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

File No. * SR 2022 - * 011

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"/>	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 *).

A proposal to amend the Exchanges transaction credits at Equity 7, Section 114 and Section 118

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 * Marsha Last Name * Dixon

Title * Associate General Counsel

E-mail * marsha.dixon@nasdaq.com

Telephone * (301) 978-8183 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 01/27/2022


(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.

 Date: 2022.01.27 15:58:05 -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 EFFS website.

Form 19b-4 Information *

Add Remove View

SR-NASDAQ-2022-011 19b-4.docx

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-2022-011 Exhibit 1.docx

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-2022-011 Exhibit 5.docx

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”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s transaction credits at Equity 7, Section 114 and Section 118, as described further below.

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:

Marsha T. Dixon
Associate General Counsel
Nasdaq, Inc.
(301) 978-8183

¹ 15 U.S.C. 78s(b)(1).

² 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 the Exchange’s schedule of credits, at Equity 7, Section 114 and Section 118(a). Specifically, the Exchange proposes to (1) amend the Exchange’s Tier 1 rebate to Qualified Market Maker (“QMM”) at Equity 7, Section 114(e); (2) amend a supplemental credit in Tapes A, B and C for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders); (3) amend certain supplemental credits for displayed quotes/orders (other than Supplemental Orders) in Tapes A, B and C and (4) allow members to receive the higher rebate when the member’s non-Designated Retail Order rebate is greater than its Designated Retail Order rebate.

Changes to Section 114

The Exchange proposes to amend its pricing schedule, at Equity 7, Section 114(e), to make a change to its Qualified Market Maker (“QMM”) Program. The QMM Program provides supplemental incentives to member organizations that meet certain quality standards in acting as market makers for securities on the Exchange.

Specifically, the Exchange proposes to adjust the threshold to also allow a QMM to qualify for the Tier 1 incentive if the QMM executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 70 million shares of average daily volume during the month (inclusive of volume and Consolidated Volume³ that consists of securities priced less than \$1). Therefore, the

³ Pursuant to Equity 7, Section 114(h), the term “Consolidated Volume” shares the meaning of that term set forth in Equity 7, Section 118(a). (For purposes of calculating a member’s qualifications for Tiers 1 and 2 of the QMM Program

amended Tier 1 incentive would provide a \$0.0001 supplemental credit if a QMM executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.70% up to, and including, 0.90% of Consolidated Volume or 70 million shares of average daily volume during the month (inclusive of volume and Consolidated Volume that consists of securities priced less than \$1). The Exchange intends for the additional threshold to provide greater incentives to members during times when the market is trading at a higher than usual daily volume.⁴

Changes to Section 118

The Exchange currently provides a \$0.0001 per share supplemental credit to members for displayed quotes/orders that provide liquidity (other than Supplemental Orders or Designated Retail Orders) where the members, through one or more of its Nasdaq Market Center MPIDs, (i) increases its shares of liquidity provided in all securities by at least 30% as a percentage of Consolidated Volume⁵ during the month

credits set forth in paragraph (e) of this Section, the Exchange will calculate a member's volume and total Consolidated Volume twice. First, the Exchange will calculate a member's volume and total Consolidated Volume inclusive of volume that consists of executions in securities priced less than \$1. Second, the Exchange will calculate a member's volume and total Consolidated Volume exclusive of volume that consists of executions in securities priced less than \$1, while also applying distinct qualifying volume thresholds to each Tier, as set forth above in paragraph (e). The Exchange will then assess which of these two calculations would qualify the member for the most advantageous credits for the month and then it will apply those credits to the member.)

⁴ The proposal provides a third alternative for members to qualify for the Tier 1 rebate.

⁵ Pursuant to Equity 7, Section 118(a), the term "Consolidated Volume" shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's

relative to the month of October 2021 and (ii) has shares of liquidity provided of least 15 million ADV during the month. The Exchange now proposes to amend the threshold to allow a member to qualify if the member increases its shares of liquidity provided in all securities by at least 30% relative to the month of October 2021 or November 2021. The Exchange hopes that it will incentivize members to increase their liquidity providing activity on the Exchange by giving members the option of an additional month of Consolidated Volume to measure their liquidity against, which the Exchange hopes will improve market quality.

Additionally, the Exchange proposes to amend in two respects, its schedule of credits, which it provides to members for displayed quotes/orders that provide liquidity. First, the Exchange is proposing to remove the \$0.0001 per share executed and the \$0.00015 per share executed supplemental credits in Tapes A, B and C that are provided to members for displayed quotes/orders (other than Supplemental Orders) that provide liquidity. Second, the Exchange is proposing to add these two supplemental credits to the current credits in Tapes A, B and C that are provided to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity.

Specifically, one of the two supplemental credits is a \$0.0001 per share executed credit provided when a member, through one or more of its Nasdaq Market Center MPIDs, either: (i) increases the extent of its ADV of MELO Orders and/or midpoint

trading activity. For the purposes of calculating the extent of a member's trading activity during the month on Nasdaq and determining the charges and credits applicable to such member's activity, all M-ELO Orders that a member executes on Nasdaq during the month will count as liquidity-adding activity on Nasdaq.

orders (that execute against MELO Orders) in all securities by an ADV of 1 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least 3 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 100% or more during the month relative to the month of June 2021. The other supplemental credit is a \$0.00015 per share executed credit provided when a member, through one or more of its Nasdaq Market Center MPIDs, either: (i) increases the extent of its ADV of MELO Orders and/or midpoint orders (that execute against MELO Orders) in all securities by an ADV of 2 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least 4 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 150% or more during the month relative to the month of June 2021. These two credits may not be combined with each other.

Although the Exchange did not exclude retail orders when it proposed these two supplemental credits in Tapes A, B and C,⁶ the Exchange did not intend to include Designated Retail Orders in the payment of these supplemental credits. Currently, Designated Retail Orders receive their own separate credits on the Exchange's fee schedule and those orders generally receive higher rebates. The Exchange does not commonly provide additional rebates to Designated Retail Orders and therefore, is

⁶ Securities Exchange Act Release No. 92433 (July 6, 2021), 86 FR 38772 (July 22, 2021).

proposing to update its fee schedule to accurately reflect the manner in which it will pay these supplemental credits going forward.⁷

Lastly, the Exchange is proposing to allow a member to receive the higher rebate for its Designated Retail Orders if the member's total rebate for non-Designated Retail Orders (including any supplemental credits provided in Section 114 and Section 118, except the NBBO Program credit provided in Section 114(g)) is greater than its rebate for Designated Retail Orders (including supplemental credits provided in Section 114 and Section 118). For example, a member that provides liquidity for Designated Retail Orders could qualify for a credit of \$0.00325 per share executed. However, if the member provides liquidity for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders), the member could qualify for a credit of \$0.00305 per share executed and could also qualify for an additional \$0.0002 per share executed through the QMM Program, as well as an additional supplemental credit of \$0.0001 per share executed, making the member's total possible credit for displayed non-Designated Retail Orders \$0.00335 per share. In this case, the member would also receive a credit of \$0.00335 per share for its Designated Retail Orders. The Exchange is excluding the NBBO Program when calculating a member's highest rebate because the NBBO Program only applies to displayed orders in securities priced at \$1 or more per share that provide liquidity, establish the national best bid or best offer ("NBBO"), and display a quantity of

⁷ Since the \$0.0001 per share executed and the \$0.00015 per share executed credits were established in July 2021, the Exchange has not been applying the credit to Designated Retail Orders when calculating a firm's credits. Therefore, the Exchange is working to retroactively provide credits to firms that would have received credits if their Designated Retail Orders were not excluded. Under the proposal, there will be three ways for firm

at least one round lot at the time of execution. Consistent with the proposed rule, the NBBO Program explicitly excludes Designated Retail Orders.

The Exchange is proposing this change to ensure that none of its members are disadvantaged and that all members can obtain the maximum possible rebate.

The Exchange notes that those participants that are dissatisfied with this new proposal are free to shift their order flow to competing venues.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁹ 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 proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal is Reasonable

The Exchange's proposal is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity 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,

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

‘[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 exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”¹⁰

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.”¹¹

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

¹⁰ 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)).

¹¹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

The Exchange believes it is reasonable to amend the Tier 1 threshold of its QMM Program to provide the option for a QMM to qualify if the QMM executes shares of liquidity provided that represent 70 million shares of average daily volume during the month (inclusive of volume that consists of securities priced less than \$1). The Exchange also believes that the additional threshold option of 70 million shares of average daily volume will provide an increased incentive to members during times when the market is trading at a higher than usual daily volume. An increase in liquidity adding activity on the Exchange will, in turn, improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants.

The Exchange notes that those participants that are dissatisfied with the new threshold option are free to shift their order flow to competing venues.

Additionally, the Exchange believes that it is reasonable to include the option of an additional baseline month to measure whether a member increases its shares of liquidity provided in all securities by at least 30%. The Exchange believes that the additional month will encourage members who had a lower baseline in November than October to increase their liquidity adding activity on the Exchange to receive the credit, which will improve the overall market quality to the benefit of all market participants.

The Exchange's fee schedule is intended to reflect the Exchange's current assessment of its fees and credits. The Exchange does not currently pay Designated Retail Orders the \$0.0001 and \$0.00015 supplemental credits discussed above. As discussed above, Designated Retail Orders receive their own separate credits on the Exchange's fee schedule and those orders generally receive higher rebates. The Exchange does not commonly provide additional rebates to Designated Retail Orders.

Therefore, the Exchange believes it is reasonable to amend its supplemental credits on Tapes A, B and C to accurately reflect that Designated Retail Orders are excluded from the Exchange's payment of these two supplemental credits.

Lastly, the Exchange believes that it is reasonable to provide a member's Designated Retail Orders with the highest rebate that a member qualifies for because the Exchange is always seeking ways to attract more retail order flow. Therefore, if a member's rebate for non-Designated Retail Orders (including any supplemental credits provided in Section 114 and Section 118, except the NBBO Program credit provided in Section 114(g)) is greater than its rebate for Designated Retail Orders (including supplemental credits provided in Section 114 and Section 118), the Exchange is proposing to provide the member with the higher rebate for its Designated Retail Orders. Additionally, the Exchange believes that it is reasonable to exclude the NBBO Program when calculating a member's highest rebate because, as discussed above, the NBBO Program only applies to displayed orders in securities priced at \$1 or more per share that provide liquidity, establish the national best bid or best offer ("NBBO"), and display a quantity of at least one round lot at the time of execution. Consistent with the proposed rule, the NBBO Program explicitly excludes Designated Retail Orders. The Exchange is proposing this change to ensure that none of its members are disadvantaged and that all members can obtain the maximum possible rebate.

The Exchange notes that those market participants that are dissatisfied with the proposals are free to shift their order flow to competing venues that offer more generous pricing or less stringent qualifying criteria.

The Proposal is an Equitable Allocation of Credits

The Exchange believes its proposal will allocate its charges and credits fairly among its market participants.

The Exchange believes that it is an equitable allocation to establish an additional threshold for its QMM Program's Tier 1 supplemental credit and to include the option of an additional baseline month to measure whether a member qualifies for the \$0.0001 per share executed supplemental credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity. The proposals will encourage members to increase the extent to which they add liquidity to the Exchange. To the extent that the Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, then the Exchange will experience improvements in its market quality, which stands to benefit all market participants.

The Exchange also believes that it is equitable to amend the \$0.0001 per share executed and the \$0.00015 per share executed supplemental credits for displayed quotes/orders (other than Supplemental Orders) by applying the credits to members for displayed quotes/orders, which accurately reflect the most current application of these two supplemental credits. The Exchange believes that it is equitable to exclude Designated Retail Orders from these supplemental credits because Designated Retail Orders receive their own separate credits on the Exchange's fee schedule and those orders generally receive higher rebates. The Exchange does not commonly provide additional rebates to Designated Retail Orders.

Lastly, the Exchange also believes it is equitable to allow a member to receive the higher credit if the member's total credits for non-Designated Retail Orders (including

any supplemental credits provided in Section 114 and Section 118, except the NBBO Program credit provided in Section 114(g)) is greater than its credit for Designated Retail Orders (including supplemental credits provided in Section 114 and Section 118) in order to encourage firms to continue to provide retail order flow even if the firms expect to receive a higher rebate from their non-Designated Retail Orders. Moreover, the Exchange also believes it is equitable to exclude the NBBO Program from the calculation to ensure that the Exchange does not inadvertently disadvantage any member and that all members are treated equitably by obtaining the maximum rebate possible. Moreover, the Exchange believes that it is equitable to exclude the NBBO Program from this proposal as it remains consistent with the current rules of the program. Additionally, the Exchange expects any impact from this exclusion to be de minimis because Designated Retail Orders do not frequently set the NBBO.

Any participant that is dissatisfied with the proposal is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

The Proposal is not Unfairly Discriminatory

The Exchange believes that its proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries – from co-branded credit cards to grocery stores to cellular telephone data plans – that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model

that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it enhances price discovery and improves the overall quality of the equity markets.

The Exchange also believes that its proposal to add an additional threshold for its QMM Program's Tier 1 supplemental credit is not unfairly discriminatory because the additional qualifications will be available to all members. Similarly, the Exchange believes that it is not unfairly discriminatory to include the option of an additional baseline month to measure whether a member qualifies for the \$0.0001 per share executed supplemental credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity because the additional qualifications will be available to all members.

Additionally, the Exchange believes that it is not unfairly discriminatory to amend its fee schedule to align with the way the Exchange pays its supplemental credits. Moreover, all non-retail market participants will continue to be entitled to the credits and the amendment will provide market participants with clarity on how certain supplemental credits are paid. Additionally, Designated Retail Orders receive their own separate credits on the Exchange's fee schedule and those orders generally receive higher rebates.

Lastly, the Exchange believes that its proposals to provide a member with the higher rebate for its Designated Retail Orders if the member's rebate for non-Designated Retail Orders (including any supplemental credits provided in Section 114 and Section 118, except the NBBO Program credit provided in Section 114(g)) is greater than its credit for Designated Retail Orders (including supplemental credits provided in Section 114 and Section 118) is not unfairly discriminatory because the higher rebate option will

be available to all members. Moreover, providing members with the higher rebate will ensure that firms are not disincentivized from increasing their retail order flow due to the higher rebate they may receive from their non-Designated Retail Orders. Additionally, exclusion of the NBBO Program credit from the calculation of the higher rebate is also not discriminatory because the exclusion will also apply to all members.

Overall, the proposals stand to improve the overall market quality of the Exchange, to the benefit of all market participants, by incentivizing members to increase the extent of their liquidity provision or activity on the Exchange. Any participant that is dissatisfied with the proposal is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage.

As noted above, the Exchange's proposals are intended to have market-improving effects, to the benefit of all members. The Exchange notes that its members are free to trade on other venues to the extent they believe that these proposals are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

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 credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited.

The additional proposed thresholds for the Exchange's QMM Program's Tier 1 supplemental credit and the \$0.0001 per share executed supplemental credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders), as well as the allowance for members to receive the better of their Designated Retail Order credit or its non-Designated Retail Order credit, is reflective of this competition. Moreover, aligning the Exchange's fee schedule with the Exchange's application of its rebates does not burden competition. Any participant that is dissatisfied with the proposals is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

Even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having

enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprises upwards of 50% of industry volume.

In sum, if the change proposed herein is 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 change will impair the ability of members or competing order execution venues 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,¹² 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

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

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.

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-2022-011)

January ___, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Equity 7, Section 114 and Section 118 of the Fee Schedule

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 January 24, 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 Exchange’s pricing schedule at Equity 7, Section 114 and Section 118, as described further below.

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.

¹ 15 U.S.C. 78s(b)(1).

² 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 the Exchange's schedule of credits, at Equity 7, Section 114 and Section 118(a). Specifically, the Exchange proposes to (1) amend the Exchange's Tier 1 rebate to Qualified Market Maker ("QMM") at Equity 7, Section 114(e); (2) amend a supplemental credit in Tapes A, B and C for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders); (3) amend certain supplemental credits for displayed quotes/orders (other than Supplemental Orders) in Tapes A, B and C and (4) allow members to receive the higher rebate when the member's non-Designated Retail Order rebate is greater than its Designated Retail Order rebate.

Changes to Section 114

The Exchange proposes to amend its pricing schedule, at Equity 7, Section 114(e), to make a change to its Qualified Market Maker ("QMM") Program. The QMM Program provides supplemental incentives to member organizations that meet certain quality standards in acting as market makers for securities on the Exchange.

Specifically, the Exchange proposes to adjust the threshold to also allow a QMM to qualify for the Tier 1 incentive if the QMM executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 70 million shares of average daily volume during the month (inclusive of volume and Consolidated Volume³ that consists of securities priced less than \$1). Therefore, the amended Tier 1 incentive would provide a \$0.0001 supplemental credit if a QMM executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.70% up to, and including, 0.90% of Consolidated Volume or 70 million shares of average daily volume during the month (inclusive of volume and Consolidated Volume that consists of securities priced less than \$1). The Exchange intends for the additional threshold to provide greater incentives to members during times when the market is trading at a higher than usual daily volume.⁴

Changes to Section 118

The Exchange currently provides a \$0.0001 per share supplemental credit to members for displayed quotes/orders that provide liquidity (other than Supplemental

³ Pursuant to Equity 7, Section 114(h), the term “Consolidated Volume” shares the meaning of that term set forth in Equity 7, Section 118(a). (For purposes of calculating a member’s qualifications for Tiers 1 and 2 of the QMM Program credits set forth in paragraph (e) of this Section, the Exchange will calculate a member’s volume and total Consolidated Volume twice. First, the Exchange will calculate a member’s volume and total Consolidated Volume inclusive of volume that consists of executions in securities priced less than \$1. Second, the Exchange will calculate a member’s volume and total Consolidated Volume exclusive of volume that consists of executions in securities priced less than \$1, while also applying distinct qualifying volume thresholds to each Tier, as set forth above in paragraph (e). The Exchange will then assess which of these two calculations would qualify the member for the most advantageous credits for the month and then it will apply those credits to the member.)

⁴ The proposal provides a third alternative for members to qualify for the Tier 1 rebate.

Orders or Designated Retail Orders) where the members, through one or more of its Nasdaq Market Center MPIDs, (i) increases its shares of liquidity provided in all securities by at least 30% as a percentage of Consolidated Volume⁵ during the month relative to the month of October 2021 and (ii) has shares of liquidity provided of least 15 million ADV during the month. The Exchange now proposes to amend the threshold to allow a member to qualify if the member increases its shares of liquidity provided in all securities by at least 30% relative to the month of October 2021 or November 2021. The Exchange hopes that it will incentivize members to increase their liquidity providing activity on the Exchange by giving members the option of an additional month of Consolidated Volume to measure their liquidity against, which the Exchange hopes will improve market quality.

Additionally, the Exchange proposes to amend in two respects, its schedule of credits, which it provides to members for displayed quotes/orders that provide liquidity. First, the Exchange is proposing to remove the \$0.0001 per share executed and the \$0.00015 per share executed supplemental credits in Tapes A, B and C that are provided to members for displayed quotes/orders (other than Supplemental Orders) that provide liquidity. Second, the Exchange is proposing to add these two supplemental credits to the

⁵ Pursuant to Equity 7, Section 118(a), the term “Consolidated Volume” shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. For the purposes of calculating the extent of a member's trading activity during the month on Nasdaq and determining the charges and credits applicable to such member's activity, all M-ELO Orders that a member executes on Nasdaq during the month will count as liquidity-adding activity on Nasdaq.

current credits in Tapes A, B and C that are provided to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity.

Specifically, one of the two supplemental credits is a \$0.0001 per share executed credit provided when a member, through one or more of its Nasdaq Market Center MPIDs, either: (i) increases the extent of its ADV of MELO Orders and/or midpoint orders (that execute against MELO Orders) in all securities by an ADV of 1 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least 3 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 100% or more during the month relative to the month of June 2021. The other supplemental credit is a \$0.00015 per share executed credit provided when a member, through one or more of its Nasdaq Market Center MPIDs, either: (i) increases the extent of its ADV of MELO Orders and/or midpoint orders (that execute against MELO Orders) in all securities by an ADV of 2 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least 4 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 150% or more during the month relative to the month of June 2021. These two credits may not be combined with each other.

Although the Exchange did not exclude retail orders when it proposed these two supplemental credits in Tapes A, B and C,⁶ the Exchange did not intend to include Designated Retail Orders in the payment of these supplemental credits. Currently, Designated Retail Orders receive their own separate credits on the Exchange's fee schedule and those orders generally receive higher rebates. The Exchange does not commonly provide additional rebates to Designated Retail Orders and therefore, is proposing to update its fee schedule to accurately reflect the manner in which it will pay these supplemental credits going forward.⁷

Lastly, the Exchange is proposing to allow a member to receive the higher rebate for its Designated Retail Orders if the member's total rebate for non-Designated Retail Orders (including any supplemental credits provided in Section 114 and Section 118, except the NBBO Program credit provided in Section 114(g)) is greater than its rebate for Designated Retail Orders (including supplemental credits provided in Section 114 and Section 118). For example, a member that provides liquidity for Designated Retail Orders could qualify for a credit of \$0.00325 per share executed. However, if the member provides liquidity for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders), the member could qualify for a credit of \$0.00305 per share executed and could also qualify for an additional \$0.0002 per share executed through the

⁶ Securities Exchange Act Release No. 92433 (July 6, 2021), 86 FR 38772 (July 22, 2021).

⁷ Since the \$0.0001 per share executed and the \$0.00015 per share executed credits were established in July 2021, the Exchange has not been applying the credit to Designated Retail Orders when calculating a firm's credits. Therefore, the Exchange is working to retroactively provide credits to firms that would have received credits if their Designated Retail Orders were not excluded. Under the proposal, there will be three ways for firm

QMM Program, as well as an additional supplemental credit of \$0.0001 per share executed, making the member's total possible credit for displayed non-Designated Retail Orders \$0.00335 per share. In this case, the member would also receive a credit of \$0.00335 per share for its Designated Retail Orders. The Exchange is excluding the NBBO Program when calculating a member's highest rebate because the NBBO Program only applies to displayed orders in securities priced at \$1 or more per share that provide liquidity, establish the national best bid or best offer ("NBBO"), and display a quantity of at least one round lot at the time of execution. Consistent with the proposed rule, the NBBO Program explicitly excludes Designated Retail Orders.

The Exchange is proposing this change to ensure that none of its members are disadvantaged and that all members can obtain the maximum possible rebate.

The Exchange notes that those participants that are dissatisfied with this new proposal are free to shift their order flow to competing venues.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁹ 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 proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

The Proposal is Reasonable

The Exchange's proposal is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity 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 exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹⁰

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.”¹¹

¹⁰ 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)).

¹¹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

The Exchange believes it is reasonable to amend the Tier 1 threshold of its QMM Program to provide the option for a QMM to qualify if the QMM executes shares of liquidity provided that represent 70 million shares of average daily volume during the month (inclusive of volume that consists of securities priced less than \$1). The Exchange also believes that the additional threshold option of 70 million shares of average daily volume will provide an increased incentive to members during times when the market is trading at a higher than usual daily volume. An increase in liquidity adding activity on the Exchange will, in turn, improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants.

The Exchange notes that those participants that are dissatisfied with the new threshold option are free to shift their order flow to competing venues.

Additionally, the Exchange believes that it is reasonable to include the option of an additional baseline month to measure whether a member increases its shares of liquidity provided in all securities by at least 30%. The Exchange believes that the additional month will encourage members who had a lower baseline in November than October to increase their liquidity adding activity on the Exchange to receive the credit, which will improve the overall market quality to the benefit of all market participants.

The Exchange's fee schedule is intended to reflect the Exchange's current assessment of its fees and credits. The Exchange does not currently pay Designated Retail Orders the \$0.0001 and \$0.00015 supplemental credits discussed above. As discussed above, Designated Retail Orders receive their own separate credits on the Exchange's fee schedule and those orders generally receive higher rebates. The Exchange does not commonly provide additional rebates to Designated Retail Orders. Therefore, the Exchange believes it is reasonable to amend its supplemental credits on Tapes A, B and C to accurately reflect that Designated Retail Orders are excluded from the Exchange's payment of these two supplemental credits.

Lastly, the Exchange believes that it is reasonable to provide a member's Designated Retail Orders with the highest rebate that a member qualifies for because the Exchange is always seeking ways to attract more retail order flow. Therefore, if a member's rebate for non-Designated Retail Orders (including any supplemental credits provided in Section 114 and Section 118, except the NBBO Program credit provided in Section 114(g)) is greater than its rebate for Designated Retail Orders (including supplemental credits provided in Section 114 and Section 118), the Exchange is proposing to provide the member with the higher rebate for its Designated Retail Orders. Additionally, the Exchange believes that it is reasonable to exclude the NBBO Program when calculating a member's highest rebate because, as discussed above, the NBBO Program only applies to displayed orders in securities priced at \$1 or more per share that provide liquidity, establish the national best bid or best offer ("NBBO"), and display a quantity of at least one round lot at the time of execution. Consistent with the proposed rule, the NBBO Program explicitly excludes Designated Retail Orders. The Exchange is

proposing this change to ensure that none of its members are disadvantaged and that all members can obtain the maximum possible rebate.

The Exchange notes that those market participants that are dissatisfied with the proposals are free to shift their order flow to competing venues that offer more generous pricing or less stringent qualifying criteria.

The Proposal is an Equitable Allocation of Credits

The Exchange believes its proposal will allocate its charges and credits fairly among its market participants.

The Exchange believes that it is an equitable allocation to establish an additional threshold for its QMM Program's Tier 1 supplemental credit and to include the option of an additional baseline month to measure whether a member qualifies for the \$0.0001 per share executed supplemental credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity. The proposals will encourage members to increase the extent to which they add liquidity to the Exchange. To the extent that the Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, then the Exchange will experience improvements in its market quality, which stands to benefit all market participants.

The Exchange also believes that it is equitable to amend the \$0.0001 per share executed and the \$0.00015 per share executed supplemental credits for displayed quotes/orders (other than Supplemental Orders) by applying the credits to members for displayed quotes/orders, which accurately reflect the most current application of these two supplemental credits. The Exchange believes that it is equitable to exclude Designated Retail Orders from these supplemental credits because Designated Retail

Orders receive their own separate credits on the Exchange's fee schedule and those orders generally receive higher rebates. The Exchange does not commonly provide additional rebates to Designated Retail Orders.

Lastly, the Exchange also believes it is equitable to allow a member to receive the higher credit if the member's total credits for non-Designated Retail Orders (including any supplemental credits provided in Section 114 and Section 118, except the NBBO Program credit provided in Section 114(g)) is greater than its credit for Designated Retail Orders (including supplemental credits provided in Section 114 and Section 118) in order to encourage firms to continue to provide retail order flow even if the firms expect to receive a higher rebate from their non-Designated Retail Orders. Moreover, the Exchange also believes it is equitable to exclude the NBBO Program from the calculation to ensure that the Exchange does not inadvertently disadvantage any member and that all members are treated equitably by obtaining the maximum rebate possible. Moreover, the Exchange believes that it is equitable to exclude the NBBO Program from this proposal as it remains consistent with the current rules of the program. Additionally, the Exchange expects any impact from this exclusion to be de minimis because Designated Retail Orders do not frequently set the NBBO.

Any participant that is dissatisfied with the proposal is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

The Proposal is not Unfairly Discriminatory

The Exchange believes that its proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing

model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries – from co-branded credit cards to grocery stores to cellular telephone data plans – that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it enhances price discovery and improves the overall quality of the equity markets.

The Exchange also believes that its proposal to add an additional threshold for its QMM Program's Tier 1 supplemental credit is not unfairly discriminatory because the additional qualifications will be available to all members. Similarly, the Exchange believes that it is not unfairly discriminatory to include the option of an additional baseline month to measure whether a member qualifies for the \$0.0001 per share executed supplemental credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity because the additional qualifications will be available to all members.

Additionally, the Exchange believes that it is not unfairly discriminatory to amend its fee schedule to align with the way the Exchange pays its supplemental credits. Moreover, all non-retail market participants will continue to be entitled to the credits and the amendment will provide market participants with clarity on how certain supplemental credits are paid. Additionally, Designated Retail Orders receive their own separate credits on the Exchange's fee schedule and those orders generally receive higher rebates.

Lastly, the Exchange believes that its proposals to provide a member with the higher rebate for its Designated Retail Orders if the member's rebate for non-Designated Retail Orders (including any supplemental credits provided in Section 114 and Section 118, except the NBBO Program credit provided in Section 114(g)) is greater than its credit for Designated Retail Orders (including supplemental credits provided in Section 114 and Section 118) is not unfairly discriminatory because the higher rebate option will be available to all members. Moreover, providing members with the higher rebate will ensure that firms are not disincentivized from increasing their retail order flow due to the higher rebate they may receive from their non-Designated Retail Orders. Additionally, exclusion of the NBBO Program credit from the calculation of the higher rebate is also not discriminatory because the exclusion will also apply to all members.

Overall, the proposals stand to improve the overall market quality of the Exchange, to the benefit of all market participants, by incentivizing members to increase the extent of their liquidity provision or activity on the Exchange. Any participant that is dissatisfied with the proposal is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage.

As noted above, the Exchange's proposals are intended to have market-improving effects, to the benefit of all members. The Exchange notes that its members are free to trade on other venues to the extent they believe that these proposals are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

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 credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited.

The additional proposed thresholds for the Exchange's QMM Program's Tier 1 supplemental credit and the \$0.0001 per share executed supplemental credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders), as well as the allowance for members to receive the better of their Designated Retail Order credit or its non-Designated Retail Order credit, is reflective of this competition. Moreover,

aligning the Exchange's fee schedule with the Exchange's application of its rebates does not burden competition. Any participant that is dissatisfied with the proposals is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

Even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprises upwards of 50% of industry volume.

In sum, if the change proposed herein is 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 change will impair the ability of members or competing order execution venues 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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹² 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.

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. Please include File Number SR-NASDAQ-2022-011 on the subject line.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

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-2022-011. 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-2022-011 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.¹³

J. Matthew DeLesDernier
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The Nasdaq Stock Market Rules

* * * * *

Equity Rules

* * * * *

Equity 7 Pricing Schedule

* * * * *

Section 114. Market Quality Incentive Programs

...

Qualified Market Maker ("QMM") Program

...

(e) Nasdaq will provide a rebate per share executed (as defined in the below table) with respect to all other displayed orders (other than Designated Retail Orders, as defined in Equity 7, Section 118) in securities priced at \$1 or more per share that provide liquidity and were for securities listed on NYSE ("Tape A QMM Incentive"), securities listed on exchanges other than Nasdaq and NYSE ("Tape B QMM Incentive"), or securities listed on Nasdaq ("Tape C QMM Incentive"). Such rebate will be in addition to any rebate payable under Equity 7, Section 118(a):

QMM Tiers	Tape A QMM Incentive	Tape B QMM Incentive	Tape C QMM Incentive
Tier 1 QMM executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.70% up to, and including, 0.90% of Consolidated Volume <u>or 70 million shares ADV</u> during the month (inclusive of volume and Consolidated Volume that consists of securities priced less than \$1); or QMM executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center	\$0.0001	\$0.0001	\$0.0001

MPIDs that represent above 0.80% up to, and including, 0.90% of Consolidated Volume during the month (exclusive of volume and Consolidated Volume that consists of securities priced less than \$1)

...

* * * * *

Section 118. Nasdaq Market Center Order Execution and Routing

(a) No change.

(1) Fees for Execution and Routing of Orders in Nasdaq-Listed Securities

...	
Supplemental credit to member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity:	
...	
member that, through one or more of its Nasdaq Market Center MPIDs, (i) increases its shares of liquidity provided in all securities by at least 30% as a percentage of Consolidated Volume during the month relative to the month of October or November 2021 and (ii) has shares of liquidity provided of least 15 million ADV during the month:	\$0.0001 per share executed
<u>member, through one or more of its Nasdaq Market Center MPIDs, either: (i) increases the extent of its ADV of MELO Orders and/or midpoint orders (that execute against MELO Orders) in all securities by an ADV of 1 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least 3 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 100% or more during the month relative to the month of June 2021:</u>	<u>\$0.0001 per share executed*</u> <u>*May not be combined with \$0.00015 per share executed credit listed immediately below</u>

<p><u>member, through one or more of its Nasdaq Market Center MPIDs, either: (i) increases the extent of its ADV of MELO Orders and/or midpoint orders (that execute against MELO Orders) in all securities by an ADV of 2 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least a 4 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 150% or more during the month relative to the month of June 2021:</u></p>	<p><u>\$0.00015 per share executed*</u> <u>*May not be combined with \$0.0001 per share executed credit listed immediately above</u></p>
<p>...</p>	
<p>Supplemental credit to member for displayed quotes/orders (other than Supplemental Orders) that provide liquidity:</p>	
<p>member, through one or more of its Nasdaq Market Center MPIDs (i) with shares of liquidity provided in all securities during the month representing at least 0.50% of Consolidated Volume during the month; (ii) adds at least 0.35% of Consolidated Volume during the month in securities in Tape C; (iii) adds at least 0.15% of Consolidated Volume during the month in Designated Retail Orders* for securities in any tape; and (iv) achieves at least a 60% ratio of its liquidity adding activity to its total activity on the Exchange during the month:</p>	<p>\$0.00005 per share executed</p>
<p>[member, through one or more of its Nasdaq Market Center MPIDs, either: (i) increases the extent to which its ADV of MELO Orders and/or midpoint orders (that execute against MELO Orders) in all securities by an ADV of 1 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least 3 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 100% or more during the month relative to the month of June 2021:]</p>	<p>[\$0.0001 per share executed* *May not be combined with \$0.00015 per share executed credit listed immediately below]</p>
<p>[member, through one or more of its Nasdaq Market Center MPIDs, either: (i) increases the extent to which its ADV of MELO Orders and/or midpoint orders (that execute against MELO Orders) in all securities by an</p>	<p>[\$0.00015 per share executed* *May not be combined with</p>

<p>ADV of 2 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least a 4 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 150% or more during the month relative to the month of June 2021:]</p>	<p>\$0.0001 per share executed credit listed immediately above]</p>
<p>...</p>	

* * * * *

(2) Fees for Execution and Routing of Securities Listed on NYSE

<p>...</p>	
<p>Supplemental credit to member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity:</p>	
<p>...</p>	
<p>member that, through one or more of its Nasdaq Market Center MPIDs, (i) increases its shares of liquidity provided in all securities by at least 30% as a percentage of Consolidated Volume during the month relative to the month of October or November 2021 and (ii) has shares of liquidity provided of least 15 million ADV during the month:</p>	<p>\$0.0001 per share executed</p>
<p><u>member, through one or more of its Nasdaq Market Center MPIDs, either: (i) increases the extent of its ADV of MELO Orders and/or midpoint orders (that execute against MELO Orders) in all securities by an ADV of 1 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least 3 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 100% or more during the month relative to the month of June 2021:</u></p>	<p><u>\$0.0001 per share executed*</u> <u>*May not be combined with \$0.00015 per share executed credit listed immediately below</u></p>

<p><u>member, through one or more of its Nasdaq Market Center MPIDs, either: (i) increases the extent to which its ADV of MELO Orders and/or midpoint orders (that execute against MELO Orders) in all securities by an ADV of 2 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least a 4 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 150% or more during the month relative to the month of June 2021:</u></p>	<p><u>\$0.00015 per share executed*</u></p> <p><u>*May not be combined with \$0.0001 per share executed credit listed immediately above</u></p>
<p>...</p>	
<p>Supplemental credit to member for displayed quotes/orders (other than Supplemental Orders) that provide liquidity:</p>	
<p>member, through one or more of its Nasdaq Market Center MPIDs (i) with shares of liquidity provided in all securities during the month representing at least 0.50% of Consolidated Volume during the month; (ii) adds at least 0.35% of Consolidated Volume during the month in securities in Tape C; (iii) adds at least 0.15% of Consolidated Volume during the month in Designated Retail Orders* for securities in any tape; and (iv) achieves at least a 60% ratio of its liquidity adding activity to its total activity on the Exchange during the month:</p>	<p>\$0.00005 per share executed</p>
<p>[member, through one or more of its Nasdaq Market Center MPIDs, either: (i) increases the extent to which its ADV of MELO Orders and/or midpoint orders (that execute against MELO Orders) in all securities by an ADV of 1 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least 3 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 100% or more during the month relative to the month of June 2021:]</p>	<p>[\$0.0001 per share executed*]</p> <p>*May not be combined with \$0.00015 per share executed credit listed immediately below]</p>
<p>[member, through one or more of its Nasdaq Market Center MPIDs, either: (i) increases the extent to which its ADV of MELO Orders and/or midpoint orders (that execute against MELO Orders) in all securities by an</p>	<p>[\$0.00015 per share executed*]</p> <p>*May not be combined with</p>

<p>ADV of 2 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least a 4 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 150% or more during the month relative to the month of June 2021:]</p>	<p>\$0.0001 per share executed credit listed immediately below]</p>
<p>...</p>	

* * * * *

(3) Fees for Execution and Routing of Orders in Securities Listed on Exchanges other than Nasdaq and NYSE ("Tape B Securities")

<p>...</p>	
<p>Supplemental credit to member for displayed quotes/orders (other than Supplemental Orders) that provide liquidity:</p>	
<p>member, through one or more of its Nasdaq Market Center MPIDs (i) with shares of liquidity provided in all securities during the month representing at least 0.50% of Consolidated Volume during the month; (ii) adds at least 0.35% of Consolidated Volume during the month in securities in Tape C; (iii) adds at least 0.15% of Consolidated Volume during the month in Designated Retail Orders* for securities in any tape; and (iv) achieves at least a 60% ratio of its liquidity adding activity to its total activity on the Exchange during the month:</p>	<p>\$0.00005 per share executed</p>
<p>[member, through one or more of its Nasdaq Market Center MPIDs, either: (i) increases the extent to which its ADV of MELO Orders and/or midpoint orders (that execute against MELO Orders) in all securities by an ADV of 1 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least 3 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 100% or more during the month relative to the month of June 2021:]</p>	<p>[\$0.0001 per share executed* *May not be combined with \$0.00015 per share executed credit listed immediately below]</p>
<p>[member, through one or more of its Nasdaq Market</p>	<p>[\$0.00015 per share</p>

Center MPIDs, either: (i) increases the extent to which its ADV of MELO Orders and/or midpoint orders (that execute against MELO Orders) in all securities by an ADV of 2 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least a 4 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 150% or more during the month relative to the month of June 2021:]	executed* *May not be combined with \$0.0001 per share executed credit listed immediately below]
Supplemental credit to member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity:	
member that, through one or more of its Nasdaq Market Center MPIDs, (i) increases its shares of liquidity provided in all securities by at least 30% as a percentage of Consolidated Volume during the month relative to the month of October or November 2021 and (ii) has shares of liquidity provided of least 15 million ADV during the month:	\$0.0001 per share executed
<u>member, through one or more of its Nasdaq Market Center MPIDs, either: (i) increases the extent of its ADV of MELO Orders and/or midpoint orders (that execute against MELO Orders) in all securities by an ADV of 1 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least 3 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 100% or more during the month relative to the month of June 2021:</u>	<u>\$0.0001 per share executed*</u> <u>*May not be combined with \$0.00015 per share executed credit listed immediately below</u>
<u>member, through one or more of its Nasdaq Market Center MPIDs, either: (i) increases the extent of its ADV of MELO Orders and/or midpoint orders (that execute against MELO Orders) in all securities by an ADV of 2 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least 4 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 150% or</u>	<u>\$0.00015 per share executed*</u> <u>*May not be combined with \$0.0001 per share executed credit listed immediately above</u>

<p><u>more during the month relative to the month of June 2021:</u></p>	
<p>...</p>	

* A "Designated Retail Order" is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this section, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An order from a "natural person" can include orders on behalf of accounts that are held in a corporate legal form - such as an Individual Retirement Account, Corporation, or a Limited Liability Company - that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. Members must submit a signed written attestation, in a form prescribed by Nasdaq, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as "Designated Retail Orders" comply with these requirements. Orders may be designated on an order by-order basis, or by designating all orders on a particular order entry port as Designated Retail Orders. If a member's total rebate for non-Designated Retail Orders (including any supplemental credits provided in Section 114 and Section 118, except the NBBO Program credit provided in Section 114(g)) is greater than its rebate for Designated Retail Orders (including supplemental credits provided in Section 114 and Section 118), then the member shall receive the higher rebate.
