SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77661; File No. SR–NASDAQ–2016–055]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options Pricing at Chapter XV, Section 2

April 20, 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 April 13, 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 amend Chapter XV, entitled ''Options Pricing,'' at Section 2, which governs pricing for Exchange members using the NASDAQ Options Market (''NOM''), the Exchange's facility for executing and routing standardized equity and index options.[3] The Exchange proposes to amend certain Penny Pilot Options[4] and Non-Penny Pilot Options pricing.

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 certain amendments to the NOM transaction fees set forth at Chapter XV, Section 2, for executing and routing standardized equity and index Penny Pilot Options and Non-Penny Pilot Options. Specifically, the Exchange proposes to (a) Modify the Non-Penny Pilot Options fees and rebates schedule (per executed contract) to make Customer[5] and Professional[6] Fee for Adding Liquidity, Fee for Removing Liquidity, and Rebate to Add Liquidity the same; (b) modify Tier 5 and Tier 8 that allow Customer and Professional to earn a Penny Pilot Options Rebate to Add Liquidity; (c) modify note ''c'' and note ''d'' to indicate that they have applicability to Customer and/or Professional and to increase the amount of additional rebate from $0.03 to $0.05, and modify note ''c'' to indicate an alternative requirement for earning a rebate; and (d) modify which eligible contracts qualify for the Market Access and Routing Subsidy (''MARS'') payment. The proposed changes are discussed below.

Today, the Exchange offers fees and rebates for Non-Penny Options to Customer, Professional, Firm,[7] Non-NOM Market Maker,[8] NOM Market Maker,[9] and/or Broker-Dealer[10]; and also offers fees and rebates for Penny Pilot Options. The current fees and rebates in Non-Penny-Pilot Options are as follows: the Fee for Adding Liquidity for Customer is N/A (not fee liable) and for Professional is $0.45; the Fee for Removing Liquidity for Customer is $0.85 and for Professional is $1.10; and the Rebate to Add Liquidity for Customer is $0.80[11] and for Professional is N/A (no rebate).

Today, the Exchange offers a Penny Pilot Options Rebate to Add Liquidity to Customers and Professionals that add liquidity per Tier 1 through Tier 8. These rebates range from $0.20 for Tier 1 to $ 0.48 for Tier 8 per contract,[12] and generally allow Participants[13] to earn a greater rebate by bringing more liquidity to the Exchange as specified in Tier 1 to Tier 8. Today, Tier 5 rebates are offered where 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 exchange traded fund (''ETF'') option average daily volume (''ADV'') contracts per day in a month. Or, in the alternative, Participant adds (1) Customer and/or Professional liquidity in Penny Pilot Options and/or

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

[2] 17 CFR 240.19b–4.

[3] References in this proposal to Chapter and Series refer to NOM rules, unless otherwise indicated.

[4] The Penny Pilot was established in March 2008 and was last extended in 2015. *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 75283 (June 24, 2015), 80 FR 37347 (June 30, 2015) (SR–NASDAQ–2015–063) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016). All Penny Pilot Options listed on the Exchange can be found at *http://www.nasdaqtrader.com/Micro.aspx?id=phlx.*

[5] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Chapter I, Section 1(a)(48)).

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

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

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

[9] ''NOM Market Maker'' means 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. ''Participant'' means a firm, or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of participating in options trading on NOM as a ''Nasdaq Options Order Entry Firm'' or ''Nasdaq Options Market Maker'', *see* Chapter I, Section (a)(40).

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

[11] Note ''1'', which is applicable to Rebate to Add Liquidity for Customer, states: [1] A Participant that qualifies for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 2, 3, 4, 5 or 6 in a month will receive an additional $0.10 per contract Non-Penny Pilot Options Rebate to Add Liquidity for each transaction which adds liquidity in Non-Penny Pilot Options in that month. A Participant that qualifies for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 7 or 8 in a month will receive an additional $0.20 per contract Non-Penny Pilot Options Rebate to Add Liquidity for each transaction which adds liquidity in Non-Penny Pilot Options in that month.

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

[13] ''Participant'' (also known as ''NOM Participant'') includes Options Market Makers and Options Order Entry Firms that are registered to enter orders into the System.

Non-Penny Pilot Options of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program (''ISP'') set forth in NASDAQ Rule 7014, and (3) the Participant executed at least one order on NASDAQ's equity market. Today, Tier 8 rebates are offered where 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) the Participant has certified for the ISP set forth in NASDAQ Rule 7014. No change is proposed to the current Tier 5 and Tier 8 rebates; these Rebates to Add Liquidity remain at $0.45 and $0.48, respectively.[14] Rather, as discussed below, the Exchange proposes to delete reference to the ISP, which is being deleted.[15]

Today, notes ''a'' through ''d'' apply to certain rebate Tiers. Note ''a'', which references ISP,[16] is currently applicable to Tier 5 and Tier 8; the Exchange proposes to delete note ''a'' as the ISP references are no longer needed. Note ''c'', which indicates what liquidity Participants need to bring to the Exchange in order to earn an additional rebate amount, is applicable to Tier 8; the Exchange proposes to modify note ''c'' to change the available liquidity-enhancing ways to earn addition rebates. The Exchange proposes to make note ''d'' as amended, which discusses additional rebate opportunity through MARS liquidity, applicable to Professionals.[17]

Today, for the purpose of qualifying for MARS payment, eligible contracts may include Firm, Non-NOM Market Maker, Broker-Dealer, Joint Back Office or ''JBO'' or Professional equity option orders that add liquidity and are electronically delivered and executed. In light of the harmonization of Customer and Professional, described below, the Exchange is removing reference to Professional.

Change 1—Non-Penny Pilot Options: Customer and Professional, MARS Eligible Contracts

The Exchange proposes to modify the Non-Penny Pilot Options fees and rebates schedule (per executed contract) to harmonize the Customer and Professional Fee for Adding Liquidity, Fee for Removing Liquidity, and Rebate to Add Liquidity. The Exchange proposes to harmonize or make the relevant fees and rebates for Customer and Professional the same: For Fee for Adding Liquidity Customer and Professional will each not pay anything (currently, Professional pays $0.45); for Fee for Removing Liquidity Customer and Professional will each pay $0.85 (currently, Professional pays $1.10); and for Rebate to Add Liquidity Customer and Professional will each pay [sic] $0.80 (currently, Professional is not subject to a rebate for Non-Penny Pilot Options). The Exchange believes that this incentivizes Customers and Professional to continue to transact Non-Penny Pilot Options on the Exchange.

Following on the harmonization of Customer and Professional in fees and rebates, the Exchange proposes to delete Professional from the types of MARS contracts that qualify for MARS payment.[18] This is because at this time Customer equity option orders are not included in the list of contracts that are eligible for MARS payment.[19] Removal of Professional thus harmonizes the treatment of Customer and Professional vis a vis MARS.[20]

Change 2—Penny Pilot Options: Modify Tier 5 and Tier 8

The Exchange proposes to modify Tier 5 and Tier 8 that allow Customer and Professional to earn a Penny Pilot Options Rebate to Add Liquidity.

The Exchange proposes to amend Tier 5 of the Rebate to Add Liquidity by deleting the second volume alternative for this Tier, which requires, among other things, that the Participant has certified for the ISP set forth in NASDAQ Rule 7014. The Exchange proposes to amend Tier 8 of the Penny Pilot Options Rebate to Add Liquidity by updating a volume alternative which also requires that Participant has certified for the ISP. In lieu of the ISP reference in Tier 8, the Exchange proposes to state that Participant may provide liquidity in all securities through one or more of its NASDAQ Market Center ''MPIDs'' [21] that represent 1.00% or more of Consolidated Volume [22] in a month or qualifies [sic] for ''MARS''. MARS is the Market Access and Routing Subsidy, which offers rebates to certain NOM Participants that have routed the requisite number of contracts that were executed on NOM.[23]

Commensurate with deletion in Tier 5 and Tier 8 of reference to ISP, the Exchange also proposes to delete applicable note ''a''. This note applies only to Tier 5 and Tier 8 and, similarly, refers to ISP. As such, note ''a'' is no longer needed and is being deleted.

The Exchange believes that deleting reference to ISP in Tier 5 and Tier 8 Customer and Professional Penny Pilot Option Rebate to Add Liquidity and updating how one can qualify for rebates will continue to incentivize market participants to send order flow to NOM.

Change 3—Penny Pilot Options: Modify Note ''c'' and Note ''d''

The Exchange proposes to modify note ''c'' and note ''d'' to indicate that they apply to Customer and Professional

[14] No change is proposed to the rebates offered by achieving liquidity requirements set by the other Tiers (1, 2, 3, 4, 6, 7). As such, other than to note that these tiers continue to offer progressively larger rebates, these tiers are not discussed in the proposal.

[15] *See* NASDAQ–2016–051 (filed as immediately effective proposal deleting ISP). For the proposal to initiate ISP, *see also* Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ–2010–141) (notice of filing and immediate effectiveness).

[16] Note ''a'' states: [a] For purposes of Tiers 5 and 8, the Exchange will allow a NOM Participant to qualify for the rebate if a NASDAQ member has certified for the Investor Support Program and executed at least one order on NASDAQ's equity market.

[17] Note ''d'' will continue to be applicable to Customer Rebate to Add Liquidity in Penny Pilot Options.

[18] 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 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. Chapter XV, Section 2(6).

[19] *See* Chapter XV, Section 2(6).

[20] The Exchange notes that Customer and Professional fees and rebates applicable to Penny Pilot Options are already harmonized. The proposed change will treat Customer and Professional similarly for Penny Pilot Options as well as Non-Penny Pilot Options.

[21] ''MPID'' is the market participant identifier, which is a unique four-letter mnemonic assigned to each Participant in the Nasdaq Market Center. *See* NASDAQ Rule 4701(i).

[22] ''Consolidated volume'' means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities, excluding executed orders with a size of less than one round lot.

[23] *See* Chapter XV, Section 2(6).

and to increase the amount of additional rebate from $0.03 to $0.05. The Exchange also proposes to modify note ''c'' to indicate additional ways to earn additional rebate.

The Exchange proposes language in note ''d'' to ensure that the Penny Pilot Options [sic] to Add Liquidity is for Professional as well as for Customer. Note ''d'' states, as proposed, that NOM Participants that qualify for MARS Payment Tiers 1, 2, or 3 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, in addition to qualifying Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tiers 1–8.[24] To further incentivize Customers and Professionals to qualify for MARS Payment Tiers and to bring flow to the Exchange, in note ''d'' the Exchange proposes that for each transaction which adds liquidity in Penny Pilot Options in that month instead of receiving an additional $0.03 per contract one can receive an ''additional $0.05 per contract''; and that the Rebate to Add Liquidity is for ''Customer and/or Professional''.

Note ''c'' gives three different ways for Participants that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non- Penny Pilot Options to receive additional Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity. Subsection (1), (2), and (3) in note ''c'', as proposed, offers additional rebates that are $0.02, $0.05, and $0.05 (changed from $0.03) per contract, respectively. To incentivize Customers and Professionals to qualify for bringing flow to the Exchange, in note ''c'' the Exchange proposes, similarly to the rebate and fees change, that each of the subsections is applicable to both ''Customer and/or Professional''. To further incentivize bringing flow to the Exchange, the Exchange enhances the means in subsection (3)[25] to earn additional rebates, and states Participants that: (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'')[26] via Market-on-Close/Limit-on-Close (''MOC/LOC'')[27] volume within the NASDAQ Stock Market Closing Cross 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 a month. The Exchange believes that this proposed change, which includes a new methodology to earn rebates through CV via MOC/LOC, will incentivize bringing additional flow to the Exchange.

As proposed, in Chapter XV, Section 2, fees and rebates in Non-Penny Pilot Options (per executed contract), including Customer and Professional; and MARS Eligible Contracts, will read as follows:

FEES AND REBATES

[Per executed contract]

	Customer	Professional	Firm	Non-NOM market maker	NOM market maker	Broker-dealer
Non-Penny Pilot Options:						
Fee for Adding Liquidity	N/A	N/A	$0.45	$0.45	$0.35	$0.45
Fee for Removing Liquidity	0.85	0.85	1.10	1.10	[4] 1.10	1.10
Rebate to Add Liquidity	[1] 0.80	[1] 0.80	N/A	N/A	N/A	N/A
MARS Eligible Contracts						

MARS Payment would be made to NOM Participants that have System Eligibility and have routed the requisite number of Eligible Contracts daily in a month, which were executed on NOM. For the purpose of qualifying for the MARS Payment, Eligible Contracts may include Firm, Non-NOM Market Maker, Broker-Dealer, or Joint Back Office or ''JBO'' equity option orders that add liquidity and are electronically delivered and executed. Eligible Contracts do not include Mini Option orders.

As proposed, in Chapter XV, Section 2 Tier 5 and Tier 8 in the Rebate to Add Liquidity will read as follows:

Monthly	Volume	Rebate to add liquidity
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

[24] Note ''d'' indicates that NOM Participants that qualify for a note ''c'' incentive will receive the greater of the note ''c'' or note ''d'' incentive.

[25] Current subsection (3) requires that a Participant: (a) [sic] 0.75% of total industry customer equity and ETF option ADV contracts per day in a month and (b) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.10% or more of Consolidated Volume in a month.

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

[27] MOC/LOC, as set forth in NASDAQ Rule 4754, represents the volume in the NASDAQ Stock Market Closing Cross that allows market participants to contribute order flow that will result in executions at the official closing price for the day in the NASDAQ listed security. An ''MOC Order'' is an order type entered without a price that may be executed only during the NASDAQ Closing Cross, which refers to the equity closing cross. An ''LOC Order'' is an order type entered with a price that may be executed only in the NASDAQ Closing Cross.

Monthly	Volume	Rebate to add liquidity
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

As proposed, in Chapter XV, Section 2 note ''c'' and note ''d'' will read as follows:

[c] 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 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 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.

[d] NOM Participants that qualify for MARS Payment Tiers 1, 2 or 3 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, in addition to qualifying Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tiers 1–8. NOM Participants that qualify for a note ''c'' incentive will receive the greater of the note ''c'' or note ''d'' incentive.

In terms of housekeeping changes, the Exchange is correcting a typographical error in Non-Penny Options fees and rebates by adding ''N/A'' to make it even clearer that Broker-Dealer does not get a Rebate to Add Liquidity (in fact, this section of Rebate to Add Liquidity does not currently indicate any rebate to Broker-Dealer).

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act,[28] in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,[29] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which The Exchange operates or controls, 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.'' [30] Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [31] (''NetCoalition'') the DC 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.[32] 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.'' [33]

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' . . . .'' [34] 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.

The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory for the following reasons.

Change 1—Non-Penny Pilot Options: Customer and Professional, MARS Eligible Contracts

In Change 1, the Exchange proposes to modify the Non-Penny Pilot Options fees and rebates schedule (per executed contract) to harmonize Customer and Professional Fee for Adding Liquidity, Fee for Removing Liquidity, and Rebate to Add Liquidity. In particular, the Exchange proposes to harmonize or make the relevant fees and rebates for Customer and Professional the same for Fee for Adding Liquidity, Fee for Removing Liquidity, and Rebate to Add Liquidity. The Exchange believes that

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(4), (5).

[30] Securities Exchange Act Release No. 51808 at 37499 (''Regulation NMS Adopting Release'' at Securities Exchange [sic] Release No. 34–51808 (June 29, 2005), 70 FR 37496 (File No. S7–10–04)).

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

[32] *See id.* at 534–535.

[33] *See id.* at 537.

[34] *Id.* at 539 (quoting Securities Exchange Commission at [sic] Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) at 73 FR at 74782–74783).

this incentivizes Customers and Professional to continue to transact Non-Penny Pilot Options on the Exchange.

Similar to the harmonization of Customer and Professional in fees and rebates, the Exchange proposes to delete Professional from the types of MARS contracts that quality for MARS payment. This is because at this time Customer equity option orders are not included in the list of contracts that are eligible for MARS payment.[35] Removal of Professional thus harmonizes the treatment of Customer and Professional vis a vis MARS.

The proposed rule change is reasonable because it continues to encourage market participant behavior through the fees and rebates system, which is an accepted methodology among options exchanges.[36] It is reasonable to encourage Customer and Professional by putting them in the same fees and rebates position, as discussed above, in regards to Non-Penny Pilot Options.[37] It is also reasonable to carry the Customer and Professional harmonization through to the MARS eligibility, so that Customer and Professional are treated the same.

The Exchange believes it is equitable and not unfairly discriminatory to make the noted harmonization changes regarding Customer and Professional, who bring liquidity to the Exchange. Such liquidity attracts other market participants. Customer and Professional liquidity benefits all market participants by providing more trading opportunities, which attract Market Makers.[38] An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Also, the Exchange believes that it is equitable and not unfairly discriminatory to make MARS eligibility the same for Customer and Professional. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will be applied uniformly to all Customers and Professionals. The proposed fees and rebates and MARS change enhances the competitiveness of the Exchange by continuing to incentivize bringing flow to the Exchange.

Change 2—Penny Pilot Options: Modify Tier 5 and Tier 8

In Change 2, the Exchange's proposal to delete reference to a program that is being deleted, ISP, in Tiers 5 and 8 of the Rebate to Add Liquidity and to substitute Consolidated Volume or MARS volume in Tier 8, and to delete note ''a'' that refers to ISP, is reasonable because NOM Participants will continue to be incentivized to send more order flow to NOM. The Exchange believes that deletion or substitution of reference to ISP is reasonable because the ISP program is being deleted and the reference to ISP in the Payment Schedule as discussed is no longer valid.

The proposed deletion of the ISP reference is reasonable because the program is being retired.[39] Substituting ISP reference in Tier 8 with reference to Consolidated Volume or MARS volume is reasonable because it is designed to attract volume to the Exchange. With this proposal, in order to qualify for the highest Tier 8 rebate ($0.48), a NOM Participant must have added 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, in the alternative, Participant must have added: (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) must have, as proposed, either added liquidity in all securities through one or more Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month, or must qualify for MARS. This brings liquidity to the Exchange. The proposed rule change is reasonable because it continues to encourage market participant behavior through the fees and rebates system, which is an accepted methodology among options exchanges.[40] The Tiers and the proposed change to Tier 8 continue to reflect the progressively increasing rebate requirements that offer incentives to earn the highest Rebate to Add Liquidity by bringing the most order flow to the Exchange.

The Exchange believes it is equitable and not unfairly discriminatory to continue to offer rebate Tiers, and in particular proposed Tier 8, in order to incentivize Professionals and Customers to bring liquidity to the Exchange. Such liquidity, and in particular Customer liquidity, attracts other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attract Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Also, the Exchange believes that it is equitable and not unfairly discriminatory to offer Tier 8 incentives to certain NOM Participants because the ability to earn Tier 8 rebates, as well as the requirements to earn such rebates, would apply uniformly to qualifying NOM Participants. By attracting flow to the Exchange, the proposed Tier 8 liquidity goals enhance the competitiveness of the Exchange.

Change 3—Penny Pilot Options: Modify Note ''c'' and Note ''d''

In Change 3, the Exchange proposes to modify note ''c'' and note ''d'' to indicate that they have applicability to Customer and/or Professional and to increase the amount of additional rebate from $0.03 to $0.05. The Exchange also proposes to modify note ''c'' to indicate enhanced ways to earn additional rebate.

It is reasonable to incentivize Participants to bring flow to the Exchange. To further incentivize Participants on NOM to bring flow to the Exchange, in note ''d'' the Exchange proposes that if the Participants qualify for MARS Payment Tiers 1, 2, or 3 and to [sic] bring flow to the Exchange, then such Participants will receive an additional $0.05 per contract (now $0.03) Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity (in addition to qualifying Penny Pilot Options Customer [sic] Rebate to Add Liquidity Tiers 1–8). To incentivize qualifying for additional rebate by bringing flow to the Exchange,

[35] *See* Chapter XV, Section 2(6).

[36] *See, e.g.,* fee and rebate schedules of other options exchanges, including, but not limited to, NYSE ARCA (''ARCA'') *https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf,* and BATS BZX OPTIONS (''BATS'') *http://www.batsoptions.com/support/fee_schedule/bzx/. See also* NASDAQ BX Options Market (''BX Options''), NASDAQ PHLX LLC (''Phlx''), and Chicago Board Options Exchange (''CBOE'').

[37] The Exchange notes that Customer and Professional fees and rebates applicable to Penny Pilot Options are already harmonized. The proposed change will treat Customer and Professional similarly for Penny Pilot Options as well as Non-Penny Pilot Options.

[38] Market Makers on the Exchange are valuable market participants that provide liquidity in the marketplace. They also have obligations to the market and regulatory requirements, which normally do not apply to other market participants.

[39] *See* NASDAQ–2016–051 (filed as immediately effective proposal deleting ISP).

[40] *See, e.g.,* fee and rebate schedules of other options exchanges, including, but not limited to, NYSE ARCA (''ARCA'') *https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf,* and BATS BZX OPTIONS (''BATS'') *http://www.batsoptions.com/support/fee_schedule/bzx/. See also* NASDAQ BX Options Market (''BX Options''), NASDAQ PHLX LLC (''Phlx''), and Chicago Board Options Exchange (''CBOE'').

in note ''c'' the Exchange reasonably proposes, similarly to the rebate and fee change, that each of the subsections is applicable to both ''Customer and/or Professional''. To further incentivize bringing flow to the Exchange, the Exchange enhances the means in subsection (3) of note ''c'' to earn additional rebates and states that Participants can receive an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity through: (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 CV via MOC/LOC volume within the NASDAQ Stock Market Closing Cross in a month. It is reasonable for the Exchange to further incentivize bringing flow to the Exchange by proposing a new methodology to earn option rebates through CV via MOC/LOC within the NASDAQ Stock Market Closing Cross.

The proposed rule change is reasonable because it continues to encourage market participant behavior through the fees and rebates system, which is an accepted methodology among options exchanges. It is reasonable to incentivize bringing flow to the Exchange by offering additional or enhanced ways to bring liquidity to the Exchange and earn payment for it. It is also reasonable to make sure that Customer and Professional are harmonized and treated the same.

The Exchange believes it is equitable and not unfairly discriminatory to make the changes to note ''c'' and note ''d'' because they will be applied uniformly across all similarly situated Participants, while promoting bringing liquidity to the Exchange.

Such liquidity attracts other market participants. Customer and Professional liquidity benefits all market participants by providing more trading opportunities, which attract Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The proposed changes enhance the competitiveness of the Exchange by continuing to incentivize bringing flow to the Exchange.

The Exchange desires to continue to incentivize members and member organizations, through the Exchange's rebate and fee structure, to select the Exchange as a venue for bringing liquidity and trading by offering competitive pricing. Such competitive, differentiated pricing exists today on other options exchanges. The Exchange's goal is creating and increasing incentives to attract orders to the Exchange that will, in turn, benefit all market participants through increased liquidity at the Exchange.

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.

The Exchange 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 and rebate changes in this market may impose any burden on competition is extremely limited. In this instance, the proposed changes regarding the Non-Penny Pilot Options fees and rebates, Tiers 5 and 8, notes ''c'' and ''d'', and MARS eligibility do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues.

The proposed changes reflect this competition and the Exchange's desire to offer better fees and rebates in return for market-improving liquidity, which is ultimately limited by the Exchange's need to cover costs and make a profit. Thus, the Exchange must carefully adjust its fees and rebates with the understanding that if the proposed changes are unattractive to market participants, it is likely that the Exchange will lose market share to other exchanges and off-exchange venues as a result.

The Exchange is proposing changes regarding the Non-Penny Pilot Options fees and rebates, Tiers 5 and 8, notes ''c'' and ''d'', and MARS eligibility. The Exchange believes that such proposed changes will support liquidity on the Exchange and are procompetitive, since any other market is free to provide similar, if not better, fees and rebates should they choose to do so. For these reasons, the Exchange does not believe that the proposed changes will impair the ability of its own members or competing order execution venues to maintain their competitive standing in the financial markets.

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.[41]

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–2016–055 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.

[41] 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR–NASDAQ–2016–055. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2016–055 and should be submitted on or before May 17, 2016.

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

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–09597 Filed 4–25–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77658; File No. SR–NYSEMKT–2016–45]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the NYSE Amex Options Fee Schedule

April 20, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 11, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 NYSE Amex Options Fee Schedule ("Fee Schedule"). The Exchange proposes to implement the fee change effective April 11, 2016. The proposed change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The purpose of this filing is to amend Sections I. E. and G. of the Fee Schedule[4] to adjust fees and credits payable, effective on April 11, 2016.

Proposed changes to ACE Program

Section I.E. of the Fee Schedule describes the Exchange's ACE Program, which features five tiers expressed as a percentage of total industry Customer equity and Exchange Traded Fund ("ETF") option average daily volume[5] and provides two alternative methods through which Order Flow Providers (each an "OFP") may receive per contract credits for Electronic Customer volume that the OFP, as agent, submits to the Exchange.

The Exchange proposes to modify the ACE Program by increasing certain of the credits available for Tiers 2 through 5 as illustrated in the table below, with proposed additions appearing underscored and proposed deletions appearing in brackets:

Tier	ACE Program—Standard options			Credits payable on customer volume only		
	Customer electronic ADV as a % of industry customer equity and ETF options ADV	OR	Total electronic ADV (of which 20% or greater of the minimum qualifying volume for each tier must be customer) as a % of industry customer equity and ETF options ADV	Customer volume credits	1 Year enhanced customer volume credits	3 Year enhanced customer volume credits
1	0.00% to 0.60%		N/A	$0.00	$0.00	$0.00

[42] 17 CFR 200.30–3(a)(12).

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Fee Schedule, Sections I. E. (Amex Customer Engagement ("ACE") Program—Standard Options) and G. (CUBE Auction Fees & Credits), *available here, https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf.*

[5] The volume thresholds are based on an NYSE Amex Options Market Makers' volume transacted Electronically as a percentage of total industry Customer equity and ETF options volumes as reported by the Options Clearing Corporation (the "OCC"). Total industry Customer equity and ETF option volume is comprised of those equity and ETF contracts that clear in the Customer account type at OCC and does not include contracts that clear in either the Firm or Market Maker account type at OCC or contracts overlying a security other than an equity or ETF security. *See* OCC Monthly Statistics Reports, *available here, http://www.theocc.com/webapps/monthly-volume-reports.*