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

File No. * SR 2022 - * 025

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)		
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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 fees and credits at Equity 7, Sections 114 and 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 * Brett Last Name * Kitt

Title * AVP, Principal Associate General Counsel

E-mail * brett.kitt@nasdaq.com

Telephone * (301) 978-8132 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 03/09/2022 (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: 2022.03.09 15:51:41 -05'00'

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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-2022-025 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-2022-025 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-2022-025 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 fees and credits at Equity 7, Sections 114 and 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”). 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:

Brett Kitt
AVP, Principal Associate General Counsel
Nasdaq, Inc.
(301) 978-8132

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 fees and credits, at Equity 7, Sections 114 and 118 to establish pricing for orders executed in the new Extended Trading Close or “ETC,” which the Commission approved earlier this year.³ The proposed fee will be effective coincident with the commencement of the ETC, which the Exchange intends to occur on March 7, 2022.

As set forth in Rule 4755, the Extended Trading Close will allow Participants an additional opportunity to access liquidity in Nasdaq-listed securities at the Nasdaq Official Closing Price for a five minute period of time after the Nasdaq Closing Cross⁴ or the LULD Closing Cross,⁵ (collectively, the “Closing Cross”) concludes. During this five minute period, the System will continuously match and execute “ETC Eligible Orders” – which include “ETC Orders” and “ETC Eligible LOC Orders” (discussed below) – at the Nasdaq Official Closing Price, as determined by the Closing Cross, unless the System suspends executions in two scenarios. First, the System will suspend executions of matched orders in a Nasdaq-listed security in the ETC if and when it detects an order in the security resting on the Nasdaq Continuous Book in After Hours

³ See Securities Exchange Act Release No. 34-94038 (January 24, 2022), 87 FR 4683 (January 28, 2022) (order approving SR-Nasdaq-2021-40, as amended).

⁴ The “Nasdaq Closing Cross” refers to Nasdaq’s process for determining the price at which it will execute orders at the close and for executing those orders, as set forth in Rule 4754.

⁵ The “LULD Closing Cross” refers to Nasdaq’s modified process for determining the price at which it will execute orders at the close, following a Trading Pause, as set forth in Rule 4120(a), which exists at or after 3:50 p.m. and before 4:00 p.m., as well as the process for executing those orders, as set forth in Rule 4754(b)(6).

Trading⁶ with an After Hours Trading bid (offer) price that is higher (lower) than the Nasdaq Official Closing Price. Second, the System will suspend executions of matched orders in a Nasdaq-listed security in the ETC if and when the last sale price during After Hours Trading, or the best After Hours Trading bid (offer) price, of the security, other than on the Nasdaq Continuous Book, is higher (lower) than the Nasdaq Official Closing Price by the greater of 0.5% or \$0.01. The Exchange will cancel any portion of an ETC Eligible Order that remains unexecuted at the conclusion of the ETC, or for which the System has suspended execution, where that suspension remains active as of the conclusion of the ETC. The ETC will not occur for a security on any day when insufficient interest exists in the System to conduct the Closing Cross for that security or when the Exchange invokes contingency procedures due to a disruption that prevents execution of the Closing Cross.

As noted above, two types of orders may participate in the ETC: (1) ETC Eligible Limit-on-Close (“LOC”) Orders; and (2) Extended Trading Close (“ETC”) Orders. As set forth in Rule 4702(b)(12), ETC Eligible LOC Orders are LOC Orders that are eligible to, and by default are designated to participate in the ETC⁷ to the extent that such LOC

⁶ For purposes of the ETC, the term “After Hours Trading” refers to trading in a Nasdaq-listed security that commences immediately following the conclusion of the Nasdaq Closing Cross or the LULD Closing Cross, during Post-Market Hours, as that term is defined in Equity 1, Section 1(a)(9).

⁷ By default, all LOC Orders in Nasdaq-listed securities will be set to participate in the Extended Trading Close in the event that the LOC Orders are not fully executed during the Closing Cross. However, a Participant may opt to exclude its LOC Orders from participating in the Extended Trading Close. When ETC eligibility is disabled, the System will simply cancel LOC Orders in Nasdaq-listed securities that remain unexecuted after the Closing Cross occurs. Also, if Participants select a time-in-force for their LOC Orders in Nasdaq-listed securities that continues after the Closing Cross occurs, then if such LOC Orders remain unexecuted after the Closing Cross, the Exchange will cause the remaining

Orders are entered through RASH or FIX and remain unexecuted, in whole or part, in the Closing Cross. An ETC Order, meanwhile, is an order in a Nasdaq-listed security that is eligible for entry and execution exclusively during the ETC, at the Nasdaq Official Closing Price, as determined by the Closing Cross.

The Exchange now proposes to amend Equity 7, Section 118 to adopt fees for ETC Eligible LOC Orders and ETC Orders that execute in the ETC. In short, the Exchange proposes to charge the same fees to execute ETC Eligible Orders as it does to execute ordinary LOC Orders (and Market on Close (“MOC”) Orders) in the Closing Cross.

Equity 7, Section 118(d) governs pricing for orders executed in the Nasdaq Closing Cross. It provides for a system of tiered fees for MOC and LOC Orders executed in the Closing Cross. These tiers are as follows:

Tiers	Volume	Price Per Executed Share
Tier A	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 1.75% of Consolidated Volume ⁸ or MOC/LOC volume above 0.50% of Consolidated Volume	\$0.0008 per executed share

unexecuted shares to bypass the Extended Trading Close and participate in After Hours Trading.

⁸ Pursuant to Equity 7, Section 118(a), the term “Consolidated Volume” means 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 is 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.

Tier B	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.80% to 1.75% of Consolidated Volume or MOC/LOC volume above 0.30% to 0.50% of Consolidated Volume	\$0.0011 per executed share
Tier C	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.50% to 0.80% of Consolidated Volume or MOC/LOC volume above 0.10% to 0.30% of Consolidated Volume	\$0.0012 per executed share
Tier D	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.30% to 0.50% of Consolidated Volume	\$0.00135 per executed share
Tier E	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.015% to 0.30% of Consolidated Volume	\$0.00145 per executed share
Tier F	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.00% to 0.015% of Consolidated Volume	\$0.0016 per executed share
Tier G	member adds Nasdaq Options Market Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.80% or more of national customer volume in multiply-listed equity and ETF options classes in a month	\$0.0010 per executed share

The Exchange proposes to amend this tier schedule so that its fees also apply to executions of ETC Eligible LOC Orders and ETC Orders in the ETC. For example, if at the end of a month, a member provides liquidity on Nasdaq that represents 1.20% of Consolidated Volume and/or provides MOC or LOC volume in the Nasdaq Closing Cross amounting to 0.40% of Consolidated Volume, then the member would qualify for Tier B pricing of \$0.0011 per share executed for both its LOC and MOC Orders executed in the Nasdaq Closing Cross and its ETC Eligible LOC Orders and ETC Orders executed in the ETC.

Under the proposal, shares in ETC Eligible LOC Orders and ETC Orders will not count towards determining a participant's qualification for any of the fee or credit tiers in Section 118(a) or 118(d). Likewise, the Exchange proposes to amend Equity 7, Section

114(a) to specify that, to the extent that any of the market quality incentive programs described in Section 114⁹ prescribe pricing tiers for which eligibility depends upon a participant achieving certain threshold volumes in LOC or MOC shares, then ETC Eligible LOC Orders and ETC Orders will not count towards such eligibility determinations.

The Exchange's proposal is reasonable to adopt the same execution fees for ETC Eligible LOC Orders and ETC Orders that execute in the ETC as it charges for ordinary LOC and MOC Orders that execute in the Nasdaq Closing Cross because the ETC will act as an extension of the Closing Cross. That is, ordinary LOC Orders which do not execute fully in the Nasdaq Closing Cross will become eligible automatically for participation in the ETC as an ETC Eligible LOC Order (unless a member opts out of such participation), and if such ETC Eligible LOC Orders execute in the ETC, then they will do so at the Nasdaq Official Closing Price, as determined by the Nasdaq Closing Cross. Given the close relationship between LOC Orders that execute in the Nasdaq Closing Cross, and those that execute in the ETC, the Exchange believes that it is logical for the same fee structure to apply to each of them. The Exchange also believes that this same price structure is appropriate for ETC Orders that execute in the ETC because this structure is simple for participants and properly calibrates incentives to participate in the ETC so that they are neither too high nor too low. The Exchange does not wish for ETC Order execution fees to be too high, lest it will discourage participation in the ETC in favor of competing on- and off-exchange mechanisms that also allow for participants to

⁹ These market quality incentive programs are the Qualified Market Maker Program, the NBBO Program, the Designated Liquidity Provider Program, and the Nasdaq Growth Program.

execute orders at the Nasdaq Closing Cross price. The Exchange also does not wish for the fees to be too low, lest it may discourage participation in the Nasdaq Closing Cross.

Similarly, the Exchange believes it is reasonable to exclude ETC Eligible LOC and ETC Orders from determining a participant's qualification for any of the MOC or LOC based fee tiers in Equity 7, Sections 114, 118(a), and 118(d). Again, the Exchange does not wish to provide undue incentives to participate in the ETC that might occur at the expense of participation in the Nasdaq Closing Cross.

The Exchange notes that those participants that are dissatisfied with the proposed fees are free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ 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.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 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’”¹²

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.”¹³

¹² 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)).

¹³ 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 reasonable to adopt the same execution fees for ETC Eligible LOC Orders and ETC Orders that execute in the ETC as it charges for ordinary LOC and MOC Orders that execute in the Nasdaq Closing Cross because the ETC will act as an extension of the Closing Cross. That is, ordinary LOC Orders which do not execute fully in the Nasdaq Closing Cross will become eligible automatically for participation in the ETC as an ETC Eligible LOC Order (unless a member opts out of such participation), and if such ETC Eligible LOC Orders execute in the ETC, then they will do so at the Nasdaq Official Closing Price, as determined by the Nasdaq Closing Cross. Given the close relationship between LOC Orders that execute in the Nasdaq Closing Cross, and those that execute in the ETC, the Exchange believes that it is logical for the same fee structure to apply to each of them. The Exchange also believes that this same price structure is appropriate for ETC Orders that execute in the ETC because this structure is simple for participants and properly calibrates incentives to participate in the ETC so that they are neither too high nor too low. The Exchange does not wish for ETC Order execution fees to be too high, lest it will discourage participation in the ETC in favor of competing on- and off-exchange mechanisms that also allow for participants to

execute orders at the Nasdaq Closing Cross price. The Exchange also does not wish for the fees to be too low, lest it may discourage participation in the Nasdaq Closing Cross.

Similarly, the Exchange believes it is reasonable to exclude ETC Eligible LOC and ETC Orders from determining a participant's qualification for any of the MOC or LOC based fee tiers in Equity 7, Sections 114, 118(a), and 118(d). Again, the Exchange does not wish to provide undue incentives to participate in the ETC that might occur at the expense of participation in the Nasdaq Closing Cross.

The Exchange notes that those participants that are dissatisfied with the proposed fees are free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

The Proposal is an Equitable Allocation of Fees

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

The Exchange believes that its proposed fees for ETC executions is an equitable allocation. The proposed fees are consistent with those it presently charges for MOC and LOC Orders that execute in the Nasdaq Closing Cross. Given the close relationship between LOC Orders that execute in the Nasdaq Closing Cross, and those that execute in the ETC, the Exchange believes that it is logical for the same fee structure to apply to each of them. The Exchange also believes that this same price structure is appropriate for ETC Orders that execute in the ETC because this structure is simple for participants and properly calibrates incentives to participate in the ETC so that they are neither too high nor too low. The Exchange does not wish for ETC Order execution fees to be too high,

lest it will discourage participation in the ETC. The Exchange also does not wish for the fees to be too low, lest it may discourage participation in the Nasdaq Closing Cross. For similar reasons, it is equitable to exclude ETC Eligible LOC and ETC Orders from determining a participant's qualification for any of the MOC or LOC based fee tiers in Equity 7, Sections 114, 118(a), and 118(d). Again, the Exchange does not wish to provide undue incentives to participate in the ETC that might occur at the expense of participation in the Nasdaq Closing Cross.

The Exchange notes that those participants that are dissatisfied with the proposed fees are free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

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 is not unfairly discriminatory because the proposed tiered ETC execution fees already apply to members that execute MOC and LOC Orders in the Nasdaq Closing Cross, and thus are familiar and understood. Moreover, the fee tiers are accessible to any Nasdaq member that engages in qualifying activity on Nasdaq or that chooses to grow the extent of that activity to qualify for a more favorable tier.

Again, any participants that are dissatisfied with the proposed fees are free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

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 proposed pricing for ETC executions is intended to be consistent with its pricing for LOC and MOC Closing Cross executions due to similarities in the two mechanisms and the desire to properly calibrate incentives to spur member participation in each of them. The Exchange notes that its members are free to trade on other venues, or to not participate in the ETC, to the extent they believe that the proposed fees are not attractive.

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 proposal is reflective of this competition. Any participant that is dissatisfied with the proposal is free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

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,¹⁴ 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.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2022-025)

March __, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Transaction Credits at Equity 7, Sections 114 and 118

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 March 9, 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 transaction credits at Equity 7, 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 fees and credits, at Equity 7, Sections 114 and 118 to establish pricing for orders executed in the new Extended Trading Close or “ETC,” which the Commission approved earlier this year.³ The proposed fee will be effective coincident with the commencement of the ETC, which the Exchange intends to occur on March 7, 2022.

As set forth in Rule 4755, the Extended Trading Close will allow Participants an additional opportunity to access liquidity in Nasdaq-listed securities at the Nasdaq Official Closing Price for a five minute period of time after the Nasdaq Closing Cross⁴ or the LULD Closing Cross,⁵ (collectively, the “Closing Cross”) concludes. During this

³ See Securities Exchange Act Release No. 34-94038 (January 24, 2022), 87 FR 4683 (January 28, 2022) (order approving SR-Nasdaq-2021-40, as amended).

⁴ The “Nasdaq Closing Cross” refers to Nasdaq’s process for determining the price at which it will execute orders at the close and for executing those orders, as set forth in Rule 4754.

⁵ The “LULD Closing Cross” refers to Nasdaq’s modified process for determining the price at which it will execute orders at the close, following a Trading Pause, as

five minute period, the System will continuously match and execute “ETC Eligible Orders” – which include “ETC Orders” and “ETC Eligible LOC Orders”^(discussed below) – at the Nasdaq Official Closing Price, as determined by the Closing Cross, unless the System suspends executions in two scenarios. First, the System will suspend executions of matched orders in a Nasdaq-listed security in the ETC if and when it detects an order in the security resting on the Nasdaq Continuous Book in After Hours Trading⁶ with an After Hours Trading bid (offer) price that is higher (lower) than the Nasdaq Official Closing Price. Second, the System will suspend executions of matched orders in a Nasdaq-listed security in the ETC if and when the last sale price during After Hours Trading, or the best After Hours Trading bid (offer) price, of the security, other than on the Nasdaq Continuous Book, is higher (lower) than the Nasdaq Official Closing Price by the greater of 0.5% or \$0.01. The Exchange will cancel any portion of an ETC Eligible Order that remains unexecuted at the conclusion of the ETC, or for which the System has suspended execution, where that suspension remains active as of the conclusion of the ETC. The ETC will not occur for a security on any day when insufficient interest exists in the System to conduct the Closing Cross for that security or when the Exchange invokes contingency procedures due to a disruption that prevents execution of the Closing Cross.

set forth in Rule 4120(a), which exists at or after 3:50 p.m. and before 4:00 p.m., as well as the process for executing those orders, as set forth in Rule 4754(b)(6).

⁶ For purposes of the ETC, the term “After Hours Trading” refers to trading in a Nasdaq-listed security that commences immediately following the conclusion of the Nasdaq Closing Cross or the LULD Closing Cross, during Post-Market Hours, as that term is defined in Equity 1, Section 1(a)(9).

As noted above, two types of orders may participate in the ETC: (1) ETC Eligible Limit-on-Close (“LOC”) Orders; and (2) Extended Trading Close (“ETC”) Orders. As set forth in Rule 4702(b)(12), ETC Eligible LOC Orders are LOC Orders that are eligible to, and by default are designated to participate in the ETC⁷ to the extent that such LOC Orders are entered through RASH or FIX and remain unexecuted, in whole or part, in the Closing Cross. An ETC Order, meanwhile, is an order in a Nasdaq-listed security that is eligible for entry and execution exclusively during the ETC, at the Nasdaq Official Closing Price, as determined by the Closing Cross.

The Exchange now proposes to amend Equity 7, Section 118 to adopt fees for ETC Eligible LOC Orders and ETC Orders that execute in the ETC. In short, the Exchange proposes to charge the same fees to execute ETC Eligible Orders as it does to execute ordinary LOC Orders (and Market on Close (“MOC”) Orders) in the Closing Cross.

Equity 7, Section 118(d) governs pricing for orders executed in the Nasdaq Closing Cross. It provides for a system of tiered fees for MOC and LOC Orders executed in the Closing Cross. These tiers are as follows:

⁷ By default, all LOC Orders in Nasdaq-listed securities will be set to participate in the Extended Trading Close in the event that the LOC Orders are not fully executed during the Closing Cross. However, a Participant may opt to exclude its LOC Orders from participating in the Extended Trading Close. When ETC eligibility is disabled, the System will simply cancel LOC Orders in Nasdaq-listed securities that remain unexecuted after the Closing Cross occurs. Also, if Participants select a time-in-force for their LOC Orders in Nasdaq-listed securities that continues after the Closing Cross occurs, then if such LOC Orders remain unexecuted after the Closing Cross, the Exchange will cause the remaining unexecuted shares to bypass the Extended Trading Close and participate in After Hours Trading.

Tiers	Volume	Price Per Executed Share
Tier A	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 1.75% of Consolidated Volume ⁸ or MOC/LOC volume above 0.50% of Consolidated Volume	\$0.0008 per executed share
Tier B	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.80% to 1.75% of Consolidated Volume or MOC/LOC volume above 0.30% to 0.50% of Consolidated Volume	\$0.0011 per executed share
Tier C	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.50% to 0.80% of Consolidated Volume or MOC/LOC volume above 0.10% to 0.30% of Consolidated Volume	\$0.0012 per executed share
Tier D	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.30% to 0.50% of Consolidated Volume	\$0.00135 per executed share
Tier E	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.015% to 0.30% of Consolidated Volume	\$0.00145 per executed share
Tier F	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.00% to 0.015% of Consolidated Volume	\$0.0016 per executed share
Tier G	member adds Nasdaq Options Market Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.80% or more of national customer volume in multiply-listed equity and ETF options classes in a month	\$0.0010 per executed share

The Exchange proposes to amend this tier schedule so that its fees also apply to

⁸ Pursuant to Equity 7, Section 118(a), the term “Consolidated Volume” means 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 is 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.

executions of ETC Eligible LOC Orders and ETC Orders in the ETC. For example, if at the end of a month, a member provides liquidity on Nasdaq that represents 1.20% of Consolidated Volume and/or provides MOC or LOC volume in the Nasdaq Closing Cross amounting to 0.40% of Consolidated Volume, then the member would qualify for Tier B pricing of \$0.0011 per share executed for both its LOC and MOC Orders executed in the Nasdaq Closing Cross and its ETC Eligible LOC Orders and ETC Orders executed in the ETC.

Under the proposal, shares in ETC Eligible LOC Orders and ETC Orders will not count towards determining a participant's qualification for any of the fee or credit tiers in Section 118(a) or 118(d). Likewise, the Exchange proposes to amend Equity 7, Section 114(a) to specify that, to the extent that any of the market quality incentive programs described in Section 114⁹ prescribe pricing tiers for which eligibility depends upon a participant achieving certain threshold volumes in LOC or MOC shares, then ETC Eligible LOC Orders and ETC Orders will not count towards such eligibility determinations.

The Exchange's proposal is reasonable to adopt the same execution fees for ETC Eligible LOC Orders and ETC Orders that execute in the ETC as it charges for ordinary LOC and MOC Orders that execute in the Nasdaq Closing Cross because the ETC will act as an extension of the Closing Cross. That is, ordinary LOC Orders which do not execute fully in the Nasdaq Closing Cross will become eligible automatically for participation in the ETC as an ETC Eligible LOC Order (unless a member opts out of

⁹ These market quality incentive programs are the Qualified Market Maker Program, the NBBO Program, the Designated Liquidity Provider Program, and the Nasdaq Growth Program.

such participation), and if such ETC Eligible LOC Orders execute in the ETC, then they will do so at the Nasdaq Official Closing Price, as determined by the Nasdaq Closing Cross. Given the close relationship between LOC Orders that execute in the Nasdaq Closing Cross, and those that execute in the ETC, the Exchange believes that it is logical for the same fee structure to apply to each of them. The Exchange also believes that this same price structure is appropriate for ETC Orders that execute in the ETC because this structure is simple for participants and properly calibrates incentives to participate in the ETC so that they are neither too high nor too low. The Exchange does not wish for ETC Order execution fees to be too high, lest it will discourage participation in the ETC in favor of competing on- and off-exchange mechanisms that also allow for participants to execute orders at the Nasdaq Closing Cross price. The Exchange also does not wish for the fees to be too low, lest it may discourage participation in the Nasdaq Closing Cross.

Similarly, the Exchange believes it is reasonable to exclude ETC Eligible LOC and ETC Orders from determining a participant's qualification for any of the MOC or LOC based fee tiers in Equity 7, Sections 114, 118(a), and 118(d). Again, the Exchange does not wish to provide undue incentives to participate in the ETC that might occur at the expense of participation in the Nasdaq Closing Cross.

The Exchange notes that those participants that are dissatisfied with the proposed fees are free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ 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, ‘[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

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”¹²

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.”¹³

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 reasonable to adopt the same execution fees for ETC Eligible LOC Orders and ETC Orders that execute in the ETC as it charges for ordinary LOC and MOC Orders that execute in the Nasdaq Closing Cross because the ETC will act as an extension of the Closing Cross. That is, ordinary LOC Orders which do not

¹² 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)).

¹³ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

execute fully in the Nasdaq Closing Cross will become eligible automatically for participation in the ETC as an ETC Eligible LOC Order (unless a member opts out of such participation), and if such ETC Eligible LOC Orders execute in the ETC, then they will do so at the Nasdaq Official Closing Price, as determined by the Nasdaq Closing Cross. Given the close relationship between LOC Orders that execute in the Nasdaq Closing Cross, and those that execute in the ETC, the Exchange believes that it is logical for the same fee structure to apply to each of them. The Exchange also believes that this same price structure is appropriate for ETC Orders that execute in the ETC because this structure is simple for participants and properly calibrates incentives to participate in the ETC so that they are neither too high nor too low. The Exchange does not wish for ETC Order execution fees to be too high, lest it will discourage participation in the ETC in favor of competing on- and off-exchange mechanisms that also allow for participants to execute orders at the Nasdaq Closing Cross price. The Exchange also does not wish for the fees to be too low, lest it may discourage participation in the Nasdaq Closing Cross.

Similarly, the Exchange believes it is reasonable to exclude ETC Eligible LOC and ETC Orders from determining a participant's qualification for any of the MOC or LOC based fee tiers in Equity 7, Sections 114, 118(a), and 118(d). Again, the Exchange does not wish to provide undue incentives to participate in the ETC that might occur at the expense of participation in the Nasdaq Closing Cross.

The Exchange notes that those participants that are dissatisfied with the proposed fees are free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

The Proposal is an Equitable Allocation of Fees

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

The Exchange believes that its proposed fees for ETC executions is an equitable allocation. The proposed fees are consistent with those it presently charges for MOC and LOC Orders that execute in the Nasdaq Closing Cross. Given the close relationship between LOC Orders that execute in the Nasdaq Closing Cross, and those that execute in the ETC, the Exchange believes that it is logical for the same fee structure to apply to each of them. The Exchange also believes that this same price structure is appropriate for ETC Orders that execute in the ETC because this structure is simple for participants and properly calibrates incentives to participate in the ETC so that they are neither too high nor too low. The Exchange does not wish for ETC Order execution fees to be too high, lest it will discourage participation in the ETC. The Exchange also does not wish for the fees to be too low, lest it may discourage participation in the Nasdaq Closing Cross. For similar reasons, it is equitable to exclude ETC Eligible LOC and ETC Orders from determining a participant's qualification for any of the MOC or LOC based fee tiers in Equity 7, Sections 114, 118(a), and 118(d). Again, the Exchange does not wish to provide undue incentives to participate in the ETC that might occur at the expense of participation in the Nasdaq Closing Cross.

The Exchange notes that those participants that are dissatisfied with the proposed fees are free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

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 is not unfairly discriminatory because the proposed tiered ETC execution fees already apply to members that execute MOC and LOC Orders in the Nasdaq Closing Cross, and thus are familiar and understood. Moreover, the fee tiers are accessible to any Nasdaq member that engages in qualifying activity on Nasdaq or that chooses to grow the extent of that activity to qualify for a more favorable tier.

Again, any participants that are dissatisfied with the proposed fees are free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

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 proposed pricing for ETC executions is intended to be consistent with its pricing for LOC and MOC Closing Cross executions due to similarities in the two mechanisms and the desire to properly calibrate incentives to spur member participation in each of them. The Exchange notes that its members are free to trade on other venues, or to not participate in the ETC, to the extent they believe that the proposed fees are not attractive.

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 proposal is reflective of this competition. Any participant that is dissatisfied with the proposal is free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁴

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2022-025 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-2022-025. 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-2022-025 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.¹⁵

J. Matthew DeLesDernier
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The Nasdaq Stock Market Rules

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Equity Rules

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Equity 7 Pricing Schedule

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Section 114. Market Quality Incentive Programs

(a) [Reserved]**Applicability of Extended Trading Close Volume to Market Quality Incentive Programs.** Volume from ETC Eligible LOC Orders and ETC Orders shall not be utilized to determine eligibility for any pricing tiers set forth in this Section to the extent that such eligibility is based upon MOC or LOC volume.

(b) – (j) no change.

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Section 118. Nasdaq Market Center Order Execution and Routing

(a) The following charges shall apply to the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at \$1 or more that it trades. For purposes of determining a member's shares of liquidity routed, TFTY, MOPB, MOPP, SAVE, SOLV, CART, QDRK, QCST and directed orders are not counted. As used in this section, 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. Volume from ETC Eligible LOC Orders and ETC Orders shall not be utilized to determine eligibility for any pricing tiers set forth in Section 118(a) to the extent that such eligibility is based upon MOC or LOC volume.

(b) – (c) No change.

(d) Closing Cross and Extended Trading Close

(1) Fees

Market-on-Close and Limit-on-Close orders executed in the Nasdaq Closing Cross; <u>ETC Eligible Limit-on-Close and ETC Orders executed in the Extended Trading Close</u>	Subject to the tiers below as provided in Equity 7, Section 118(d)(2)
All other quotes and orders executed in the Nasdaq Closing Cross	\$0.00085 per share executed

(2) Tiers Applicable to Market-on-Close and Limit-on-Close ("MOC/LOC") orders executed in the Nasdaq Closing Cross and ETC Eligible Limit on Close and ETC Orders executed in the Extended Trading Close[Tiers]. *Note that volume in ETC Eligible LOC Orders and ETC Orders shall not be utilized to determine eligibility for the Tiers below.

Tiers	Volume	Price Per Executed Share
Tier A	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 1.75% of Consolidated Volume or MOC/LOC volume above 0.50% of Consolidated Volume	\$0.0008 per executed share
Tier B	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.80% to 1.75% of Consolidated Volume or MOC/LOC volume above 0.30% to 0.50% of Consolidated Volume	\$0.0011 per executed share
Tier C	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.50% to 0.80% of Consolidated Volume or MOC/LOC volume above 0.10% to 0.30% of Consolidated Volume	\$0.0012 per executed share
Tier D	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.30% to 0.50% of Consolidated Volume	\$0.00135 per executed share
Tier E	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.015% to 0.30% of Consolidated Volume	\$0.00145 per executed share
Tier F	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.00% to 0.015% of Consolidated Volume	\$0.0016 per executed share

Tier G	member adds Nasdaq Options Market Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.80% or more of national customer volume in multiply-listed equity and ETF options classes in a month	\$0.0010 per executed share
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(e) – (m) No change.

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