objectives of Section 6(b)(5) of the Act [10] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that its proposal to update Exchange Rule 11.25(a) to include IEX will ensure that the rule correctly identifies and publicly states on a market-by-market basis the specific network processor data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity, clarity and transparency.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposal would enhance competition because including all of the exchanges enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate,

[10] 15 U.S.C. 78f(b)(5).

it has become effective pursuant to Section 19(b)(3)(A) [11] of the Exchange Act and Rule 19b–4(f)(6) thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NSX–2016–06 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NSX–2016–06. 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–NSX–2016–06, and should be submitted on or before August 19, 2016.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17906 Filed 7–28–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78406; File No. SR–NASDAQ–2016–100]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ Options Market LLC Pricing at Chapter XV

July 25, 2016

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 July 12, 2016, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to modify the NASDAQ Options Market LLC's (''NOM'') pricing at Chapter XV, Sections 2(1) and 2(6) to: (i) Amend

[13] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

Customer[3] and Professional[4] Penny Pilot Options[5] Rebate to Add Liquidity tiers; (ii) amend the Customer and Professional Penny Pilot Options Fee for Removing Liquidity; and (iii) amend the Market Access and Routing Subsidy or ''MARS.''

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes three NOM pricing amendments at Chapter XV as described below in greater detail.

Pricing Change Number 1: Chapter XV, Section 2(1)—Customer and Professional Penny Pilot Options Rebate To Add Liquidity

The Exchange proposes to amend the Customer and Professional Penny Pilot Options Rebate to Add Liquidity tiers. Specifically, the Exchange proposes to amend the current qualifications related to the Tier 8 Customer and Professional Penny Pilot Options rebate. The proposed new Tier 8 qualifications should continue to attract Customer and Professional order flow to NOM. This order flow benefits other market participants through order interaction.

Today, the Exchange pays Customer and Professional Penny Pilot Options Rebates to Add Liquidity as follows:

	Monthly volume	Rebate to add liquidity ($)
Tier 1	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.10% of total industry customer equity and ETF option average daily volume (''ADV'') contracts per day in a month.	0.20
Tier 2	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month.	0.25
Tier 3	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month.	0.42
Tier 4	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month.	0.43
Tier 5	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.40% to 0.75% of total industry customer equity and ETF option ADV contracts per day in a month.	0.45
Tier 6[b]	Participant has Total Volume of 100,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer and/or Professional liquidity in Penny Pilot Options.	0.45
Tier 7[b]	Participant has Total Volume of 150,000 or more contracts per day in a month, of which 50,000 or more contracts per day in a month must be Customer and/or Professional liquidity in Penny Pilot Options.	0.47
Tier 8	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds: (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 30,000 or more contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS (defined below).	[c] 0.48

Today, the Exchange pays a $0.48 per contract rebate[6] to Participants that add

[3] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation which is not for the account of broker or dealer or for the account of a ''Professional.'' *See* Chapter XV.

[4] The term ''Professional'' or (''P'') means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

[5] The Penny Pilot was established in March 2008 and was last extended in 2016. *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); and 78037 (June 10, 2016), 81 FR 39299 (June 16, 2016) (SR–NASDAQ–2016–052) (notice of filing and immediate effectiveness extending the Penny Pilot through December 31, 2016). All Penny Pilot Options listed on the Exchange can be found at *http://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2016-15.*

[6] Note ''c,'' which is applicable to the Tier 8 rebate, provides additional rebates to Participants that execute certain volume on NOM. Participants that: (1) Add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.15% or more of total industry customer equity and ETF option ADV contracts per day in a month receive an additional $0.02 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (2) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.30% or more of total industry customer equity and ETF option ADV contracts per day in a month receive an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (3) (a) add Customer, Professional, Firm, Non-NOM Market

Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds: (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 30,000 or more contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS.[7] The Exchange is proposing to continue to pay a $0.48 per contract rebate provided, NOM Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds: (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.25% or more of total industry customer equity and ETF option ADV contracts per day in a month,[8] and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS.

The Exchange's proposal to amend the current qualification from 30,000 or more contracts per day in a month to 0.25% or more of total industry customer equity and ETF option ADV contracts provides Participants the ability to qualify for this tier in lower industry ADV months because the percentage would be tied to the industry volume and not represent a fixed number. If the industry volume were to increase in a given month, the Participant will have greater opportunity to execute a higher number of contracts because the entire industry has more volume available to execute.

For example in May 2016, 0.25% of total industry customer equity and ETF option ADV contracts represented approximately 28,000 contracts as compared to the requisite 30,000 contracts which Tier 8 currently requires. Because volume was lower in the month of May 2016, market participants would have been better able to continue to meet the Tier 8 requirement with a percentage tied to volume as compared to a fixed number of contracts.

The Exchange also proposes to amend note ''d,'' which applies to the Customer and Professional Penny Pilot Options Rebate to Add Liquidity tiers. Currently, note ''d'' provides that NOM Participants that qualify for MARS Payment Tiers[9] 1, 2 or 3 will receive an additional $0.05 per contract in addition to any Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tiers they may qualify for in that month, unless the Participant qualifies for a higher note ''c'' rebate,[10] in which case the Participants would receive the appropriate note ''c'' rebate they qualified for in that month.

The Exchange proposes to amend note ''d'' of Chapter XV, Section 2(1) to lower the additional rebate on Penny Pilot Options Customer and/or Professional Rebates to Add Liquidity from $0.05 to $0.03 per contract. The Exchange believes that despite lowering the additional incentive from $0.05 to $0.03 per contract, the note ''d'' incentive will continue to incentivize NOM Participants to participate in MARS and send qualifying order flow to the Exchange. The $0.03 per contract incentive would continue to attract Penny Pilot Option liquidity to NOM. All market participants benefit from the increased order interaction when more order flow is available on NOM.

Pricing Change Number 2: Chapter XV, Section 2(6)—MARS Pricing

The Exchange currently offers a Market Access and Routing Subsidy or ''MARS'' to qualifying NOM Participants in Chapter XV, Section 2(6). NOM Participants that have System Eligibility[11] and have executed the

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Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month, (b) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options above 0.15% of total industry customer equity and ETF option ADV contracts per day in a month, and (c) execute greater than 0.04% of Consolidated Volume (''CV'') via Market-on-Close/Limit-on-Close (''MOC/LOC'') volume within the NASDAQ Stock Market Closing Cross within a month receive an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in a month. Consolidated Volume means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of an equity member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. This note ''c'' is not being amended with this proposal.

[7] NOM Participants that have System Eligibility and have executed the requisite number of Eligible Contracts in a month are paid MARS rebates based on average daily volume in a month. *See* Chapter XV, Section 2(6).

[8] For reference, in May 2016, 0.25% of total industry customer equity and ETF option ADV equated to approximately 28,000 contracts.

[9] MARS Payments are currently based on a 3 tier rebate based on average daily volume (''ADV''). The Exchange pays a MARS Payment of $0.07 for ADV of 2,500 Eligible Contracts. The Exchange pays a MARS Payment of $0.09 for ADV of 5,000 Eligible Contracts. Finally, the Exchange pays a MARS Payment of $0.11 for AVD of 10,000 Eligible Contracts. The MARS Payment is paid on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System and meet the requisite Eligible Contracts ADV. *See* Chapter XV, Section 2(6).

[10] The note ''c'' incentive in Chapter XV, Section 2 provides that Participants that: (1) Add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.15% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.02 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (2) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.30% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (3) (a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month, (b) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options above 0.15% of total industry customer equity and ETF option ADV contracts per day in a month, and (c) execute greater than 0.04% of Consolidated Volume (''CV'') via Market-on-Close/Limit-on-Close (''MOC/LOC'') volume within the NASDAQ Stock Market Closing Cross within a month will receive an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in a month. Consolidated Volume shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of an equity member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. NOM Participants that qualify for a note ''c'' incentive receive the greater of the note ''c'' or note ''d'' incentive.

[11] To qualify for MARS, the Participant's routing system (''System'') would be required to: (1) Enable the electronic routing of orders to all of the U.S. options exchanges, including NOM; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with NOM's API to access current NOM match engine functionality. Further, the Participant's System would also need to cause NOM to be the

Continued

requisite number of Eligible Contracts in a month are paid rebates based on average daily volume (''ADV'') in a month. Today, MARS Payments are currently based on a 3 tier rebate based on ADV. The Exchange pays a MARS Payment of $0.07 for ADV of 2,500 Eligible Contracts. The Exchange pays a MARS Payment of $0.09 for ADV of 5,000 Eligible Contracts. Finally, the Exchange pays a MARS Payment of $0.11 for ADV of 10,000 Eligible Contracts. The MARS Payment is paid on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System and meet the requisite Eligible Contracts ADV.

The Exchange proposes to provide an additional incentive to the MARS Payment in Chapter XV, Section 2(6) by offering NOM Participants that qualify for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tier 8 [12] an additional $0.09 per contract rebate applicable to MARS Payment tiers. This $0.09 rebate would be in addition to any MARS Payment Tier [13] on MARS Eligible Contracts that the NOM Participant qualifies for in a given month. This incentive is intended to encourage NOM Participants to continue to send more order flow to the Exchange in either Penny Pilot or Non-Penny Pilot Options to qualify for the Customer and Professional Penny Pilot Options Tier 8 rebate to earn the additional MARS Payment. All market participants benefit from the increased order interaction when more order flow is available on NOM.

Pricing Change Number 3: Chapter XV, Section 2(1)—Penny Pilot Options Fee for Removing Liquidity

The Exchange is proposing to amend note ''4,'' which is currently reserved, to lower the Customer and Professional Penny Pilot Options Fees for Removing Liquidity from $0.50 [14] to $0.48 per contract, excluding SPY,[15] for NOM Participants that qualify for MARS Payment Tiers 1, 2 or 3.

The Exchange believes that offering NOM Participants the opportunity to lower the Customer and Professional Penny Pilot Options Fees for Removing Liquidity by qualifying for MARS Payment Tiers 1, 2 or 3 and transacting MARS Eligible Contracts,[16] will incentivize NOM Participants to send more MARS Eligible Contracts to NOM. All market participants benefit from the increased order interaction when more order flow is available on NOM.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[18] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [19]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [20] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[21] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [22]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [23] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Pricing Change Number 1: Chapter XV, Section 2(1)—Customer and Professional Penny Pilot Options Rebate to Add Liquidity

The Exchange's proposal to amend the current qualifications related to the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity is reasonable because the rebate should continue to attract Customer and Professional order flow to NOM. The additional Customer and Professional order flow to NOM benefits other market participants by providing additional liquidity with which to interact. Amending the current qualification from 30,000 or more contracts per day in a month to 0.25% or more of total industry customer equity and ETF option ADV contracts provides Participants the ability to qualify for this tier in months with lower industry ADV because the required number of contracts would be directly correlated to industry volume. With this proposal, members that consistently send order flow to the Exchange may continue to qualify for

one of the top three default destination exchanges for individually executed marketable orders if NOM is at the national best bid or offer (''NBBO''), regardless of size or time, but allow any user to manually override NOM as a default destination on an order-by-order basis. Any NOM Participant would be permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described above and satisfies NOM that it appears to be robust and reliable. The Participant remains solely responsible for implementing and operating its System. *See* Chapter XV, Section 2(6).

[12] With the proposal herein, to be eligible for Tier 8, a Participant is required to add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds: (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.25% or more of total industry customer equity and ETF option ADV contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS.

[13] *See* note 9 above.

[14] Currently, the Customer and Professional Penny Pilot Options Fees for Removing Liquidity are $0.50 per contract.

[15] Note ''3'' of the Pricing Schedule offers Customers and Professionals that remove liquidity in SPY Options a lower Customer and Professional Penny Pilot Options Fees for Removing Liquidity of $0.47 per contract.

[16] MARS Eligible Contracts include electronic Firm, Non-NOM Market Maker, Broker-Dealer or Joint Back Office orders that add liquidity, excluding Mini Options. *See* Chapter XV, Section 2(6).

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

[18] 15 U.S.C. 78f(b)(4) and (5).

[19] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[20] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[21] *See NetCoalition,* at 534–535.

[22] *Id.* at 537.

[23] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

Tier 8 rebates. The Exchange's proposal to amend the current qualification from 30,000 or more contracts per day in a month to 0.25% or more of total industry customer equity and ETF option ADV contracts provides Participants the ability to qualify for this tier in lower industry ADV months because the percentage would be tied to the industry volume and not represent a fixed number. If the industry volume were to increase in a given month the Participant will have greater opportunity to execute a higher number of contracts because the entire industry has more volume available to execute. The Exchange notes that utilizing a percentage as compared to a fixed number is not novel. Today, NOM Customer and Professional Penny Pilot Options Tiers 1 through 5 utilize a percentage of total industry customer equity and ETF option ADV contracts per day in a month.[24]

The Exchange's proposal to amend the current qualifications related to the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity is equitable and not unfairly discriminatory because all Participants are eligible to earn rebates. These rebates would be uniformly paid to all qualifying Participants.

The Exchange's proposal to amend note ''d,'' which applies to any Customer and Professional Penny Pilot Options Rebates to Add Liquidity tier, to lower the per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity incentive from $0.05 to $0.03 per contract is reasonable as discussed hereafter. Despite lowering the incentive, the reduced rebate would continue to attract Penny Pilot Options liquidity to NOM and also would continue to incentivize market participants to participate in MARS. All market participants benefit from the increased order interaction when more order flow is available on NOM.

The Exchange's proposal to amend note ''d,'' which applies to the additional Customer and Professional Penny Pilot Options Rebate to Add Liquidity tiers, to lower the additional per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity incentive from $0.05 to $0.03 per contract, is equitable and not unfairly discriminatory because all Participants are eligible to earn rebates and the rebates would be uniformly paid to all qualifying Participants. In addition, any Participant may qualify for MARS provided they have the requisite System Eligibility.

Pricing Change Number 2: Chapter XV, Section 2(6)—MARS Pricing

The Exchange's proposal to amend the MARS Payment to offer NOM Participants that qualify for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tier 8 an additional $0.09 per contract rebate in addition to any MARS Payment tier on MARS Eligible Contracts the NOM Participant qualifies for in a given month is reasonable because it will encourage NOM Participants to continue to send more order flow to the Exchange in either Penny Pilot or Non-Penny Pilot Options to qualify for the higher MARS Payment. All market participants benefit from the increased order interaction when more order flow is available on NOM.

The Exchange's proposal to amend the MARS Payment to offer NOM Participants that qualify for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tier 8 an additional $0.09 per contract rebate in addition to any MARS Payment tier on MARS Eligible Contracts the NOM Participant qualifies for in a given month is equitable and not unfairly discriminatory because any Participant may qualify for MARS provided they have the requisite System Eligibility. The Exchange will also uniformly pay MARS rebates to qualifying Participants on all MARS Eligible Contracts.

Pricing Change Number 3: Chapter XV, Section 2(1)—Penny Pilot Options Fee for Removing Liquidity

The Exchange's proposal to amend note ''4'' to lower the Customer and Professional Penny Pilot Options Fees for Removing Liquidity from $0.50 to $0.48 per contract, excluding SPY, provided NOM Participants qualify for MARS Payment Tiers 1, 2 or 3 is reasonable for the reasons which follow. NOM Participants will be encouraged to send additional electronic MARS Eligible Contracts[25] to NOM to obtain the fee reduction. This should in turn incentivize NOM Participants to send more order flow to NOM. All market participants benefit from the increased order interaction when more order flow is available on NOM. Excluding SPY from the note ''4'' discount is reasonable because SPY options are among the most highly liquid options. Today, the Exchange prices SPY differently from other Multiply-Listed Options.[26] Other options exchanges price differently by options symbol.[27]

The Exchange's proposal to amend note ''4'' to lower the Customer and Professional Penny Pilot Options Fees for Removing Liquidity from $0.50 to $0.48 per contract, excluding SPY, provided NOM Participants qualify for MARS Payment Tiers 1, 2 or 3 is equitable and not unfairly discriminatory because all Participants may qualify for MARS provided they have the requisite System Eligibility. The Exchange will also uniformly assess the discounted Customer and Professional Penny Pilot Options Fees for Removing Liquidity to qualifying Participants. Excluding SPY from the note ''4'' discount is equitable and not unfairly discriminatory because the Exchange pays discounts today for SPY options transactions. Today, note ''3'' of Chapter XV, Section 2(1) assesses Customers and Professionals that remove liquidity in SPY Options a $0.47 per contract discounted Customer and Professional Penny Pilot Options Fees for Removing Liquidity. Both notes ''3'' and ''4'' of Chapter XV, Section 2(1) are paid uniformly to all qualifying Participants.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed fee changes are competitive and do not impose a burden

[24] *See* Chapter XV, Section 2(1).

[25] *See* note 16 above.

[26] *See* current note ''3'' at Chapter XV, Section 2(1).

[27] *See* NASDAQ PHLX LLC's (''Phlx'') Pricing Schedule at Section I which contains pricing for options overlying SPY that is different from other Multiply Listed Options pricing in Section II of that Pricing Schedule.

on inter-market competition. Today, other venues offer rebate programs, discounted fees and incentives for maintain routing systems.[28] In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

Pricing Change Number 1: Chapter XV, Section 2(1)—Customer and Professional Penny Pilot Options Rebate To Add Liquidity

The Exchange's proposal to amend the current qualifications related to the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity does not impose an undue burden on intra-market competition because all Participants are eligible to earn rebates and these rebates would be uniformly paid to all qualifying Participants.

The Exchange's proposal to amend note ''d,'' which applies to the Customer and Professional Penny Pilot Options Rebate to Add Liquidity tiers, to lower the additional amount of the per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity from $0.05 to $0.03 per contract does not impose an undue burden on intra-market competition because all Participants are eligible to earn rebates and these rebates would be uniformly paid to all qualifying Participants. In addition, any Participant may qualify for MARS provided they have the requisite System Eligibility.

Pricing Change Number 2: Chapter XV, Section 2(6)—MARS Pricing

The Exchange's proposal to amend the MARS Payment to offer NOM Participants that qualify for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tier 8 an additional $0.09 per contract rebate, in addition to any MARS Payment tier on MARS Eligible Contracts the NOM Participant qualifies for in a given month, does not impose an undue burden on intra-market competition because any Participant may qualify for MARS provided they have the requisite System Eligibility. The Exchange will also uniformly pay MARS Payments to qualifying Participants on all Eligible Contracts.

Pricing Change Number 3: Chapter XV, Section 2(1)—Penny Pilot Options Fee for Removing Liquidity

The Exchange's proposal to amend note ''4'' to lower the Customer and Professional Penny Pilot Options Fees for Removing Liquidity from $0.50 to $0.48 per contract, excluding SPY, provided NOM Participants qualify for MARS Payment Tiers 1, 2 or 3 does not impose an undue burden on intra-market competition because all Participants may qualify for MARS provided they have the requisite System Eligibility. The Exchange will also uniformly assess the discounted Customer and Professional Penny Pilot Options Fees for Removing Liquidity to qualifying Participants. Excluding SPY does not impose an undue burden on intra-market competition because today, the Exchange offers a discount for SPY options, which discounts are uniformly paid to all Participants. Today, other options exchanges price differently by options symbol.[29]

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.[30]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–100 on the subject line.

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–100. 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 referto File Number SR–NASDAQ–2016–100, and should be submitted on or before August 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Robert W. Errett,

Deputy Secretary.

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[28] *See* Phlx's Pricing Schedule at Section B (Customer Rebate Program) and Section IV, Part E (MARS). Also, the International Securities Exchange LLC (''ISE'') offers a lower Market Maker Taker Fee for Select Symbols of $0.44 per contract for Market Makers with total affiliated Priority Customer Complex ADV of 150,000 or more contracts. *See* ISE's Fee Schedule.

[29] *See* note 27.

[30] 15 U.S.C. 78s(b)(3)(A)(ii).

[31] 17 CFR 200.30–3(a)(12).