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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSEMKT–2012–60 and should be submitted on or before December 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28148 Filed 11–19–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68232; File No. SR–NASDAQ–2012–127]

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

November 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that, on November 1, 2012, 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 NASDAQ Stock Market LLC 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 the Non-Penny Pilot Options Fees for Removing Liquidity and the Customer Rebate to Add Liquidity as well as the Penny Pilot Options Customer Rebate to Add Liquidity.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments related to fee increases will be operative on November 2, 2012.[3]

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 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

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 is proposing to increase certain Non-Penny Pilot Options Fees for Removing Liquidity in order to offer increased Penny Pilot and Non-Penny Pilot Options Customer Rebates to Add Liquidity to attract additional order flow to the Exchange to the benefit of all market participants.

The Exchange proposes to amend the Fees for Removing Liquidity in Non-Penny Pilot Options. Today Customers and NOM Market Makers are assessed a $0.79 per contract Fee for Removing Liquidity in Non-Penny Pilot Options and Professionals, Firms and Non-NOM Market Makers are assessed an $0.85 per contract Fee for Removing Liquidity in Non-Penny Pilot Options. The Exchange proposes to increase the Customer and NOM Market Maker Fees for Removing Liquidity in Non-Penny Pilot Options from $0.79 to $0.82 per contract and also increase the Professional, Firm and Non-NOM Market Maker Fees for Removing Liquidity in Non-Penny Pilot Options from $0.85 per to $0.89 per contract. The Exchange proposes that these amendments will become operative on November 2, 2012.

The Exchange also proposes to amend the Customer Rebate to Add Liquidity in Non-Penny Pilot Options. Today, the Customer Rebate to Add Liquidity in Non-Penny Pilot Options, including NDX, is $0.75 per contract, unless a market participant adds Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month, then the Customer Rebate to Add Liquidity in Non-Penny Pilot Options is $0.77 per contract.[4] The Exchange proposes to increase the Customer Rebate to Add Liquidity in Non-Penny Pilot Options, including NDX, from $0.75 to $0.80 per contract and also to increase the Customer Rebate to Add Liquidity in Non-Penny Pilot Options when a market participant adds Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month from $0.77 to $0.81 per contract. The Exchange proposes that these amendments become immediately effective.

The Exchange also proposes to amend the Customer Rebate to Add Liquidity in Penny Pilot Options. Today, the Exchange pays Customer Rebates to Add Liquidity on Penny Pilot Options as follows:

[21] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] The amendments related to the Fees for Removing Liquidity in Non-Penny Pilot Options would be operative on November 2, 2012.

[4] NOM Participants under common ownership may aggregate their Customer volume to qualify for the increased Customer rebate. Common ownership is defined as 75 percent common ownership or control.

	Monthly volume	Rebate to add liquidity
Tier 1	Participant adds Customer liquidity of up to 34,999 contracts per day in a month	$0.26
Tier 2	Participant adds Customer liquidity of 35,000 to 74,999 contracts per day in a month	0.43
Tier 3	Participant adds Customer liquidity of 75,000 or more contracts per day in a month	0.44
Tier 4 [a]	Participant adds (1) Customer 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 5 [b,c]	Participant has Total Volume of 130,000 or more contracts per day in a month	0.45

[a] For purposes of Tier 4, the Exchange will allow a NOM Participant to qualify for the rebate if a NASDAQ member under common ownership with the NOM Participant has certified for the Investor Support Program and executed at least one order on NASDAQ's equity market. Common ownership is defined as 75 percent common ownership or control.

[b] For purposes of Tier 5, "Total Volume" shall be defined as Customer, Professional, Firm, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and Non-Penny Pilot Options which either adds or removes liquidity.

[c] For purposes of Tier 5, the Exchange will allow NOM Participants under common ownership to aggregate their volume to qualify for the rebate. Common ownership is defined as 75 percent common ownership or control.

The Exchange proposes to amend the Tier 5 rebate which pays a $0.45 per contract Rebate to Add Liquidity to NOM Options Participants that have Total Volume of 130,000 or more contracts per day in a month.[5] Total Volume is defined as Customer, Professional, Firm, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and Non-Penny Pilot Options which either adds or removes liquidity. The Exchange proposes to amend the Tier 5 rebate from $0.45 to $0.46 per contract.[6] The Exchange proposes that this amendment become immediately effective.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] 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.

The Exchange believes increasing the Fees for Removing Liquidity in Non-Penny Pilot Options for all market participants is reasonable because the increased fees permit the Exchange to offer increased Customer Rebates to Add Liquidity in both Penny Pilot and Non-Penny Pilot Options. Also, the proposed Fees for Removing Liquidity are similar to the non-Penny Pilot Options fees at BATS Exchange, Inc. ("BATS").[9]

The Exchange believes that increasing the Professional, Firm and Non-NOM Market Maker Fees for Removing Liquidity from $0.85 to $0.89 per contract is equitable and not unfairly discriminatory because all market participants would be assessed the same Fees for Removing Liquidity in Non-Penny Pilot Options, except Customers and NOM Market Makers. The Exchange believes that it is equitable and not unfairly discriminatory to increase Customer and NOM Market Maker Non-Penny Pilot Fees for Removing Liquidity from $0.79 to $0.82 per contract because Customers and NOM Market Makers each bring benefits to the market. The Exchange believes that Customer order flow brings unique benefits to the market which benefits all market participants through increased liquidity. NOM Market Makers have obligations to the market and regulatory requirements,[10] which normally do not apply to other market participants. A NOM Market Maker has the obligation to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The proposed differentiation as between Customers and NOM Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by Customers and NOM Market Makers, as well as the differing mix of orders entered.

The Exchange believes that increasing the Customer Rebate to Add Liquidity in Non-Penny Pilot Options, including NDX, from $0.75 to $0.80 per contract and also increasing the Customer Rebate to Add Liquidity in Non-Penny Pilot Options when a market participant adds Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month from $0.77 to $0.81 per contract is reasonable because these increased rebates would continue to attract Customer order flow to the Exchange in Non-Penny Pilot Options. Today, NOM Options Participants have the ability to earn a $0.75 per contract Customer Rebate to Add Liquidity in Non-Penny Pilot Options and an increased rebate of $0.77 when a market participant adds Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month. By increasing both the Customer Rebate to Add Liquidity to $0.80 per contract and the Customer Rebate for market participants that add Customer in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month to $0.81 per contract should encourage market participants to send additional order flow to NOM to obtain an even greater Customer Rebate to Add Liquidity in Non-Penny Pilot Options.

The Exchange believes that increasing the Customer Rebate to Add Liquidity in Non-Penny Pilot Options, including NDX, from $0.75 to $0.80 per contract and also increasing the Customer Rebate to Add Liquidity in Non-Penny Pilot Options when a market participant adds Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts

[5] For purposes of Tier 5, the Exchange allows NOM Participants under common ownership to aggregate their volume to qualify for the rebate. Common ownership is defined as 75 percent common ownership or control.

[6] The Exchange is not proposing to otherwise amend Tier 5 or any other Penny Pilot Options Customer rebate tier.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] BATS is amending pricing effective November 1, 2012 to increase non-customer non-Penny pricing from $0.80 to $0.84 per contract. *See* BATS alert titled "BATS Options Exchange Pricing Effective November 1, 2012."

[10] 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.

per day in a month from $0.77 to $0.81 per contract is equitable and not unfairly discriminatory because Customer order flow brings unique benefits to the market which benefits all market participants. The Exchange believes that its success at attracting Customer order flow benefits all market participants by improving the quality of order interaction and executions at the Exchange. These increased rebates are available to all NOM Options Participants acting as agent for Customer orders and in the case of the enhanced rebate of $0.81 per contract, all NOM Options Participants that send 115,000 contracts per day in a month in either or both Penny Pilot or Non-Penny Pilot Options would be entitled to receive the enhanced rebate.

In the current U.S. options market, many of the contracts are quoted in pennies. Under this pricing structure, the minimum penny tick increment equates to a $1.00 economic value difference per contract, given that a single standardized U.S. option contract covers 100 shares of the underlying stock. Where contracts are quoted in $0.05 increments (non-pennies), the value per tick is $5.00 in proceeds to the investor transacting in these contracts. Liquidity rebate and access fee structures on the make-take exchanges, including NOM, for securities quoted in penny increments are commonly in the $0.30 to $0.45 per contract range.[11] A $0.30 per contract rebate in a penny quoted security is a rebate equivalent to 30% of the value of the minimum tick. A $0.45 per contract fee in a penny quoted security is a charge equivalent to 45% of the value of that minimum tick. In other words, in penny quoted securities, where the price is improved by one tick with an access fee of $0.45 per contract, an investor paying to access that quote is still $0.55 better off than trading at the wider spread, even without the access fee ($1.00 of price improvement − $0.45 access fee = $0.55 better economics). This computation is equally true for securities quoted in wider increments. Rebates and access fees near the $0.89 per contract level equate to only 17.8% of the value of the minimum tick in Non-Penny Pilot Options, less than the experience today in Penny Pilot Options. For example, a retail investor transacting a single contract in a non-penny quoted security quoted a single tick tighter than the rest of the market, and paying an access fee of $0.82 per contract, is receiving an economic benefit of $4.18 ($0.05 improved tick = $5.00 in proceeds − $0.82 access fee = $4.18). The Exchange believes that encouraging NOM Market Makers to quote more aggressively by maintaining reducing transaction fees[12] and incentivizing Customer orders to post on NOM will narrow the spread in Non-Penny Pilot Options to the benefit of investors and all market participants by improving the overall economics of the resulting transactions that occur on the Exchange, even if the access fee paid in connection with such transactions is higher. Accordingly, the Exchange believes that the proposed fees and rebates for Non-Penny Pilot Options are reasonable, equitable and not unfairly discriminatory.

The Exchange believes that the proposed increase to the Tier 5 Customer Rebate to Add Liquidity in Penny Pilot Options is reasonable because the increased rebate would encourage broker-dealers acting as agent for Customer orders to select the Exchange as a venue to post Customer orders. The Exchange believes the existing monthly volume thresholds have incentivized firms to increase Customer order flow to the Exchange. The Exchange desires to continue to encourage firms to route Customer orders to the Exchange by offering an increased Customer rebate.

The Exchange believes that the proposed increase to the Tier 5 Customer Rebate to Add Liquidity in Penny Pilot Options is equitable and not unfairly discriminatory because the Exchange is proposing to offer an even higher Tier 5 Customer rebate in Penny Pilot Options of $0.46 per contract to NOM Participants which will be based on Total Volume. NOM Participants may total all Penny Pilot Option and Non-Penny Pilot Option volume that either adds or removes liquidity to reach the 130,000 volume requirement and qualify to obtain this rebate. All NOM Participants that transact Customer orders in Penny Pilot Options are eligible for the Customer rebates.[13]

The Exchange operates in a highly competitive market comprised of ten U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive or rebate opportunities to be inadequate. The Exchange believes that the proposed rebate scheme and fees are competitive and similar to other fees, rebates and tier opportunities in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts rebates and fees present on the Exchange today and substantially influences the proposal set forth above.

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. To the contrary, NASDAQ has designed its rebates and fees to compete effectively for the execution and routing of options contracts and to reduce the overall cost to investors of options trading. The Exchange believes that incentivizing NOM Participants to transact greater Customer volume on the Exchange benefits all market participants because of the increased liquidity to the market.

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.[14] 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.

[11] NOM is proposing to only pay a Customer a Rebate to Add Liquidity in Non-Penny Pilot Options. Other market participants would not be entitled to a rebate.

[12] The Exchange notes that the proposed $0.25 per contract NOM Market Maker Fee for Adding in Non-Penny Pilot Options is significantly less than transaction fees plus payment for order flow fees assessed by other options exchanges. For example, on NASDAQ OMX PHLX LLC ("Phlx"), the combined payment for order flow fee plus the transaction fee is $0.92 per contract. *See* Phlx's Pricing Schedule. Unlike Penny Pilot Options, the Exchange believes this significant reduction in fees for adding liquidity will have the same effect as a rebate in non-Penny Pilot Options in terms of a narrower spread.

[13] Tier 1 pays a rebate for NOM Participants that add Customer liquidity of up to 14,999 contracts per day in a month of Penny Pilot Options. There is no required minimum volume of Customer orders to qualify for a Customer Rebate to Add Liquidity.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

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–2012–127 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–2012–127. 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–2012–127 and should be submitted on or before December 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68229; File No. SR–NYSE–2012–60]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Change the Monthly Fees for the Use of Ports

November 14, 2012.

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 November 1, 2012, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') 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 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 its Price List to change the monthly fees for the use of ports. 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] 17 CFR 240.19b–4.

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

1. Purpose

The Exchange proposes to amend its Price List to change the monthly fees for the use of ports that provide connectivity to the Exchange's trading systems (i.e., ports for entry of orders and/or quotes (''order/quote entry ports'')) and to implement a fee for ports that allow for the receipt of ''drop copies'' of order or transaction information (''drop copy ports'' and, together with order/quote entry ports, ''ports'').[3] The Exchange proposes to implement the fee changes on November 1, 2012.

Order/Quote Entry Ports

The Exchange currently makes order/quote entry ports available for connectivity to its trading systems and charges $300 per port pair per month for up to five pairs of ports, then $1,500 per month for each additional five pairs of ports.[4]

The Exchange proposes to change the current methodology for order/quote entry port billing, such that order/quote entry ports would be charged on a per port basis, without billing in groups of five and without requiring that ports be in pairs.[5] More specifically, the Exchange proposes to charge $200 per port per month for order/quote entry ports, which are currently charged $300 per pair per month for activity on

[3] Firms receive confirmations of their orders and receive execution reports via the order/quote entry port that is used to enter the order or quote. A ''drop copy'' contains redundant information that a firm chooses to have ''dropped'' to another destination (e.g., to allow the firm's back office and/or compliance department, or another firm—typically the firm's clearing broker—to have immediate access to the information). Such drop copies can only be sent via a drop copy port. Drop copy ports cannot be used to enter orders and/or quotes.

[4] *See* Securities Exchange Act Release No. 63057 (October 6, 2010), 75 FR 63232 (October 14, 2010) (SR–NYSE–2010–70) (the port fee ''Adopting Release''). *See also* Securities Exchange Act Release No. 66107 (January 5, 2012), 77 FR 1759 (January 11, 2012) (SR–NYSE–2011–72) (the port fee ''Amending Release''). For example, the current fee for six pairs of ports would be $3,000 total per month (i.e., $1,500 total for the first five pairs and $1,500 for the sixth pair). The fee would remain $3,000 for pairs seven through 10. The fee would increase by $1,500, to $4,500 total, for pairs 11 through 15.

[5] The Exchange stated in the Adopting Release that the port fee is charged per participant. The Exchange later clarified that ''per participant'' means per member organization for purposes of the port fees. *See* Amending Release, at 1760. The proposed fee change would change the current methodology such that ports would not be charged on a per member organization basis. Accordingly, reference to per member organization would be removed from the Price List related to port fees.