract to Customers, Professionals and NOM Market Makers for transacting one qualifying contract as compared to other market participants.[28] 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 Professionals the same Penny Pilot Options Rebates to Add Liquidity as Customers is equitable and not unfairly discriminatory for the reasons which follow. 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. 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.''[29] 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.''[30] 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,

[22] The Customer Penny Pilot Fee for Removing Liquidity is $0.45 per contract. This fee is not being amended.

[23] The NOM Market Maker Penny Pilot Fee for Removing Liquidity will remain at $0.47 per contract although, similar to other market participants, NOM Market Makers will no longer receive a $0.01 per contract fee reduction for transactions in which the same NOM Participant or a NOM Participant under common ownership is the buyer and the seller. The elimination of the $0.01 per contract fee is discussed below.

[24] Today, Customers are not offered the $0.01 reduction to the Penny Pilot Option Fee for Removing Liquidity.

[25] NOM Participants under common ownership may aggregate their Customer volume to qualify for the increased Customer rebate.

[26] 15 U.S.C. 78f.

[27] 15 U.S.C. 78f(b)(4).

[28] Firms, Non-NOM Market Makers and Broker-Dealers receive a $0.10 per contract Penny Pilot Option Rebate to Add Liquidity.

[29] *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.

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

accomplishes this objective.[31] 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 and NOM Market Makers, as discussed herein.[32] 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[33] and the commitment of capital.

The Exchange's proposal to amend the Customer and Professional Rebates to Add Liquidity in Penny Pilot Options is reasonable 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. The Exchange's proposal to convert the qualification for Customer and Professional rebate Tiers 1 through 4 from a metric which calculates the fixed average daily volume to a percentage of total industry customer equity and ETF options ADV[34] is reasonable because it allows the Exchange to control and account for changes in the national industry-wide customer volume. Market participants will continue to receive rebates on Customer and Professional volume as is the case today and in most cases similar to the rebates that they receive today. The proposed tier percentages approximate the contract volume numbers that are captured in the Customer and Professional rebate tiers today. For example, Tier 2 of the Customer and Professional rebate requires Participants to transact between 25,000 and 34,999 contacts per day in a month. The proposed percentages of total industry customer equity and ETF volume for Tier 2, which are 0.21% to 0.30%, are approximately the volume numbers that are required today to qualify for a Tier 2 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options.[35] The same is true for Tiers 1 and 3 in terms of volume requirements. The Exchange proposes to reduce the qualifying number of contracts per day in a month with respect to the Tier 4 Customer and Professional rebates. Currently, a Participant must transact 75,000 or more contracts per day in a month to qualify for a Tier 4 Customer and Professional rebate. The Exchange is proposing to amend the Tier 4 Customer and Professional Rebate to Add Liquidity today in Penny Pilot Options to require Participants to transact 0.5% or more of total industry customer equity and ETF option ADV to qualify for the rebate. This percentage is a lower approximation of the volume required today to qualify for the Tier 4 rebate. With this proposal, Participants should be able to qualify for Tier 4 with less volume than is the case today. The Exchange's proposal to amend current Tier 7 to rename it Tier 8 and amend the third prong of the qualifications for newly named Tier 8 to increase the amount of NOM Market Maker liquidity from 30,000 to 40,000 or more contracts per day in a month should incentivize NOM Market Makers to post additional liquidity. Current Tier 7 allows Participants to achieve the rebate in a number of ways,[36] and this amendment only impacts one of the ways in which a Participant may obtain the rebate. With respect to the current Customer and Professional rebate tiers, the Exchange is lowering the Tier 1 rebate from $0.26 to $0.25 per contract. This would equate the Tier 1 rebate for Customers and Professionals with the Tier 1 rebate paid to NOM Market Makers. While the Exchange is reducing this rebate, it believes that Participants will continue to be incentivized to transact Customer and Professional Penny Pilot Orders on NOM to receive the rebate. 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. The first qualifying order is entitled to the rebate. The Exchange is increasing the rebate for the Tier 4 Customer and Professional rebate from $0.44 to $0.45 per contract. In combination with requiring less qualifying contracts, given today's current industry volume, and offering a higher rebate, the Exchange believes that Participants may be incentivized to transact the requisite number of orders to qualify for the Tier 4 Customer and Professional rebate in Penny Pilot Options. The Exchange also proposes to decrease the rebate offered on the Tier 6 Customer and Professional rebate[37] from $0.46 to $0.45 per contract. The Exchange believes that Participants will continue to be incentivized to transact Total Volume[38] of 130,000 or more contracts per day in a month of which 25,000 or more contracts must be Customer or Professional liquidity. In addition, the Exchange is offering Participants the opportunity to earn a higher rebate of $0.47 per contract with new Tier 7.[39] The Exchange believes that its proposal to adopt a new Tier 7 Customer and

[31] *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.

[32] The Fee for Removing Liquidity in Penny Pilot Options would be $0.48 per contract for all market participants, except Customers and NOM Market Makers. Customers are assessed $0.45 per contract and NOM Market Makers would continue to be assessed $0.47 per contract.

[33] 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.

[34] It is important to note that the Exchange utilizes data from OCC to determine the total industry customer equity and ETF options ADV figure. OCC classifies equity and ETF options volume under the equity options category. Also, both customer and professional orders that are transacted on options exchanges clear in the customer range at OCC and therefore both customer and professional volume would be included in the total industry figure to calculate rebate tiers. This is the case today for the Total Volume number that appears in Tiers 6 and 7 of the Customer and Professional rebate today, which includes Customer and Professional numbers in both the numerator and denominator of that percentage.

[35] The month to date volume number for March 2013, utilizing OCC total industry customer equity and ETF option ADV, is 11,248,136. Therefore, in this example, 0.31% would be ~34,869 contracts and 0.49% would be ~55,115 contracts per day.

[36] Today, a Participant may qualify for the Tier 7 rebate if the Participant (1) has Total Volume of 325,000 or more contracts per day in a month, or (2) adds Customer or Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month or (3) adds Customer or 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.

[37] In order to qualify for a Tier 6 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options, a Participant must have Total Volume of 130,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer or Professional liquidity.

[38] Total Volume is defined 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.

[39] Current Tier 7 of the Customer and Professional Penny Pilot Rebate to Add Liquidity is being renamed Tier 8.

Professional rebate which requires Participants to transact a Total Volume of 175,000 or more contracts per day in a month, of which 50,000 or more contracts per day in a month must be Customer or Professional liquidity is reasonable because it offers Participants an additional opportunity to earn a higher rebate.

The Exchange believes that the addition of new Tier 7 and the aforementioned amendments to the Customer and Professional Rebates to Add Liquidity in Penny Pilot Options are reasonable because these amendments should incentivize market participants to increase the amount of Customer and Professional orders that are transacted on NOM in order to obtain rebates. In addition, other exchanges employ similar incentive programs.[40] The Exchange believes that the addition of new Tier 7 and the aforementioned amendments to the Customer and Professional Rebates to Add Liquidity in Penny Pilot Options are equitable and not unfairly discriminatory because these amendments will be applied to all market participants in a uniform matter. Any market participant is eligible to receive the rebate provided they transact a qualifying amount of Customer and Professional volume in Penny Pilot Options.

The Exchange's proposal to amend corresponding notes b and c is reasonable, equitable and not unfairly discriminatory because the amendments conform the notes to the amendments in the Customer and Professional rebate tiers and provide clarity to the rebates.

The Exchange's proposal to amend the NOM Market Maker Rebates to Add Liquidity in Penny Pilot Options is reasonable because it should incentivize NOM Market Makers to post liquidity 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 earn the same or lower rebates as compared to Customers and Professionals.[41] The Exchange's proposal to amend Tiers 1 and 2 of the NOM Market Maker Penny Pilot Rebates to Add Liquidity to exclude Non-Penny Pilot Options is reasonable because the Exchange believes that permitting only Penny Pilot Options to count toward the rebate would continue to incentivize NOM Market Makers to post liquidity. The Exchange's proposal to amend the number of qualifying contracts in Tier 2 of the NOM Market Maker rebate from 40,000 to 89,999 contracts to 40,000 to 109,999 contracts is reasonable because Participants that transact between 90,000 to 109,999 contracts of Penny Pilot Options would be entitled to receive a $0.30 per contract rebate as compared to the proposed $0.28 per contract Tier 4 rebate, provided the liquidity is in a symbol other than BAC, GLD, IWM, QQQ, VXX and SPY, in which case the Participant would receive a decreased rebate compared to the $0.38 per contract rebate. The Exchange's proposal seeks to encourage Participants to add liquidity in BAC, GLD, IWM, QQQ, VXX and SPY in order to obtain a higher rebate of $0.38 or $0.40 (SPY) per contract and otherwise offers Participants a higher rebate between 90,000 to 109,999 contracts in other symbols. The Exchange's proposal to increase the Tier 3 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options[42] from $0.32 to $0.37 per contract is reasonable because the increased rebate will continue to incentivize NOM Market Makers to post liquidity in order to obtain the higher rebate. The Exchange's proposal to amend the text of Tier 3 of the NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options to refer to renamed ''Tier 8'' is reasonable because pursuant to this proposal, the Exchange renamed current Tier 7 of the Customer and Professional Rebate to Add Liquidity in Penny Pilot Options as Tier 8. The Exchange is simply amending the text of Tier 3 to continue to reference the same Customer and Professional rebate tier as today. Finally, the Exchange believes that its proposal to amend Tier 4 of the NOM Market Maker rebate in Penny Pilot Options is reasonable because the proposed amendments should continue to incentivize NOM Market Makers to post liquidity. The Exchange is amending the text of Tier 4 of the NOM Market Maker rebate to specify that the liquidity must be Penny Pilot Option liquidity (similar to proposed amendments to Tiers 1 and 2 of the NOM Market Maker rebate) and is increasing the number of qualifying contracts from 90,000 to 110,000 or more contracts per day in a month. The Exchange believes that the amendment is reasonable because while the Exchange is limiting the types of contracts that will qualify for the rebate and increasing the number of contracts, the Exchange is continuing to incentivize NOM Market Makers to post liquidity. The Exchange's proposal to amend the number of qualifying contracts in Tier 2 of the NOM Market Maker rebate from 40,000 to 89,999 contracts to 40,000 to 109,999 contracts is equitable and not unfairly discriminatory because the amendments applies uniformly to all Participants. The Exchange's amendment to the Tier 4 rebate is also reasonable because the Exchange is offering different rebate incentives to remain competitive while continuing to encourage NOM Market Makers to aggressively post liquidity on NOM. The $0.32 per contract rebate, applicable to all symbols other than BAC, GLD, IWM, QQQ, VXX and SPY, is being lowered to $0.28 per contract while the $0.38 per contract rebate will remain the same for GLD, IWM, QQQ and VXX. Participants transacting a qualifying number of Tier 4 EEM and XLF contracts would be entitled to receive the lower NOM Market Maker $0.28 per contract rebate instead of the $0.38 per contract rebate. Participants transacting a qualifying number of Tier 4 BAC contracts would be entitled to receive a higher NOM Market Maker $0.38 rebate instead of the current $0.32 per contract rebate they are entitled to receive today. Participants transacting the requisite number of SPY options to qualify for the Tier 4 NOM Market Maker rebate would receive an increased rebate of $0.40 per contract as compared to the $0.38 per contract rebate that they receive today. The Exchange believes the proposed symbols selected for higher rebates will assist the Exchange in remaining competitive. Although the rebate for all other symbols is being lowered to $0.28

[40] *See* CBOE Fees Schedule. 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 also* Phlx's Pricing Schedule at Section B which contains the Customer Rebate Program.

[41] The Tier 1 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options is the same rebate as the proposed Tier 1 Customer and Professional rebate in Penny Pilot Options.

[42] Today, in order to qualify for the Tier 3 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options, a Participant and its affiliate under Common Ownership (75% common ownership or control) must qualify for Tier 7 of the Customer and Professional Rebate to Add Liquidity in Penny Pilot Options.

per contract, for Participants qualifying for the Tier 4 rebate, the Exchange believes that this rebate remains competitive. Further, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to adopt specific pricing for BAC, GLD, IWM, QQQ, VXX and SPY 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.[43] The Exchange notes that BAC, GLD, IWM, QQQ, VXX and SPY 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 BAC, GLD, IWM, QQQ, VXX and SPY on NOM in order to obtain the higher $0.38, or in the case of SPY $0.40 per contract rebate if they transact the proposed qualifying number of Tier 4 contracts required for the NOM Market Maker rebate. The Exchange believes that it is reasonable to only pay a Participant that qualifies for both a Tier 3 and a Tier 4 NOM Market Maker Penny Pilot Option rebate, the Tier 3 rebate ($0.37 per contract) unless the Participant is eligible for an increased rebate in one of the following symbols: BAC, GLD, IWM, QQQ, VXX and SPY, then the Tier 4 rebate would be paid because the Exchange is offering to pay the Participant the higher rebate as between Tiers 4 and 5.

The Exchange believes offering NOM Market Makers the opportunity to receive higher rebates as compared to Firms, Non-NOM Market Makers and Broker-Dealers is equitable and not unfairly discriminatory because all NOM Market Makers may qualify for the NOM Market Maker rebate 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 the same rebate in Tier 1 as compared Customers and Professionals and a higher rebate in all other tiers as compared to a Firm, Non-NOM Market Maker or Broker-Dealer because of the obligations[44] borne by NOM Market Makers as compared to other market participants. Encouraging NOM Market Makers to add greater liquidity benefits all Participants in the quality of order interaction. The Exchange believes that it is equitable and not unfairly discriminatory to only pay a Participant that qualifies for both a Tier 3 and a Tier 4 NOM Market Maker Penny Pilot Option rebate, the Tier 3 rebate ($0.37 per contract) unless the Participant is eligible for an increased rebate in one of the following symbols: BAC, GLD, IWM, QQQ, VXX and SPY, then the Tier 4 rebate would be paid because the Exchange would uniformly pay only one NOM Market Maker rebate per month to each Participant.

Penny Pilot Fees for Removing Liquidity

The Exchange's proposal to increase the Professional, Firm, Non-NOM Market Maker and Broker-Dealer Fees for Removing Liquidity in Penny Pilot Options from $0.47 to $0.48 per contract is reasonable because the increase will afford the Exchange the opportunity to offer additional and increased rebates to Customers, Professionals and NOM Market Makers which should benefit all market participants through increased liquidity and order interaction. The Exchange believes that it is equitable and not unfairly discriminatory to increase Fees for Removing Liquidity in Penny Pilot Options for Professionals, Firms, Non-NOM Market Makers and Broker-Dealers because all market participants, other than Customers and NOM Market Makers will be assessed a uniform fee. As explained herein, Customers order flow brings unique benefits to the market through increased liquidity which benefits all market participants and NOM Market Makers add value through continuous quoting[45] and the commitment of capital.

The Exchange's proposal to eliminate the $0.01 per contract reduction for Professionals, Firms, Non-NOM Market Makers, NOM Market Makers and Broker-Dealers for transactions in which the same NOM Participant or a NOM Participant under Common Ownership is the buyer and the seller is reasonable because the Exchange does not believe it is necessary to continue to offer this incentive in order to remain competitive. Also, the Exchange prefers to reward market participants by offering additional rebates to incentivize Participants to send additional order flow to the Exchange and encourage NOM Market Makers to aggressively post liquidity on NOM. The Exchange believes that its proposal to eliminate the $0.01 per contract reduction for Professionals, Firms, Non-NOM Market Makers, NOM Market Makers and Broker-Dealers is equitable and not unfairly discriminatory because the Exchange would not offer such a reduction to any market participant.[46]

Non-Penny Pilot Rebate to Add Liquidity

The Exchange's proposal to amend the Customer Rebate to Add Liquidity in Non-Penny Pilot Options is reasonable because the Exchange proposes to eliminate the current Customer Rebate to Add Liquidity in Non-Penny Pilot Options, including NDX, of $0.80 or $0.81 per contract, depending on whether the Participant added Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month, would be replaced with a flat rebate of $0.81 per contract regardless of volume. The Exchange believes that offering Customers the opportunity to receive a $0.81 per contract Rebate to Add Liquidity on each transaction in a Non-Penny Pilot Option where liquidity was added will incentivize Participants to post Customer liquidity in Non-Penny Pilot Options. The Exchange believes its proposal to amend the Customer Rebate to Add Liquidity in Non-Penny Pilot Options is equitable and not unfairly discriminatory because it will apply uniformly to all Customers. Today, no other market participant receives a Rebate to Add Liquidity in Non-Penny Pilot Options. The Exchange believes that it is equitable and not unfairly discriminatory to only pay Customers a rebate in Non-Penny Pilot Options because Customer order flow is unique and benefits all market participants through the increased liquidity that such order flow brings to the market.

The Exchange's proposal to renumber note 2 as note 1 because current note 1 is being deleted from Chapter XV, Section 2 along with note 3 is reasonable, equitable and not unfairly discriminatory because these amendments will add clarity to the pricing.

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 the same or a higher rebate as compared to a NOM

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

[44] *See* note 33.

[45] *See* note 33.

[46] Today, Customers are not offered the $0.01 reduction to the Penny Pilot Option Fee for Removing Liquidity.

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 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's proposal to pay the higher Customer Rebate to Add Liquidity in Non-Penny Pilot Options on each transaction continues to incentivize Participants to direct Customer Non-Penny Pilot Option order flow to NOM to the benefit of all other market participants. The Exchange believes that Customer order flow is unique and therefore only paying a Customer a Rebate to Add Liquidity in Non-Penny Pilot Options is consistent with rebates at other options exchanges.[47] The Exchange's proposal to increase the Professional, Firm, Non-NOM Market Maker and Broker-Dealer Fees for Removing Liquidity in Penny Pilot Options does not misalign the current fees on NOM. The Exchange believes that other market participants benefit from incentivizing Customer order flow as explained herein. Customers continue to pay a lower Fee for Removing Liquidity in 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. Also, NOM Market Makers have obligations[48] to the market which are not borne by other market participants and therefore the Exchange believes that NOM Market Makers are entitled to a lower fee.

For the reasons specified herein, the Exchange does not believe this proposal will result in any burden on competition. 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 or rebate incentives at a particular exchange to be excessive or inadequate. 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.[49] 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–2013–062 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–2013–062. 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–2013–062, and should be submitted on or before May 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08468 Filed 4–10–13; 8:45 am]

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[47] *See* Phlx's Pricing Schedule with respect to Complex Orders in Section I and NASDAQ OMX BX, Inc.'s pricing for Non-Penny Pilot Options at Chapter XV, Section 2.

[48] *See* note 32.

[49] 15 U.S.C. 78s(b)(3)(A)(ii).

[50] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8271]

Notice of the Next CAFTA–DR Environmental Affairs Council Meeting

AGENCY: Department of State.

ACTION: Notice of the CAFTA–DR Environmental Affairs Council Meeting and request for comments.

SUMMARY: The Department of State and the Office of the United States Trade Representative are providing notice that the government parties to the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR) intend to hold the seventh meeting of the Environmental Affairs Council (Council) established under Chapter 17 of that agreement in Santo Domingo, Dominican Republic on May 9, 2013 at a venue to be announced. All interested persons are invited to attend