Exchange proposes to amend that provision by removing the reference to the primary market and instead provide that the Exchange may consider whether trading in the underlying security has been halted or suspended in ''one or more of the markets trading such security.'' For example, if the primary market is unable to open due to a natural disaster, or other circumstance, but other national securities exchanges are trading the underlying security and halt or suspend trading in that security, then the proposed change would allow CBOE to halt trading in the overlying options. The Exchange also proposes to make similar changes to Exchange Rule 6.3(a)(iii), which lists factors that CBOE should consider when determining whether to halt securities other than options.

Similarly, Exchange Rule 6.3.01 currently allows the Post Director or Order Book Official to suspend trading in an option if the underlying security is halted or suspended in the primary market. The Exchange proposes to expand the authority of the Post Director or Order Book Official to halt or suspend trading in an option if the underlying security has been halted or suspended in ''one or more of the markets trading the underlying security.'' In effect, the proposal would allow the Post Director or Order Book Official to halt or suspend trading in an option in response to a halt or suspension in a market other than the primary market for the underlying security, particularly when the primary market is not open for business but the security is being traded elsewhere.

Finally, the Exchange proposes to amend language in Exchange Rule 6.3.05, which currently allows the Exchange to turn off the Retail Automatic Execution System (''RAES'') with respect to a stock-option order if credible information has been communicated that trading in the underlying stock has been halted or suspended in the primary market for that stock-option order. The Exchange proposes to replace the term ''primary market'' with ''one or more of the markets trading the underlying security.'' The proposal would allow the Exchange to turn off RAES with respect to a stock-option order if credible information has been communicated that one or more of the markets trading the underlying security has halted trading in the underlying security.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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 Commission finds that the Exchange's proposal to amend the aforementioned CBOE rules governing the Exchange's ability to open for trading or continue trading an option even if the ''primary market'' for the underlying security does not open for trading or otherwise closes is consistent with Section 6(b)(5) of the Act.[10] Similarly, the change to allow CBOE to consider whether trading in the underlying security has been halted or suspended in ''one or more of the markets trading such security'' instead of requiring CBOE to only consider trading in the underlying primary market is consistent with Section 6(b)(5) of the Act.[11]

Under its proposal, CBOE's discretion to open or continue trading in options, or halt trading in options, would not be limited by or solely rely on the status of the primary market for an underlying security. In addition, the proposed changes to Exchange Rule 6.3 would grant the Post Director and Order Book Official of the Exchange greater discretion regarding whether to halt trading by allowing them to consider halts at markets other than the primary market.

The proposed rule changes would grant discretion to the Exchange to trade options when there is sufficient liquidity outside of the primary market and to halt the trading of options if exchanges other than the primary market are trading the underlying security and halt trading rather than limit the Exchange's authority by specific reference to the status of the primary market for the underlying securities. The Commission believes that allowing CBOE to have such discretion has the potential to lessen market disruptions in the event that a primary market for an underlying security is unable to open or remain open for trading, particularly for an extended period. Thus, the proposal is designed to facilitate the trading of options when other cash equity markets are open and able to trade or continue trading in the underlying securities.

Accordingly, the Commission finds that the Exchange's proposal is consistent with the Act, including Section 6(b)(5) thereof, in that it is designed to remove impediments to and perfect the mechanism of a free and open market, and in general, protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[12] that the proposed rule change (SR–CBOE–2013–035) be, and hereby is, approved.

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

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–11625 Filed 5–15–13; 8:45 am]

BILLING CODE 8011–01–P

[8] In approving the proposed rule change, the Commission has considered the impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] *Id.*

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69559; File No. SR–NASDAQ–2013–074]

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

May 10, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 30, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

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

NASDAQ proposes to modify Chapter XV, entitled ''Options Pricing,'' at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend certain Penny Pilot Options [3] Rebates to Add Liquidity and Non-Penny Pilot Fees for Adding Liquidity applicable to Firms,[4] Non-NOM Market Makers [5] and Broker Dealers.[6]

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

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

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

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

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

1. Purpose

NASDAQ proposes to modify Chapter XV, entitled ''Options Pricing,'' at Section 2(1) governing the rebates and fees assessed for option orders entered into NOM. The Exchange proposes to adopt certain tiered pricing for Firms, Non-NOM Market Makers and Broker-Dealers with respect to Penny Pilot Options Rebates to Add Liquidity and Non-Penny Pilot Options Fees for Adding Liquidity.

Today, the Exchange offers tiered Penny Pilot Options Rebates to Add Liquidity to Customers,[7] Professionals [8] and NOM Market Makers [9] and a $0.10 per contract Penny Pilot Options Rebate to Add Liquidity to Firms, Non-NOM Market Makers and Broker-Dealers. With respect to Customers and Professionals, the Exchange pays Penny Pilot Options Rebates to Add Liquidity based on various criteria with rebates ranging from $0.25 to $0.48 per contract as follows:

	Monthly volume	Rebate to add liquidity
Tier 1	Participant adds Customer and Professional liquidity of up to 0.20% of total industry customer equity and ETF option average daily volume (''ADV'') contracts per day in a month.	$0.25
Tier 2	Participant adds Customer and Professional liquidity of 0.21% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month.	0.40
Tier 3	Participant adds Customer and Professional liquidity of 0.31% to 0.49% of total industry customer equity and ETF option ADV contracts per day in a month.	0.43
Tier 4	Participant adds Customer and Professional liquidity of 0.5% or more of total industry customer equity and ETF option ADV contracts per day in a month.	0.45
Tier 5 [a]	Participant adds (1) Customer and Professional liquidity of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014, and (3) the Participant executed at least one order on NASDAQ's equity market.	0.42
Tier 6 [b,c]	Participant has Total Volume of 130,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer or Professional liquidity.	0.45
Tier 7 [b,c]	Participant has Total Volume of 175,000 or more contracts per day in a month, of which 50,000 or more contracts per day in a month must be Customer or Professional liquidity.	0.47
Tier 8 [b,c]	Participant (1) Has Total Volume of 325,000 or more contracts per day in a month, or (2) adds Customer or Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month or (3) adds Customer or Professional liquidity of 60,000 or more contracts per day in a month and NOM Market Maker liquidity of 40,000 or more contracts per day per month.	0.48

[3] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through June 30, 2013. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009)(SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009)(SR–NASDAQ–2009–097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR–NASDAQ–2010–013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR–NASDAQ–2011–169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot); 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR–NASDAQ–2012–075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012); and 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR–NASDAQ–2012–143) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2013). *See also* NOM Rules, Chapter VI, Section 5.

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

[5] 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.

[6] 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.

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

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

[9] The term ''NOM Market Maker'' is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

With respect to NOM Market Makers, the Exchange pays Penny Pilot Options Rebates to Add Liquidity based on various criteria in four tiers with rebates which range from $0.25 to $0.38 per contract as follows:

	Monthly volume	Rebate to add liquidity
Tier 1	Participant adds NOM Market Maker liquidity in Penny Pilot Options of up to 39,999 contracts per day in a month.	$0.25
Tier 2	Participant adds NOM Market Maker liquidity in Penny Pilot Options of 40,000 to 89,999 contracts per day in a month.	$0.30
Tier 3	Participant and its affiliate under Common Ownership qualify for Tier 8 of the Customer and Professional Rebate to Add Liquidity in Penny Pilot Options.	$0.37
Tier 4	Participant adds NOM Market Maker liquidity in Penny Pilot Options of 110,000 or more contracts per day in a month.	$0.28 or $0.38 in the following symbols BAC, GLD, IWM, QQQ and VXX or $0.40 in SPY

The Exchange proposes to amend the Firm, Non-NOM Market Maker and Broker-Dealer Penny Pilot Options Rebates to Add Liquidity to pay a Participant that adds 15,000 contracts per day or more of Firm, Non-NOM Market Maker or Broker-Dealer liquidity in Penny Pilot Options or Non-Penny Pilot Options in a given month a Penny Pilot Options Rebate to Add Liquidity of $0.20 per contract. The Exchange believes that the proposed Penny Pilot Options Rebate to Add Liquidity will encourage Firms, Non-NOM Market Makers and Broker-Dealers to transact additional liquidity on NOM.

The Exchange also proposes to amend the Non-Penny Pilot Options Fees for Adding Liquidity for a Firm, Non-NOM Market Maker and Broker-Dealer. Today, a Customer does not pay a Non-Penny Pilot Options Fee for Adding Liquidity. Professionals, Firms, Non-NOM Market Makers and Broker-Dealers pay a $0.45 per contract Non-Penny Pilot Options Fee for Adding Liquidity and a NOM Market Maker pays a $0.35 per contract Non-Penny Pilot Options Fee for Adding Liquidity. The Exchange proposes to decrease the Firm, Non-NOM Market Maker and Broker-Dealer Non-Penny Pilot Options Fees for Adding Liquidity from $0.45 to $0.36 per contract provided a Participant adds 15,000 contracts per day or more of Firm, Non-NOM Market Maker or Broker-Dealer liquidity in Penny Pilot Options or Non-Penny Pilot Options in a given month. The Exchange believes that the proposed reduced Non-Penny Pilot Options Fees for Adding Liquidity will encourage Firms, Non-NOM Market Makers and Broker-Dealers to provide additional liquidity on NOM.

The Exchange proposes to add a new note 2 to describe the rebate and reduced fee as described herein to Chapter XV, Section 2(1).

2. Statutory Basis

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

The Exchange believes that the proposed Firm, Non-NOM Market Maker and Broker-Dealer Penny Pilot Options Rebates to Add Liquidity are reasonable because a Firm, Non-NOM Market Maker and Broker-Dealer have the opportunity to obtain an increased rebate, similar to Customers, Professionals and NOM Market Makers today,[12] by transacting 15,000 contracts per day or more of Penny Pilot Options or Non-Penny Pilot Options liquidity in a given month.

The Exchange believes that the proposed Firm, Non-NOM Market Maker and Broker-Dealer Penny Pilot Options Rebates to Add Liquidity are equitable and not unfairly discriminatory because the Exchange would continue to offer Customers, Professionals and NOM Market Makers an opportunity to obtain higher rebates. The Exchange believes that continuing to pay Customers and Professionals tiered Rebates to Add Liquidity in Penny Pilot Options, as compared to other market participants, is equitable and not unfairly discriminatory because Customers are entitled to higher rebates because Customer order flow brings unique benefits to the market through increased liquidity which benefits all market participants. The Exchange believes that continuing to offer Professionals the same Penny Pilot Options Rebates to Add Liquidity as Customers is equitable and not unfairly discriminatory because the Exchange believes that offering Professionals the opportunity to earn the same rebates as Customers, as is the case today, and higher rebates as compared to Firms, Broker-Dealers and Non-NOM Market Makers, and in some cases NOM Market Makers, is equitable and not unfairly discriminatory because the Exchange does not believe that the amount of the rebate offered by the Exchange has a material impact on a Participant's ability to execute orders in Penny Pilot Options. By offering Professionals, as well as Customers, higher rebates, the Exchange hopes to simply remain competitive with other venues so that it remains a choice for market participants when posting orders and the result may be additional Professional order flow for the Exchange, in addition to increased Customer order flow.

In addition, a Participant may not be able to gauge the exact rebate tier it would qualify for until the end of the month because Professional volume would be commingled with Customer volume in calculating tier volume.[13] A Professional could only otherwise presume the Tier 1 rebate would be achieved in a month when determining price.[14] Further, the Exchange initially established Professional pricing in order to ''. . . bring additional revenue to the Exchange.'' [15] The Exchange noted in

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

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

[12] Customers and Professionals Penny Pilot Option Rebates to Add Liquidity are based on various criteria with rebates ranging from $0.25 to $0.48 per contract. A NOM Market Maker is paid a Penny Pilot Options Rebate to Add Liquidity based on various criteria in four tiers with rebates which range from $0.25 to $0.38 per contract. *See* Chapter XV, Section 2(1).

[13] Customer and Professional volume is aggregated for purposes of determining which rebate tier a Participant qualifies for with respect to the Professional Rebate to Add Liquidity in Penny Pilot Options.

[14] A Professional would be unable to determine the exact rebate that would be paid on a transaction by transaction basis with certainty until the end of a given month when all Customer and Professional volume is aggregated for purposes of determining which tier the Participant qualified for in a given month.

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

the Professional Filing that it believes ''. . . that the increased revenue from the proposal would assist the Exchange to recoup fixed costs.'' [16] The Exchange also noted in that filing that it believes that establishing separate pricing for a Professional, which ranges between that of a customer and market maker, accomplishes this objective.[17] The Exchange does not believe that providing Professionals with the opportunity to obtain higher rebates equivalent to that of a Customer creates a competitive environment where Professionals would be necessarily advantaged on NOM as compared to NOM Market Makers, Firms, Broker-Dealers or Non-NOM Market Makers. Also, a Professional is assessed the same fees as other market participants, except Customers and NOM Market Makers, as discussed herein.[18] For these reasons, the Exchange believes that continuing to offer Professionals the same rebates as Customers is equitable and not unfairly discriminatory. Finally, the Exchange believes that NOM Market Makers should be offered the opportunity to earn higher rebates as compared to Non-NOM Market Makers, Firms and Broker Dealers because NOM Market Makers add value through continuous quoting [19] and the commitment of capital. Firms, Non-NOM Market Makers and Broker-Dealers would continue to be offered the same Penny Pilot Options Rebate to Add Liquidity, as is the case today, except, similar to other market participants, Firms, Non-NOM Market Makers and Broker-Dealers would have the opportunity to earn a higher Penny Pilot Options Rebate to Add Liquidity if they transact 15,000 contract per day or more of Penny Pilot Options or Non-Penny Pilot Options liquidity in a given month. The volume requirement for Firms, Non-NOM Market Makers and Broker-Dealers to qualify for the higher Penny Pilot Options Rebate to Add Liquidity is less than is required to earn a Tier 1 Customer or Professional Rebate to Add Liquidity in Penny Pilot Options or a Tier 1 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Option.[20] The proposed Firm, Non-NOM Market Maker and Broker-Dealer Penny Pilot Options Rebate to Add Liquidity of $0.20 per contract is the same for these market participants and would be uniformly applied to all Participants that qualify for the increased rebate.

The Exchange's proposal to decrease the Firm, Non-NOM Market Maker and Broker-Dealer Non-Penny Pilot Options Fees for Adding Liquidity from $0.45 to $0.36 per contract if a Firm, Non-NOM Market Maker or Broker-Dealer transacts 15,000 contracts per day or more of Penny Pilot Options or Non-Penny Pilot Options liquidity in a given month is reasonable because a Firm, Non-NOM Market Maker and Broker-Dealer have the opportunity to lower their transaction fees by transacting additional liquidity on NOM.

The Exchange's proposal to decrease the Firm, Non-NOM Market Maker and Broker-Dealer Non-Penny Pilot Options Fees for Adding Liquidity from $0.45 to $0.36 per contract if a Firm, Non-NOM Market Maker or Broker-Dealer transacts 15,000 contracts per day or more of Penny Pilot Options or Non-Penny Pilot Options liquidity in a given month is equitable and not unfairly discriminatory because the Exchange would continue to assess Firms, Non-NOM Market Makers and Broker-Dealers the same Non-Penny Pilot Options Fees for Adding Liquidity, as is the case today, except, similar to other market participants, Firms, Non-NOM Market Makers and Broker-Dealers would have the opportunity to reduce Non-Penny Pilot Options Fees for Adding Liquidity if they transact 15,000 contract per day or more of Penny Pilot Options or Non-Penny Pilot Options liquidity in a given month. Today, Customers are not assessed a Non-Penny Pilot Options Fee for Adding Liquidity because Customer order flow is unique and benefits all market participants. A NOM Market Maker would continue to be assessed lower fees as compared to Firms, Non-NOM Market Makers and Broker-Dealers in Non-Penny Pilot Fees for Adding Liquidity ($0.35 per contract for a NOM Market Maker as compared to other market participants), even with the proposed reduced fee of $0.36 per contract, because, as mentioned herein, NOM Market Makers add value through continuous quoting [21] and the commitment of capital. The proposed reduced Firm, Non-NOM Market Maker and Broker-Dealer Non-Penny Pilot Options Fee for Adding Liquidity of $0.26 per contract is the same for Firms, Non-NOM Market Makers and Broker-Dealers, and would be uniformly applied to all Participants that qualify for the reduced fee.

The Exchange believes that not offering Professionals the same reduction in Non-Penny Pilot Options Fees for Adding Liquidity is reasonable because Professionals have the opportunity to earn significantly higher rebates for adding liquidity in Penny Pilot Options, as compared to Firms, Non-NOM Market Makers and Broker-Dealers, which should continue to incentivize Professionals to add liquidity to the Exchange in Penny Pilot Options, which account for approximately 80% of the industry volume every month. The Exchange believes that the Penny Pilot Options Professional rebate tiers, which requires Professionals to add a certain amount of Penny Pilot Options liquidity per month and liquidity in either Penny Pilot Options or Non-Penny Pilot Options for purposes of Tiers 6, 7 or 8,[22] incentivizes Professionals to add Non-Penny Pilot Options liquidity on NOM. Further, Professionals average effective rate to add liquidity in Penny Pilot Options and/or Non-Penny Pilot Options has a high probability of being lower than the average effective rate for a Firm, Non-NOM Market Maker or Broker-Dealers to add liquidity in Penny Pilot Options or Non-Penny Pilot Options in any given month, despite the Exchange's decision to not offer a Professional the opportunity to reduce

NASDAQ–2011–066) (''Professional Filing''). In this filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.

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

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

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

[19] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

[20] The 15,000 contract threshold for Firms, Non-NOM Market Makers and Broker-Dealers to earn the Penny Pilot Options Rebate to Add Liquidity equates to approximately 0.12% of the industry customer equity and ETF volume.

[21] *See* note 19.

[22] Tiers 6, 7 or 8 of the Professional Penny Pilot Options Rebate to Add Liquidity permits Participants to add Total Volume which is defined as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and Non-Penny Pilot Options which either adds or removes liquidity on NOM.

Non-Penny Pilot Fees for Adding Liquidity in certain circumstances. By way of example, if a Professional and a Firm add liquidity volume, which volume is evenly split between Penny Pilot Options and Non-Penny Pilot Options and both achieve the maximum rebate opportunity available, the Professional's effective rate to add liquidity in Penny Pilot Options and/or Non-Penny Pilot Options would be an average effective rebate of $0.015 per contract, while the Firm's effective rate would be an average effective fee of $0.08 per contract. Otherwise, the Non-Penny Pilot Options Fees for Adding Liquidity are the same for all market participants, except Customers, when a Firm, Non-NOM Market Maker or Broker-Dealer does not otherwise qualify for the reduced fee. The Exchange believes that its proposal to reduce the Firm, Non-NOM Market Maker and Broker-Dealer Fees for Adding Liquidity in Non-Penny Pilot Options, only when a Firm, Non-NOM Market Maker or Broker-Dealer adds liquidity of 15,000 contracts per day or more of Penny Pilot Options or Non-Penny Pilot Options volume in a given month, is equitable and not unfairly discriminatory because of the potential a Professional has to achieve higher rebates in Penny Pilot Options, particularly when such volume is aggregated with Customer volume and, in certain cases, includes liquidity in either Penny Pilot Options or Non-Penny Pilot Options.

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

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

Customers have traditionally been paid the highest rebates offered by options exchanges. The Exchange does not believe that providing Professionals with the opportunity to obtain higher rebates equivalent to that of a Customer creates an undue burden on competition where Professionals would be necessarily advantaged on NOM as compared to NOM Market Makers, Firms, Broker-Dealers or Non-NOM Market Makers because the Exchange does not believe that the amount of the rebate offered by the Exchange has a material impact on a Participant's ability to execute orders in Penny Pilot Options. The Exchange does not believe the proposed rebate tiers would result in any burden on competition as between market participants because the remaining market participants, Firms, Non-NOM Market Makers and Broker-Dealers would continue to earn uniform rebates today and have the opportunity to earn the same enhanced rebate. The Exchange believes that incentivizing Firms, Non-NOM Market Makers and Broker-Dealers to transact a greater number of Penny Pilot Options or Non-Penny Pilot Options brings greater liquidity to the Exchange.

The Exchange's proposal to decrease the Firm, Non-NOM Market Maker and Broker-Dealer Non-Penny Pilot Options Fees for Adding Liquidity, provided those Participants transacted 15,000 contracts per day or more of Penny Pilot Options or Non-Penny Pilot Options liquidity in a given month, does not misalign the current fees on NOM. These market participants would continue to pay uniform transaction fees as compared to other market participants. Customers would not pay such a fee, as is the case today because of the unique benefits attributed to Customer order flow, and NOM Market Makers would continue to be assessed a more favorable fee, despite the fee reduction offered to Firms, Non-NOM Market Makers and Broker-Dealers because NOM Market Makers have obligations [23] to the market which are not borne by other market participants and therefore the Exchange believes that NOM Market Makers are entitled to a lower fee as compared to other market participants, except Customers.

With respect to the Non-Penny Pilot Options Fees for Adding Liquidity, the Exchange noted that Professionals have the opportunity to earn significantly higher Penny Pilot Options Rebates for Adding Liquidity as compared to Firms, Non-NOM Market Makers and Broker-Dealers by qualifying for rebate tiers which aggregates Penny Pilot Options volume and Non-Penny Pilot Options volume, in certain circusmtances [sic],[24] as well as volume from Customer executions. The Exchange believes that its proposal to reduce the Firm, Non-NOM Market Maker and Broker-Dealer Non-Penny Pilot Options Fees for Adding Liquidity only when a Firm, Non-NOM Market Maker or Broker-Dealer adds liquidity of 15,000 contracts per day or more of Penny Pilot Options or Non-Penny Pilot Options volume in a given month does not create an undue burden on competition given the opportunity for Professionals to qualify for higher Penny Pilot Options rebates.

The Exchange believes the differing outcomes, rebates and fees created by the Exchange's proposed pricing incentives contribute to the overall health of the market place for the benefit of all Participants that willing choose to transact options on NOM. For the reasons specified herein, the Exchange does not believe this proposal creates an undue burden on competition. The Exchange operates in a highly competitive market comprised of eleven U.S. options exchanges in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. These market forces support the Exchange belief that the proposed rebate structure and tiers proposed herein are competitive with rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace continues to impact the rebates present on the Exchange today and substantially influences the proposals set forth above.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[25] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File

[23] *See* note 19.

[24] *See* note 22.

[25] 15 U.S.C. 78s(b)(3)(A)(ii).

Number SR–NASDAQ–2013–074 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2013–074. 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–2013–074, and should be submitted on or before June 6, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–11636 Filed 5–15–13; 8:45 am]

BILLING CODE 8011–01–P

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69554; File No. SR–NYSEArca–2013–47]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Non-Display Usage Fees and Amending the Professional End-User Fees for NYSE Arca Options Market Data

May 10, 2013.

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 May 1, 2013, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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 establish non-display usage fees and to amend the Professional End-User fees for NYSE Arca Options market data, operative on May 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

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

[3] 17 CFR 240.19b–4.

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

1. Purpose

The Exchange proposes to establish non-display usage fees and to amend the Professional End-User fees for NYSE Arca Options market data, operative on May 1, 2013. The subsections below describe (1) the background on the current fees for these real-time products; (2) the rationale for creating the new non-display usage fee structure; (3) the proposed fee change for non-display usage by Professional End-Users; (4) the proposed fee change for display usage by Professional End-Users; and (5) an example comparing the current and proposed fees.

Background

On October 1, 2012, the Exchange began offering the following real-time options market data products: ArcaBook for Arca Options—Trades, ArcaBook for Arca Options—Top of Book, ArcaBook for Arca Options—Depth of Book, ArcaBook for Arca Options—Complex, ArcaBook for Arca Options—Series Status, and ArcaBook for Arca Options—Order Imbalance (collectively, "Arca Options Products").[4] Fees cover all six products.[5]

The Exchange charges an access fee of $3,000 per month and a redistribution fee of $2,000 per month for the Arca Options Products.

The Exchange charges Professional End-Users $50 per month for each "User per Source" for the receipt and use of the Arca Options Products.[6] A Professional End-User is a person or entity that receives market data from the Exchange or a Redistributor and uses that market data solely for its own internal purposes; a Professional End-User is not permitted to redistribute that market data to any person or entity outside of its organization. A "Source" is a Professional End-User-controlled

[4] *See* Securities Exchange Act Release No. 67720 (Aug. 23, 2012), 77 FR 52769 (Aug. 30, 2012) (SR–NYSEArca–2012–89).

[5] *See* SR–NYSEArca–2013–41 (establishing a fee schedule) and Securities Exchange Act Release No. 68005 (Oct. 9, 2012), 77 FR 63362 (Oct. 16, 2012) (SR–NYSEArca–2012–106) (establishing fees for Arca Options Products). Arca Options Products are not offered with separate fees for the individual underlying products.

[6] The Exchange notes that the User per Source reporting policy differs from the unit-of-count policy used for other Exchange market data products, such as NYSE Arca Trades and NYSE Arca BBO. *See* Securities Exchange Act Release No. 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR–NYSEArca–2010–23).