2013–040 and should be submitted on or before July 31, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69929; File No. SR–NASDAQ–2013–091]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Penny Pilot Option Rebates To Add Liquidity

July 3, 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 June 27, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASDAQ proposes to modify Chapter XV, entitled ''Options Pricing,'' at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend certain Customer,[3] Professional[4] and NOM Market Maker[5] Rebates to Add Liquidity in Penny Pilot Options.[6]

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on July 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 amend the Customer, Professional and NOM Market Maker Penny Pilot Options Rebates to Add Liquidity and make other technical amendments to the Section 2(1) as described more fully below.

Today, the Exchange offers an eight-tiered Rebate to Add Liquidity in Penny Pilot Options to Customers and Professionals 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	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

[17] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 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)).

[4] 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.

[5] 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.

[6] 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. The Exchange recently filed a proposed rule change to extend the pilot through December 31, 2013. *See* SR–Phlx–2013–64, which is not yet published.

	Monthly volume	Rebate to add liquidity
Tier 6	Participant has Total Volume of 130,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer or Professional liquidity.	0.45
Tier 7	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	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

The Exchange is proposing to amend Tier 8 which currently pays a rebate of $0.48 per contract to a Participant that: (i) Has Total Volume [7] of 325,000 or more contracts per day in a month; (ii) 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 (iii) 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 in a month. The Exchange is proposing to continue to pay a $0.48 per contract rebate for Tier 8 and amend the criteria to qualify for this rebate tier. The Exchange proposes to pay the Tier 8 rebate to a Participant that: (i) has Total Volume of 325,000 or more contracts per day in a month (as is the case today); or (ii) has Total Volume of 200,000 or more contracts per day in a month of which 70,000 or more contracts per day in a month must be Customer and/or Professional liquidity; or (iii) 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 (as is the case today). The Exchange would eliminate the criteria whereby a Participant can achieve the Tier 8 rebate by adding 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. The Exchange believes that Participants will be incentivized to achieve a Tier 8 rebate as they are today and additional Participants may be able to qualify with the new criteria, which focuses on Customer and/or Professional liquidity.

The Exchange is also proposing to make a technical amendment to the Penny Pilot Options Customer and Professional Rebates to Add Liquidity to clarify the text of these rebates. The Exchange today permits Participants to add Customer or Professional liquidity for Tiers 1 through 7. Participants may add either Customer or Professional liquidity to qualify for these rebate tiers. The Exchange proposes to add the words ''/or'' to clarify that Customer and/or Professional liquidity may be added to Tiers 1 through 5. The Exchange also proposes to amend Tiers 6 and 7 in similar fashion to add''and/ '' to specify Customer or Professional liquidity may be added. Similarly the Exchange proposes to add the word ''and/'' in note 2 of Section (2)(1) of Chapter XV which provides that ''[a] Participant that adds Firm, Non-NOM Market Maker or Broker-Dealer liquidity in Penny Pilot Options or Non-Penny Pilot Options of 15,000 contracts per day or more in a given month will receive a Rebate to Add Liquidity in Penny Pilot Options of $0.20 per contract and will pay a Fee for Adding Liquidity in Non-Penny Pilot Options of $0.36 per contract.'' This would make clear that a Participant may add Penny and/or Non-Penny Pilot Options to qualify for the rebate. Finally, the Exchange proposes a similar amendment to note b in Section 2(1) Chapter XV which provides that ''[f]or purposes of Tiers 6, 7 and 8, ''Total Volume'' shall be 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.'' The Exchange would add the words ''/or'' to make clear that Total Volume can consist of Penny Pilot Options or Non-Penny Pilot Options. The Exchange believes that these amendments will provide greater clarity to the pricing. The Exchange otherwise does not propose to amend Tiers 1 through 7 of the Customer and Professional Rebates to Add Liquidity in Penny Pilot Options.

Today, the Exchange offers a four-tiered Rebate to Add Liquidity in Penny Pilot Options to NOM Market Makers 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 109,999 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.

[7] Total Volume is defined as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options or Non-Penny Pilot Options which either adds or removes liquidity on NOM. *See* Chapter XV, Section 2(1) of the NOM Rules.

The Exchange proposes to amend the Tier 2 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options which currently pays a $0.30 per contract rebate to a Participant that adds NOM Market Maker liquidity in Penny Pilot Options of 40,000 to 109,999 contracts per day in a month to 40,000 to 69,999 contracts per day in a month to achieve the same rebate.

The Exchange also proposes to amend the Tier 3 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options which currently pays a $0.37 per contract rebate to reduce that rebate to $0.32 per contract and amend the criteria to qualify for a Tier 3 rebate. Currently, a Participant and its affiliate under Common Ownership [8] that qualify for Tier 8 of the Customer and Professional Rebate to Add Liquidity in Penny Pilot Options qualify for a Tier 3 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options. The Exchange is proposing to eliminate the current Tier 3 criteria and instead pay the new $0.32 per contract NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options to Participants that add NOM Market Maker liquidity in Penny Pilot Options of 70,000 to 99,999 contracts per day in a month.

The Exchange also proposes to amend the Tier 4 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options which currently pays rebate of $0.28 [9] or $0.38 per contract in the following symbols, Bank of America Corporation (''BAC''), SPDR Gold Shares (''GLD''), iShares Russell 2000 Index (''IWM''), PowerShares QQQ (''QQQ''), iPath S&P 500 VIX ST Futures ETN (''VXX''), or $0.40 per contract in SPDR S&P 500 (''SPY'') if Participants add NOM Market Maker liquidity in Penny Pilot Options of 110,000 or more contracts per day in a month. The Exchange is proposing to increase the Tier 4 rebate of $0.28 per contract, which is paid on all qualifying Penny Pilot Options, excluding BAC, GLD, IWM, QQQ, VXX and SPY, to $0.32 per contract.[10] In addition, the Exchange proposes to decrease the requisite number of contracts that a Participant must add in NOM Market Maker liquidity in Penny Pilot Options to achieve a Tier 4 rebate from 110,000 to 100,000 or more contracts per day in a month.

The Exchange is not proposing to amend the Tier 1 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options. The Exchange would also eliminate the text referencing Tiers 3 and 4 of the NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options which provides that ''[i]n the instance that a Participant qualifies for both a Tier 3 and a Tier 4 NOM Market Maker Penny Pilot Option rebate, the Exchange would pay the Participant the Tier 3 rebate unless the Participant is eligible for an increased rebate in one of the following symbols: BAC, GLD, IWM, QQQ, VXX and SPY, in which case the Tier 4 rebate would be applied.'' This language is no longer necessary because a Participant would not be able to qualify for both a Tier 3 and a Tier 4 rebate with the proposed changes.

The Exchange believes that the amendment to the NOM Market Maker Rebate to Add Liquidity will continue to incentivize NOM Market Makers to post liquidity on the Exchange.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[11] in general, and with Section 6(b)(4) of the Act,[12] in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among Participants and issuers and other persons using any facility or system which NASDAQ operates or controls as described in detail below.

The Exchange's proposal to amend the Customer, Professional and NOM Market Maker Penny Pilot Options Rebates to Add Liquidity are reasonable because the Exchange will continue to offer competitive Customer, Professional and NOM Market Maker rebates in order to attract liquidity to the market to the benefit of all market participants. The Exchange believes that offering Customers and Professionals and NOM Market Makers the opportunity to earn higher rebates is reasonable because by incentivizing Participants to select the Exchange as a venue to post Customer and Professional liquidity will attract additional order flow to the benefit of all market participants and incentivizing NOM Market Makers to post liquidity will also benefit participants through increased order interaction.

The Exchange believes that the amendments to the Penny Pilot Options Rebates to Add Liquidity are equitable and not unfairly discriminatory for various reasons. The Exchange believes that continuing to pay Customers and Professionals tiered Rebates to Add Liquidity in Penny Pilot Options, as proposed herein, is equitable and not unfairly discriminatory as compared to other market participants. Pursuant to this proposal, the Exchange would pay the highest Tier 1 Rebates to Add Liquidity in Penny Pilot Options of $0.25 per contract to Customers, Professionals and NOM Market Makers for transacting one qualifying contract as compared to other market participants.[13] The Exchange believes that Customers are entitled to higher rebates because Customer order flow brings unique benefits to the market through increased liquidity which benefits all market participants. The Exchange believes that continuing to offer Professionals the same Penny Pilot Options Rebates to Add Liquidity as Customers is equitable and not unfairly discriminatory for the reasons which follow. The Exchange believes that offering Professionals the opportunity to earn the same rebates as Customers, as is the case today, and higher rebates as compared to Firms, Broker-Dealers and Non-NOM Market Makers, and in some cases NOM Market Makers, is equitable and not unfairly discriminatory because the Exchange does not believe that the amount of the rebate offered by the Exchange has a material impact on a Participant's ability to execute orders in Penny Pilot Options. 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. 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.[14] A Professional could only otherwise presume the Tier 1 rebate would be achieved in a month when determining

[8] The term ''Common Ownership'' is defined in Chapter XV of the NOM Rules as Participants under 75% common ownership or control.

[9] The $0.28 per contract Tier 4 NOM Market Maker rebate would be paid on all qualifying Penny Pilot Options, excluding BAC, GLD, IWM, QQQ, VXX and SPY.

[10] The Exchange is not proposing to amend the $0.38 per contract rebate in BAC, GLD, IWM, QQQ or VXX or the $0.40 per contract rebate in SPY.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] Firms, Non-NOM Market Makers and Broker-Dealers receive a $0.10 per contract Penny Pilot Option Rebate to Add Liquidity. In addition, Participant that adds Firm, Non-NOM Market Maker or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 15,000 contracts per day or more in a given month will receive a Rebate to Add Liquidity in Penny Pilot Options of $0.20 per contract.

[14] 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.

price.[15] Further, the Exchange initially established Professional pricing in order to ''. . . bring additional revenue to the Exchange.'' [16] The Exchange noted in the Professional Filing that it believes ''. . . that the increased revenue from the proposal would assist the Exchange to recoup fixed costs.'' [17] 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.[18] 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.[19] 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 [20] because NOM Market Makers add value through continuous quoting [21] and the commitment of capital.

The Exchange's proposal to amend the Customer and Professional Rebates to Add Liquidity in Penny Pilot Options is reasonable because the Exchange is offering Participants meaningful incentives to increase their participation on NOM in terms of higher Penny Pilot Options Rebates to Add Liquidity. The Exchange's proposal to amend Tier 8 to eliminate the criteria which qualifies a Participant that adds Customer or Professional liquidity of 60,000 or more contracts per day in a month and NOM Marker Maker liquidity of 40,000 or more contracts per day in a month to a $0.48 per contract rebate and replace that criteria with new criteria that pays the same rebate if the Participant has Total Volume of 200,000 or more contracts per day in a month, of which 70,000 or more contracts per day in a month must be Customer and/or Professional liquidity is reasonable because it should continue to incentivize Participants to add liquidity on NOM. The new criteria focuses on Total Volume which consists of Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and/or Non-Penny Pilot Options which either adds or removes liquidity on NOM. The Exchange believes that offering Participants an option to transact a lower amount of Total Volume (200,000 contracts) as compared to the 325,000 contracts of Total Volume, which would also qualify a Participant for a Tier 8 rebate, and also requiring that 70,000 of that Total Volume be comprised of Customer and/or Professional liquidity further incentivizes Participants to add Customer and Professional liquidity to NOM. The criteria that is being eliminated required 60,000 or more contracts per day of Customer and/or Professional liquidity and 40,000 or more contracts of NOM Market Maker liquidity. The Exchange believes that it is reasonable to incentivize Participants to add a greater amount of Customer and/or Professional liquidity combined with other volume as a means to qualify for the Tier 8 rebate. This proposal only impacts one of the ways in which a Participant may qualify for the Tier 8 rebate. Participants that today do not qualify for the Tier 8 rebate may be able to qualify with the new criteria. In addition, other exchanges employ similar incentive programs.[22]

The Exchange's proposal to amend Tier 8 to eliminate the criteria which qualifies a Participant that adds Customer or Professional liquidity of 60,000 or more contracts per day in a month and NOM Marker Maker liquidity of 40,000 or more contracts per day in a month to a $0.48 per contract rebate and replace that criteria with new criteria that pays the same rebate if the Participant has Total Volume of 200,000 or more contracts per day in a month, of which 70,000 or more contracts per day in a month must be Customer and/or Professional liquidity is equitable and not unfairly discriminatory because this amendment will be applied to all market participants in a uniform matter. Any market participant is eligible to receive the rebate provided they transact a qualifying amount of Customer and Professional volume in Penny Pilot Options.

The Exchange's proposal to amend the NOM Market Maker Rebates to Add Liquidity in Penny Pilot Options is reasonable because it should incentivize NOM Market Makers to post liquidity on NOM. NOM Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs unlike other market participants. The Exchange believes that encouraging NOM Market Makers to be more aggressive when posting liquidity benefits all market participants through increased liquidity. The Exchange believes that the NOM Market Maker rebate proposal is equitable and not unfairly discriminatory because it does not misalign the current rebate structure because NOM Market Makers will continue to earn higher rebates as compared to Firms, Non-NOM Market Makers and Broker-Dealers and will earn the same or lower rebates as

[15] 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.

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

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

[18] *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.

[19] 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.

[20] Firms, Non-NOM Market Makers and Broker-Dealers are paid a $0.10 per contract Rebate to Add Liquidity in Penny Pilot Options and have the opportunity to earn a higher Penny Pilot Options Rebate to Add Liquidity of $0.20 per contact if they transact 15,000 contracts per day or more in a given month of Penny Pilot Options or Non-Penny Pilot Options liquidity.

[21] 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.

[22] *See* CBOE Fees Schedule. CBOE offers each Trading Permit Holder (''TPH'') a credit for each public customer order transmitted by the TPH which is executed electronically in all multiply-listed option classes, excluding QCC trades and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan, provided the TPH meets certain percentage thresholds in a month as described in the Volume Incentive Program. *See also* Phlx's Pricing Schedule at Section B which contains the Customer Rebate Program.

compared to Customers and Professionals.[23]

The Exchange's proposal to amend the number of qualifying contracts in Tier 2 of the NOM Market Maker Penny Pilot Options Rebate to Add Liquidity from 40,000 to 109,999 contracts to 40,000 to 69,999 contracts per day in a month is reasonable because today Participants that transact between 40,000 to 69,999 contracts of NOM Market Maker Penny Pilot Options would continue to qualify for Tier 2 and Participants that qualify from 70,000 to 109,999 contracts would qualify for the new proposed Tier 3 rebate of $0.32 per contract.

The Exchange's proposal to amend the Tier 3 rebate, which currently requires a Participant and its affiliate under Common Ownership that qualify for Tier 8 of the Customer and Professional Rebate to Add Liquidity in Penny Pilot Options to receive a Tier 3 rebate of $0.37 per contract, and replace it with new criteria which requires that a Participant add NOM Market Maker liquidity in Penny Pilot Options of 70,000 to 99,999 contracts per day in a month to qualify for a new Tier 3 rebate rate of $0.32 per contract is reasonable because it would increase the rebate paid to certain Participants who currently qualifying for a Tier 2 rebate. Also, those Participants and its affiliate under Common Ownership that qualify for a Tier 8 rebate would continue to receive the Customer and Professional Rebates to Add Liquidity in Penny Pilot Options rebate and may separately qualify for another NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options. The Exchange is offering a different rebate incentive to remain competitive while continuing to encourage NOM Market Makers to aggressively post liquidity on NOM.

The Exchange's proposal to amend Tier 4 to lower the number of NOM Market Maker Penny Pilot Options contract from 110,000 to 100,000 is reasonable because additional Participants may be able to qualify for a Tier 4 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options. The Exchange also believes that the proposal to pay an increased Tier 8 rebate of $0.32 per contract as compared to $0.28 per contract for all symbols excluding BAC, GLD, IWM, QQQ, VXX[24] and SPY[25] is reasonable because the increased rebate should encourage other market participants to add NOM Marker Maker liquidity to obtain a higher rebate in certain symbols.

The Exchange believes offering NOM Market Makers the opportunity to receive higher rebates as compared to Firms, Non-NOM Market Makers and Broker-Dealers is equitable and not unfairly discriminatory because all NOM Market Makers may qualify for the NOM Market Maker rebate tiers and every NOM Market Maker is entitled to a rebate solely by adding one contract of NOM Market Maker liquidity on NOM. Also, as mentioned, the NOM Market Maker would receive the same rebate in Tier 1 as compared Customers and Professionals and a higher rebate in all other tiers as compared to a Firm, Non-NOM Market Maker or Broker-Dealer because of the obligations[26] borne by NOM Market Makers as compared to other market participants. Encouraging NOM Market Makers to add greater liquidity benefits all Participants in the quality of order interaction.

The Exchange believes that it is equitable and not unfairly discriminatory to amend the Tier 2, 3 and 4 rebate criteria to qualify for those rebates as well as the Tier 4 rebate rate for certain symbols because those amendments will apply uniformly to all participants. The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to adopt specific pricing for BAC, GLD, IWM, QQQ, VXX and SPY because pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in the most actively traded options classes, in this case actively traded Penny Pilot Options.[27] The Exchange notes that BAC, GLD, IWM, QQQ, VXX and SPY are some of the most actively traded options in the U.S.

The Exchange's proposal to add language throughout Section 2(1) of Chapter XV to clarify the rule text with respect to adding liquidity is reasonable, equitable and not unfairly discriminatory because the amendments provide clarity to the rule text. The Exchange's proposal to eliminate text related to qualifying for both Tier 3 and Tier 4 NOM Market Maker rebates is reasonable, equitable and not unfairly discriminatory because the text is no longer necessary because a Participant could no longer achieve both rebates in a given month.

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

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

Customers have traditionally been paid the highest rebates offered by options exchanges. While the Exchange's proposal results in a Professional receiving the same or a higher rebate as compared to a NOM Market Maker, in certain circumstances, the Exchange does not believe the proposed rebate tiers would result in any burden on competition as between market participants. The Exchange believes that offering Customers and Professionals the proposed tiered rebates creates competition among options exchanges because the Exchange believes that the rebates may cause market participants to select NOM as a venue to send Customer and Professional order flow. The Exchange believes that incentivizing NOM Market Makers to post liquidity on NOM benefits market participants through increased order interaction. Also, NOM Market Makers have obligations[28] 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.

The proposed amendments does not misalign the current rebate structure because NOM Market Makers will continue to earn higher rebates as compared to Firms, Non-NOM Market Makers and Broker-Dealers and will earn the same or lower rebates as compared to Customers and Professionals.

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

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

[24] These symbols pay a $0.38 per contract rebate.

[25] SPY pays a $0.40 per contract rebate.

[26] *See* note 21.

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

[28] *See* note 21.

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

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–091 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–2013–091. 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–2013–091, and should be submitted on or before July 31, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Elizabeth M. Murphy,

Secretary.

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[29] 15 U.S.C. 78s(b)(3)(A)(ii).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69932; File No. SR–BYX–2013–024]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

July 3, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2013, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on July 1, 2013.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 parts of such statements.

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

1. Purpose

The purpose of the proposed rule change is to begin charging a monthly fee for the Multicast PITCH Spin Server Port and GRP Port, each of which are logical ports[6] used to receive data from

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[6] A logical port is commonly referred to as a TCP/IP port, and represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-member and grants that Member or non-member the ability to operate a specific application, such as FIX order entry or Multicast PITCH data receipt. Logical port fees are limited to logical ports in the Exchange's primary data center and no logical port fees are assessed for redundant secondary data center ports.