change is designed to promote more accurate determinations of the price of securities under the trading pause provided by Rule 4120(a)(11), thus promoting just and equitable principles of trade, removing impediments to, and perfecting the mechanism of, a free and open market and a national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1) [7] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes more accurate trading pause triggers, as well as transparency and uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Moreover, the Exchange believes that other listing markets with functionally identical rules are concurrently adopting the changes proposed herein.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change merely modifies how the value of a low-priced security is measured, replacing the current method with what the Exchange believes to be a more reliable and accurate measure. The proposed change will enhance the operation of the trading pause process by making the determination of the $1 threshold more accurate and reflective of the current value of a low-priced security, which in turn contributes to the protection of investors and the public interest. Accordingly, the proposed changes will not impose any burden on competition while providing more accurate trading pause determinations under Rule 4120(a)(11).

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

Written comments were neither solicited nor received.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B) of the Act [10] to determine whether the proposed rule change 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 No. SR–NASDAQ–2013–024 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 No. SR–NASDAQ–2013–024. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2013–024 and should be submitted on or before March 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03687 Filed 2–15–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68911; File No. SR–NASDAQ–2013–025]

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

February 12, 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 February 1, 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

[7] 15 U.S.C. 78k–1(a)(1).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 15 U.S.C. 78s(b)(2)(B).

[11] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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 its Customer and Professional Rebates to Add Liquidity in Penny Pilot Options.[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. 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 amend the Customer and Professional Rebates to Add Liquidity in Penny Pilot Options by adding an additional rebate tier to attract additional order flow to the Exchange to the benefit of all market participants. The Exchange believes that increasing the current rebate will attract additional Customer and Professional order flow.

The Exchange proposes to amend the Customer and Professional Rebates to Add Liquidity in Penny Pilot Options from a five tier rebate structure to a six tier rebate structure. Today, the Exchange pays Customer and Professional Rebates to Add Liquidity in Penny Pilot Options as follows:

Monthly volume	Rebate to add liquidity
Tier 1 Participant adds Customer and Professional liquidity of up to 34,999 contracts per day in a month	$0.26
Tier 2 Participant adds Customer and Professional liquidity of 35,000 to 74,999 contracts per day in a month	0.43
Tier 3 Participant adds Customer and Professional liquidity of 75,000 or more contracts per day in a month	0.44
Tier 4 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 5 Participant has Total Volume of 130,000 or more contracts per day in a month	0.46

The Exchange proposes to amend Tier 1 which currently pays a $0.26 per contract Rebate to Add Liquidity in Penny Pilot Options to Participants that add Customer and Professional liquidity of up to 34,999 contracts per day in a month and offer the same $0.26 per contract rebate to Participants that add Customer and Professional liquidity of up to a decreased 24,999 contracts per day in a month. The Exchange proposes to add another rebate tier as new ''Tier 2'' and pay a $0.40 per contract Rebate to Add Liquidity in Penny Pilot Options to Participants that add Customer and Professional liquidity of 25,000 to 34,999 contracts per day in a month. The Exchange would renumber current Tiers 2 through 5 as Tiers 3 through 6. The Exchange would also renumber corresponding notes a, b and c.

Participants that add Customer and Professional liquidity between 25,000 to 34,999 contracts per day in a month today receive a $0.26 per contract rebate. Pursuant to this proposal, these Participants would receive a $0.40 per contract rebate for adding Customer and Professional liquidity between 25,000 to 34,999 contracts per day in a month.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] 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 that increasing the Customer and Professional Rebates to Add Liquidity in Penny Pilot Options for Participants that add Customer and Professional liquidity between 25,000 and 34,999 contracts per day in a month from $0.26 to $0.40 per contract is reasonable because the increased rebate should encourage Participants to transact a greater number of Customer and Professional orders on NOM. The Exchange believes the existing monthly volume thresholds have incentivized Participants to increase Customer and Professional order flow to the Exchange.

[3] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2012. *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] 15 U.S.C. 78f.

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

The Exchange desires to continue to encourage Participants to route Customer and Professional orders to the Exchange by offering increased Customer and Professional Rebates to Add Liquidity in Penny Pilot Options for Participants adding between 25,000 to 34,999 contracts of Customer and Professional liquidity.

The Exchange believes that increasing the Customer and Professional Rebates To Add Liquidity in Penny Pilot Options for Participants that add Customer and Professional liquidity between 25,000 and 34,999 contracts per day in a month from $0.26 to $0.40 per contract is equitable and not unfairly discriminatory because the Exchange is proposing to offer an even higher Customer and Professional rebate in Penny Pilot Options to all Participants that qualify for new Tier 2. All NOM Participants that transact Customer and Professional orders in Penny Pilot Options are and will continue to be eligible for the Customer and Professional rebates.[6]

The Exchange believes that its proposal to amend Tier 1 to reduce the number of contracts from ''up to 34,999 contracts per day in a month'' to ''up to 24,999 contracts per day in a month'' of Customer and Professional liquidity to qualify for the Tier 1 rebate is reasonable because as mentioned above the Exchange is increasing the rebate for those contracts between 25,000 to 34,999 to attract additional Customer and Professional order flow in Penny Pilot Options to the Exchange. The Exchange believes that its proposal to amend Tier 1 to reduce the number of contracts from ''up to 34,999 contracts per day in a month'' to ''up to 24,999 contracts per day in a month'' of Customer and Professional liquidity to qualify for the Tier 1 rebate is equitable and not unfairly discriminatory because, as mentioned, all Participants that transact one Customer or one Professional order in Penny Pilot Options would continue to qualify for the Tier 1 rebate. Those Participants that transact between 25,000 to 34,999 contracts per day in a month of Customer and Professional liquidity would earn an even greater rebate pursuant to this proposal.

The Exchange believes that paying Customers and Professionals a tiered Rebate To Add Liquidity in Penny Pilot Options, as proposed herein, is equitable and not unfairly discriminatory as compared to other market participants. The Exchange pays the highest Rebates To Add Liquidity in Penny Pilot Options to Customers and Professionals as compared to other market participants, with the exception of the Tier 1 rebate. NOM Market Makers are entitled to a higher $0.30 per contract Rebate to Add Liquidity in Penny Pilot Options as compared to the Customer and Professional rebate in Tier 1 because NOM Market Makers add value through continuous quoting[7] and the commitment of capital. With respect to the proposed rebates in Tiers 2, 3, 4, 5 and 6, Customers and Professionals earn higher rebates as compared to a NOM Market Makers. Also, a Customer and a Professional are paid higher Rebates to Add Liquidity in Penny Pilot Options in all proposed tiers as compared to a Firm,[8] Broker-Dealer[9] and Non-NOM Market Maker.[10] 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 paying Professionals higher Tier 2, 3, 4, 5 and 6 rebates as compared to NOM Market Makers and paying Professionals higher rebates as compared to Firms, Broker-Dealers and Non-NOM Market Makers with any tier 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. The Exchange has been assessing the impact of rebates since it first began to offer them and has also observed the impact of fees and rebates on other options exchanges in terms of quoting and liquidity. The Exchange believes that the Fees for Adding Liquidity in Penny Pilot Options, as compared to Rebates to Add Liquidity, impact a market participant's decision-making more prominently with respect to posting order flow on different venues and price. In modifying its 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 NOM 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. Other market participants have a known rebate rate at which they would execute the entire month. A Professional could only otherwise presume the Tier 1 rebate would be achieved in a month when determining price. Further, the Exchange initially established Professional pricing in order to '' * * * bring additional revenue to the Exchange.''[11] 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.''[12] 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.[13] 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 other NOM Market Makers, Firms, Broker-Dealers or Non-NOM Market Makers. First, a Professional is assessed the same fees as other market

[6] Pursuant to this proposal, Tier 1 pays a rebate of $0.26 per contract to NOM Participants that add Customer and Professional liquidity of up to 24,999 contracts per day in a month of Penny Pilot Options. There is no required minimum volume of Customer and Professional orders to qualify for the Customer or Professional Rebate To Add Liquidity in Penny Pilot Options.

[7] 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.

[8] A Firm is paid a Rebate to Add Liquidity in Penny Pilot Options of $0.10 per contract.

[9] A Broker-Dealer is paid a Rebate to Add Liquidity in Penny Pilot Options of $0.10 per contract.

[10] A Non-NOM Market Maker is paid a Rebate to Add Liquidity in Penny Pilot Options of $0.25 per contract.

[11] *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.

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

[13] *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.

participants, except Customers.[14] Second, a Professional only has the opportunity to achieve the higher rebate by sending in more than 24,999 contracts per day in a month, otherwise the Professional only achieves a Tier 1 rebate with at least one trade and the differential in that scenario as between market participants remains the same.[15] The Exchange recognizes that the rebate tiers provide an incentive to Professionals, but it is not a guaranteed rebate.

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 would also result in a Professional receiving higher rebates as compared to a NOM Market Maker if a Professional qualified for a Tier 2, 3, 4, 5 or 6 rebate and the differential in rebates would increase as between a Professional and a Firm, a Broker-Dealer and a Non-NOM Market Maker with this proposal, the Exchange does not believe the proposed rebate tiers would result in any burden on competition as between market participants on NOM. 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 has been assessing the impact of rebates since it first began to offer them and has also observed the impact of fees and rebates on other options exchanges in terms of quoting and liquidity. The Exchange believes that the Fees for Adding Liquidity, as compared to rebates, impact a market participant's decision-making more prominently with respect to posting order flow on different venues and price. The Exchange does not believe that allowing a Professional to obtain a higher rebate as compared to other market participants, if a certain number of contracts where to be executed on the Exchange, results in a burden on competition among market participants on NOM for the reasons noted herein.

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 is offering to pay increased rebates for Customer and Professional liquidity between 25,000 to 34,999 contracts per day in a month, which additional order flow should benefit other market participants.

The Exchange operates in a highly competitive market comprised of eleven U.S. options exchanges in which sophisticated and knowledgeable market participants can readily send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed rebate structure and tiers are competitive with rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace impacts 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.[16] 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–2013–025 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–2013–025. 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–2013–025 and should be submitted on or before March 12, 2013.

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

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03684 Filed 2–15–13; 8:45 am]

BILLING CODE 8011–01–P

[14] The Fee for Removing Liquidity in Penny Pilot Options is $0.47 per contract for all market participants, except Customers.

[15] If a Professional earned a Tier 1 rebate, the Professional would continue to receive a lower rebate as compared to a NOM Market Maker and a higher rebate as compared to a Firm, Broker-Dealer and a Non-NOM Market Maker, as is the case today.

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 200.30–3(a)(12).