

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 28

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2022 - \* 001

Amendment No. (req. for Amendments \*)

Filing by The Nasdaq Stock Market LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal to amend the NOM Pricing Schedule at Options 7, Section 2

### Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Sun Last Name \* Kim

Title \* Associate General Counsel

E-mail \* sun.kim@nasdaq.com

Telephone \* (646) 420-7816 Fax

### Signature

Pursuant to the requirements of the Securities Exchange of 1934, The Nasdaq Stock Market LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 01/03/2022


(Title \*)

By John Zecca

EVP and Chief Legal Officer

(Name \*)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

 DN:  
email=john.zecca@nasdaq.com  
Date: 2022.01.03 11:57:37  
-05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

**Form 19b-4 Information \***

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SR-NASDAQ-2022-001 19b-4.doc

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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SR-NASDAQ-2022-001 Exhibit 1.doc

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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SR-NASDAQ-2022-001 Exhibit 5.doc

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Nasdaq Options Market (“NOM”) Pricing Schedule at Options 7, Section 2.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on November 5, 2020. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Sun Kim  
Associate General Counsel  
Nasdaq, Inc.  
646-420-7816

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to amend NOM’s Pricing Schedule at Options 7, Section 2 to: (1) increase the Fee to Remove Liquidity in Penny Symbols for Customers<sup>3</sup> and Professionals,<sup>4</sup> and (2) amend the qualifications for the Tier 3 NOM Market Maker<sup>5</sup> Rebate to Add Liquidity in Penny Symbols to allow an alternative way to qualify for the rebate. Each change is further discussed below.

Customer and Professional Fee to Remove Liquidity

Today, the Exchange charges Customers and Professionals a \$0.48 per contract Fee to Remove Liquidity in Penny Symbols. The Exchange proposes to increase this fee to \$0.49 per contract for Customers and Professionals.

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<sup>3</sup> The term “Customer” or (“C”) applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Options 1, Section 1(a)(47)).

<sup>4</sup> The term “Professional” or (“P”) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Options 1, Section 1(a)(47). All Professional orders shall be appropriately marked by Participants.

<sup>5</sup> The term “NOM Market Maker” or (“M”) is a Participant that has registered as a Market Maker on NOM pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. 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.

NOM Market Maker Rebate to Add Liquidity

Today, the Exchange offers tiered NOM Market Maker Rebates to Add Liquidity in Penny Symbols that are \$0.20 (Tier 1), \$0.25 (Tier 2), \$0.30 (Tier 3),<sup>6</sup> \$0.32 (Tier 4),<sup>7</sup> \$0.44 (Tier 5), and \$0.48 (Tier 6). These rebates are paid per the highest tier achieved below.

**Monthly Volume**

- Tier 1** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of up to 0.10% of total industry customer equity and ETF option average daily volume (“ADV”) contracts per day in a month
- Tier 2** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month
- Tier 3** Participant: (a) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.07% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month, (2) transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.70% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market, (3) transacts in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.10% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, and (4) executes greater than 0.01% of CV via Market-on- Close/Limit-on- Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross in the same month
- Tier 4** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month
- Tier 5** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month and transacts

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<sup>6</sup> This rebate is \$0.40 per contract in the following symbols: AAPL, SPY, QQQ, IWM, and VXX. See Options 7, Section 2(1), note 4.

<sup>7</sup> Id.

in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.40% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market

**Tier 6** Participant: (a)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.95% of total industry customer equity and ETF option ADV contracts per day in a month, (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 30,000 or more contracts per day in a month must be removing liquidity, and (3) adds Firm, Broker-Dealer and Non-NOM Market Maker liquidity in Non-Penny Symbols of 10,000 or more contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.50% of total industry customer equity and ETF option ADV contracts per day in a month, and (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 15,000 or more contracts per day in a month must be removing liquidity

As set forth above, the Exchange currently offers two different paths in (a) and (b) for Participants to achieve the Tier 3 Market Maker rebate. The Exchange now proposes to amend the Tier 3 qualifications in (b) as follows:

Participant...(b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.07% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month, (2) transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent (i) 0.70% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market or (ii) 70 million shares or more ADV which adds liquidity in the same month on The Nasdaq Stock Market, (3) transacts in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.10% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, and (4) executes greater than 0.01% of CV via Market-on-Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross in the same month

The proposal adds an alternative route to achieve the equity component in (b)(2), namely by introducing an alternative volume-based requirement in new (b)(2)(ii) that requires Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 70 million shares or more ADV which adds liquidity in the

same month on The Nasdaq Stock Market.<sup>8</sup> The options component in (b)(1) and the other equity components in (b)(3) and (b)(4) to qualify for the Tier 3 rebate will remain unchanged. The Exchange will also make a related change to renumber the existing volume requirement in (b)(2) as (b)(2)(i).

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' ... As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no

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<sup>8</sup> All NOM Participants are required to be members of The Nasdaq Stock Market pursuant to General 3 (Membership and Access).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' ...."<sup>11</sup>

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>12</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

#### Customer and Professional Fee to Remove Liquidity

The Exchange believes that its proposal to increase the Fee to Remove Liquidity in Penny Symbols for Customers and Professionals from \$0.48 to \$0.49 per contract is

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<sup>11</sup> NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>12</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").



reasonable. While this fee is increasing, Customers and Professionals will continue to be assessed the lowest Fee to Remove Liquidity in Penny Symbols compared to all other market participants.<sup>13</sup> Accordingly, the Exchange believes that the proposed fee will continue to attract Customer and Professional order flow to NOM to the benefit of all market participants.

The Exchange further believes that its proposal is equitable and not unfairly discriminatory because it will apply uniformly to all similarly situated Participants. With the proposed changes, Customers and Professionals will continue to be assessed a lower Fee to Remove Liquidity in Penny Symbols compared to all other market participants. The Exchange does not believe it is inequitable or unfairly discriminatory to assess a lower fee to Customers and Professionals, and not to other market participants. Customer order flow offers unique benefits to the market by providing more trading opportunities, which attracts specialists and market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause a corresponding increase in order flow from other market participants. The Exchange believes that encouraging Professional order flow is similarly beneficial, as the lower fee may cause market participants to select NOM as a venue to send Professional order flow, which benefits all market participants by attracting valuable liquidity to the market and thereby enhancing the trading quality and efficiency for all.

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<sup>13</sup> The Exchange currently charges all other market participants (i.e., Broker-Dealers, Firms, Non-NOM Market Makers, and NOM Market Makers) a \$0.50 per contract Fee to Remove Liquidity in Penny Symbols.

NOM Market Maker Rebate to Add Liquidity

The Exchange believes that its proposal to amend the qualifications for the Tier 3 NOM Market Maker Rebate to Add Liquidity in Penny Symbols represents a reasonable attempt to incentivize market participants to increase the number and variety of orders sent to the Exchange for execution. Specifically, the Exchange proposes to introduce an alternative volume-based requirement in new subsection (b)(2)(ii) that requires Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 70 million shares or more ADV which adds liquidity in the same month on The Nasdaq Stock Market. By introducing an alternative method to qualify for the Tier 3 rebate, the Exchange will create an additional opportunity for Market Makers to increase their liquidity adding activity on the Exchange's equity market. Taken together with existing options and equity components that comprise the Tier 3 rebate qualifications in (b), the Exchange believes that the amended qualifying criteria will continue to incentivize participation in greater volume from cross asset activity, which would improve the overall quality of the Exchange's marketplace to the benefit of all market participants, both on NOM and The Nasdaq Stock Market.

The Exchange also believes that the proposed changes to the qualifications for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols is equitable and not unfairly discriminatory because the Exchange will pay the Tier 3 rebate uniformly to any qualifying Market Makers. Market Makers add value through continuous quoting and the commitment of capital.<sup>14</sup> Because Market Makers have these obligations to the market and regulatory requirements that normally do not apply to other market participants, the

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<sup>14</sup> See Options 2, Sections 4 and 5.

Exchange believes that offering the rebate to only Market Makers is equitable and not unfairly discriminatory in light of their obligations. Finally, encouraging Market Makers to add greater liquidity benefits all market participants, both on NOM and The Nasdaq Stock Market, in the quality of order interaction.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In terms of intra-market competition, the Exchange does not that its proposals will place any category of market participant at a competitive disadvantage. As discussed above, while the Exchange's proposals target certain order flow and activity on the Exchange (i.e., Customer, Professional, and Market Maker activity), the proposed changes are ultimately aimed at attracting greater order flow to the Exchange, which benefits all market participants by providing more trading opportunities.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly,

the Exchange does not believe that the proposed changes will impair the ability of Participants or competing exchanges to maintain their competitive standing in the financial markets.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>15</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2022-001)

January \_\_, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NOM Pricing Schedule at Options 7, Section 2

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 3, 2022, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Nasdaq Options Market (“NOM”) Pricing Schedule at Options 7, Section 2.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend NOM's Pricing Schedule at Options 7, Section 2 to: (1) increase the Fee to Remove Liquidity in Penny Symbols for Customers<sup>3</sup> and Professionals,<sup>4</sup> and (2) amend the qualifications for the Tier 3 NOM Market Maker<sup>5</sup> Rebate to Add Liquidity in Penny Symbols to allow an alternative way to qualify for the rebate. Each change is further discussed below.

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<sup>3</sup> The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(a)(47)).

<sup>4</sup> The term "Professional" or ("P") means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Options 1, Section 1(a)(47). All Professional orders shall be appropriately marked by Participants.

<sup>5</sup> The term "NOM Market Maker" or ("M") is a Participant that has registered as a Market Maker on NOM pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. 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.

Customer and Professional Fee to Remove Liquidity

Today, the Exchange charges Customers and Professionals a \$0.48 per contract Fee to Remove Liquidity in Penny Symbols. The Exchange proposes to increase this fee to \$0.49 per contract for Customers and Professionals.

NOM Market Maker Rebate to Add Liquidity

Today, the Exchange offers tiered NOM Market Maker Rebates to Add Liquidity in Penny Symbols that are \$0.20 (Tier 1), \$0.25 (Tier 2), \$0.30 (Tier 3),<sup>6</sup> \$0.32 (Tier 4),<sup>7</sup> \$0.44 (Tier 5), and \$0.48 (Tier 6). These rebates are paid per the highest tier achieved below.

**Monthly Volume**

- Tier 1** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of up to 0.10% of total industry customer equity and ETF option average daily volume (“ADV”) contracts per day in a month
- Tier 2** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month
- Tier 3** Participant: (a) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.07% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month, (2) transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.70% or more of Consolidated Volume (“CV”), which adds liquidity in the same month on The Nasdaq Stock Market, (3) transacts in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.10% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, and (4) executes greater than 0.01% of CV via Market-on-Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market

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<sup>6</sup> This rebate is \$0.40 per contract in the following symbols: AAPL, SPY, QQQ, IWM, and VXX. See Options 7, Section 2(1), note 4.

<sup>7</sup> Id.



- Closing Cross in the same month
- Tier 4** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month
- Tier 5** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month and transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.40% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market
- Tier 6** Participant: (a)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.95% of total industry customer equity and ETF option ADV contracts per day in a month, (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 30,000 or more contracts per day in a month must be removing liquidity, and (3) adds Firm, Broker-Dealer and Non-NOM Market Maker liquidity in Non-Penny Symbols of 10,000 or more contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.50% of total industry customer equity and ETF option ADV contracts per day in a month, and (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 15,000 or more contracts per day in a month must be removing liquidity

As set forth above, the Exchange currently offers two different paths in (a) and (b) for Participants to achieve the Tier 3 Market Maker rebate. The Exchange now proposes to amend the Tier 3 qualifications in (b) as follows:

Participant... (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.07% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month, (2) transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent (i) 0.70% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market or (ii) 70 million shares or more ADV which adds liquidity in the same month on The Nasdaq Stock Market, (3) transacts in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.10% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, and (4) executes greater than 0.01% of CV via Market-on-Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross in the same month

The proposal adds an alternative route to achieve the equity component in (b)(2), namely by introducing an alternative volume-based requirement in new (b)(2)(ii) that requires

Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 70 million shares or more ADV which adds liquidity in the same month on The Nasdaq Stock Market.<sup>8</sup> The options component in (b)(1) and the other equity components in (b)(3) and (b)(4) to qualify for the Tier 3 rebate will remain unchanged. The Exchange will also make a related change to renumber the existing volume requirement in (b)(2) as (b)(2)(i).

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing

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<sup>8</sup> All NOM Participants are required to be members of The Nasdaq Stock Market pursuant to General 3 (Membership and Access).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ....”<sup>11</sup>

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>12</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

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<sup>11</sup> NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>12</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

Customer and Professional Fee to Remove Liquidity

The Exchange believes that its proposal to increase the Fee to Remove Liquidity in Penny Symbols for Customers and Professionals from \$0.48 to \$0.49 per contract is reasonable. While this fee is increasing, Customers and Professionals will continue to be assessed the lowest Fee to Remove Liquidity in Penny Symbols compared to all other market participants.<sup>13</sup> Accordingly, the Exchange believes that the proposed fee will continue to attract Customer and Professional order flow to NOM to the benefit of all market participants.

The Exchange further believes that its proposal is equitable and not unfairly discriminatory because it will apply uniformly to all similarly situated Participants. With the proposed changes, Customers and Professionals will continue to be assessed a lower Fee to Remove Liquidity in Penny Symbols compared to all other market participants. The Exchange does not believe it is inequitable or unfairly discriminatory to assess a lower fee to Customers and Professionals, and not to other market participants. Customer order flow offers unique benefits to the market by providing more trading opportunities, which attracts specialists and market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause a corresponding increase in order flow from other market participants. The Exchange believes that encouraging Professional order flow is similarly beneficial, as the lower fee may cause market participants to select NOM as a venue to send Professional order flow, which benefits all

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<sup>13</sup> The Exchange currently charges all other market participants (i.e., Broker-Dealers, Firms, Non-NOM Market Makers, and NOM Market Makers) a \$0.50 per contract Fee to Remove Liquidity in Penny Symbols.

market participants by attracting valuable liquidity to the market and thereby enhancing the trading quality and efficiency for all.

NOM Market Maker Rebate to Add Liquidity

The Exchange believes that its proposal to amend the qualifications for the Tier 3 NOM Market Maker Rebate to Add Liquidity in Penny Symbols represents a reasonable attempt to incentivize market participants to increase the number and variety of orders sent to the Exchange for execution. Specifically, the Exchange proposes to introduce an alternative volume-based requirement in new subsection (b)(2)(ii) that requires Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 70 million shares or more ADV which adds liquidity in the same month on The Nasdaq Stock Market. By introducing an alternative method to qualify for the Tier 3 rebate, the Exchange will create an additional opportunity for Market Makers to increase their liquidity adding activity on the Exchange's equity market. Taken together with existing options and equity components that comprise the Tier 3 rebate qualifications in (b), the Exchange believes that the amended qualifying criteria will continue to incentivize participation in greater volume from cross asset activity, which would improve the overall quality of the Exchange's marketplace to the benefit of all market participants, both on NOM and The Nasdaq Stock Market.

The Exchange also believes that the proposed changes to the qualifications for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols is equitable and not unfairly discriminatory because the Exchange will pay the Tier 3 rebate uniformly to any qualifying Market Makers. Market Makers add value through continuous quoting and the

commitment of capital.<sup>14</sup> Because Market Makers have these obligations to the market and regulatory requirements that normally do not apply to other market participants, the Exchange believes that offering the rebate to only Market Makers is equitable and not unfairly discriminatory in light of their obligations. Finally, encouraging Market Makers to add greater liquidity benefits all market participants, both on NOM and The Nasdaq Stock Market, in the quality of order interaction.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In terms of intra-market competition, the Exchange does not that its proposals will place any category of market participant at a competitive disadvantage. As discussed above, while the Exchange's proposals target certain order flow and activity on the Exchange (i.e., Customer, Professional, and Market Maker activity), the proposed changes are ultimately aimed at attracting greater order flow to the Exchange, which benefits all market participants by providing more trading opportunities.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market

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<sup>14</sup> See Options 2, Sections 4 and 5.

participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Participants or competing exchanges to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>15</sup>

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

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<sup>15</sup> 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2022-001 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2022-001. This file number should be included on the subject line if e-mail 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 website 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-2022-001 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

Deleted text is [bracketed]. New text is underlined.

**The Nasdaq Stock Market LLC Rules**

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**Options Rules**

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**Options 7 Pricing Schedule**

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**Section 2 Nasdaq Options Market - Fees and Rebates**

The following charges shall apply to the use of the order execution and routing services of The Nasdaq Options Market for all securities.

(1) Fees and Rebates for Execution of Contracts on The Nasdaq Options Market\*

**Rebates to Add Liquidity in Penny Symbols**

	<b>Tier 1</b>	<b>Tier 2</b>	<b>Tier 3</b>	<b>Tier 4</b>	<b>Tier 5</b>	<b>Tier 6</b>
<b>Customer</b> 1,8,9,10	(\$0.20)	(\$0.25)	(\$0.43)	(\$0.44)	(\$0.45)	(\$0.48) <sup>7</sup>
<b>Professional</b> 1,9,10	(\$0.20)	(\$0.25)	(\$0.43)	(\$0.44)	(\$0.45)	(\$0.48)
<b>Broker-Dealer Firm</b>	(\$0.10)	(\$0.10)	(\$0.10)	(\$0.10)	(\$0.10)	(\$0.10)
<b>Non-NOM Market Maker</b>	(\$0.10)	(\$0.10)	(\$0.10)	(\$0.10)	(\$0.10)	(\$0.10)
<b>NOM Market Maker</b> <sup>3</sup>	(\$0.20)	(\$0.25)	(\$0.30) <sup>4</sup>	(\$0.32) <sup>4</sup>	(\$0.44) <sup>11</sup>	(\$0.48)

**Fees and Rebates to Add Liquidity in Non-Penny Symbols**

<b>Customer</b> 9,10,12	(\$0.80)
<b>Professional</b> 9,10,12	(\$0.80)
<b>Broker-Dealer Firm</b>	\$0.45
<b>Firm</b>	\$0.45

<b>Non-NOM Market Maker</b>	\$0.45
<b>NOM Market Maker</b> <sup>5,6</sup>	\$0.35/(\$0.30)

### Fees to Remove Liquidity in Penny and Non-Penny Symbols

	<b>Penny Symbols</b>	<b>Non-Penny Symbols</b>
<b>Customer</b>	\$0.[48]49	\$0.85
<b>Professional</b>	\$0.[48]49	\$0.85
<b>Broker-Dealer</b>	\$0.50	\$1.10
<b>Firm</b>	\$0.50	\$1.10
<b>Non-NOM Market Maker<sup>2</sup></b>	\$0.50	\$1.10
<b>NOM Market Maker<sup>2</sup></b>	\$0.50	\$1.10

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<sup>3</sup> The NOM Market Maker Rebate to Add Liquidity in Penny Symbols will be paid per the highest tier achieved below.

### Monthly Volume

- Tier 1** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of up to 0.10% of total industry customer equity and ETF option average daily volume (“ADV”) contracts per day in a month
- Tier 2** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month
- Tier 3** Participant: (a) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.07% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month, (2) transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent (i) 0.70% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market or (ii) 70 million shares or more ADV which adds liquidity in the same month on The Nasdaq Stock Market, (3) transacts in

Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.10% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, and (4) executes greater than 0.01% of CV via Market-on-Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross in the same month

- Tier 4** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month
- Tier 5** Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month and transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.40% or more of Consolidated Volume (“CV”) which adds liquidity in the same month on The Nasdaq Stock Market
- Tier 6** Participant: (a)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.95% of total industry customer equity and ETF option ADV contracts per day in a month, (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 30,000 or more contracts per day in a month must be removing liquidity, and (3) adds Firm, Broker-Dealer and Non-NOM Market Maker liquidity in Non-Penny Symbols of 10,000 or more contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.50% of total industry customer equity and ETF option ADV contracts per day in a month, and (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 15,000 or more contracts per day in a month must be removing liquidity

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