

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 22

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

File No. * SR 2022 - * 040

Amendment No. (req. for Amendments *)

Filing by The Nasdaq Stock Market LLC

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

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

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

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

Section 806(e)(2) *

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

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

Proposal to amend certain NOM Market Maker Non Penny discounts in Options 7, Section 2

Contact Information

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

First Name * Sun Last Name * Kim

Title * Associate General Counsel

E-mail * Sun.kim@nasdaq.com

Telephone * (646) 420-7816 Fax


Signature

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

Date 07/01/2022 (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: 2022.07.01
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Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-NASDAQ-2022-040 19b-4.doc

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

Exhibit 1 - Notice of Proposed Rule Change *

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SR-NASDAQ-2022-040 Exhibit 1.doc

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

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

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

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

Add Remove View

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

Add Remove View

SR-NASDAQ-2022-040 Exhibit 5.doc

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 Pricing Schedule at Options 7, Section 2(1), which governs pricing for Nasdaq participants using The Nasdaq Options Market (“NOM”), Nasdaq’s facility for executing and routing standardized equity and index options. The proposed changes are 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:

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

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

Pursuant to Options 7, Section 2(1), the Exchange currently assesses NOM Market Makers³ a \$0.35 per contract Fee to Add Liquidity in Non-Penny Symbols. This fee applies unless Participants meet the volume thresholds set forth in note 5. Note 5 currently stipulates that Participants that add NOM Market Maker liquidity in Non-Penny Symbols of 10,000 to 14,999 average daily volume ("ADV") contracts per day in a month will be assessed a \$0.00 per contract Non-Penny Options Fee for Adding Liquidity in that month. Participants that add NOM Market Maker liquidity in Non-Penny Symbols of 15,000 or more ADV contracts per day in a month will receive the Non-Penny Rebate to Add Liquidity (currently \$0.30 per contract) for that month instead of paying the Non-Penny Fee for Adding Liquidity. Accordingly, qualifying Participants are offered an opportunity to reduce the \$0.35 fee or earn a rebate if they meet the volume-based requirements under note 5.

The Exchange now proposes to replace the current ADV thresholds in note 5 with new thresholds that will be based on a percentage of total industry volume. Specifically, Participants will be eligible for free executions instead of paying the \$0.35 per contract fee if they add NOM Market Maker liquidity in Non-Penny Symbols of 0.05% to 0.07% of total industry customer equity and ETF option ADV contracts ("TCV") per day in a month (currently 10,000 to 14,999 ADV contracts per day in a month). Further,

³ The term "NOM Market Maker" or ("M") is a Participant that has registered as a Market Maker on NOM pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

Participants will receive the \$0.30 per contract rebate instead of paying the \$0.35 per contract fee if they add NOM Market Maker liquidity in Non-Penny Symbols of above 0.07% TCV (currently 15,000 or more ADV contracts) per day in a month. As proposed, note 5 will state:

The NOM Market Maker Fee for Adding Liquidity in Non-Penny Symbols will apply unless Participants meet the volume thresholds set forth in this note. Participants that add NOM Market Maker liquidity in Non-Penny Symbols of 0.05% to 0.07% of total industry customer equity and ETF option ADV contracts per day in a month will be assessed a \$0.00 per contract Non-Penny Options Fee for Adding Liquidity in that month. Participants that add NOM Market Maker liquidity in Non-Penny Symbols of above 0.07% of total industry customer equity and ETF option ADV contracts per day in a month will receive the Non-Penny Rebate to Add Liquidity for that month instead of paying the Non-Penny Fee for Adding Liquidity.

Only the volume requirements for the note 5 incentives will be amended with this proposal, not the related fees or rebates. The Exchange notes that the new volume requirements are more stringent than the current ADV volume requirements.⁴ The Exchange is proposing to effectively raise the volume requirements to align with increasing Participant activity on the Exchange over time. While the proposed tiered requirements are more stringent, the Exchange believes that the note 5 incentives will continue to encourage NOM Market Makers to add Non-Penny Symbol liquidity on NOM to the benefit of all market participants.

b. Statutory Basis

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

⁴ For example, 0.05% TCV is currently representative of approximately 16,150 contracts ADV and 0.07% TCV is currently representative of approximately 22,610 contracts ADV.

⁵ 15 U.S.C. 78f(b).

particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”⁷

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

⁶ 15 U.S.C. 78f(b)(4) and (5).

⁷ 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)).

market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁸

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

The Exchange believes that its proposal to replace the current ADV thresholds in note 5 with the new TCV% thresholds described above is reasonable for the reasons that follow. The Exchange is proposing to base the note 5 incentives on a percentage of industry volume in recognition of the fact that the volume executed by a member may rise or fall with industry volume. A percentage of industry volume calculation allows the Exchange’s tiers to be calibrated to current market volumes rather than requiring the same amount of volume regardless of market conditions. While the amount of volume required by the proposed tiers in note 5 may change in any given month due to increases or decreases in industry volume, the Exchange believes that the proposed tier requirements are set at appropriate levels. While the proposed TCV% requirements are more stringent than the current ADV requirements, the Exchange is proposing to effectively raise the volume thresholds in note 5 to align with increased Participant

⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

activity over time.⁹ Furthermore, the Exchange believes that the more stringent volume requirements will encourage NOM Market Makers to add a greater amount of liquidity on NOM in order to receive the note 5 incentives. The Exchange believes that encouraging additional NOM Market Maker liquidity in this manner would increase overall liquidity and trading opportunities on NOM to the benefit of all market participants.

The Exchange believes that its proposal is equitable and not unfairly discriminatory. As described above, the proposed volume requirements will primarily impact NOM Market Makers that are eligible to receive the note 5 incentives for Non-Penny Symbols. The Exchange, however, anticipates minimal impact with the proposed changes as no NOM Market Maker would fall in or out of the new TCV% tiers as a result of this change. The Exchange further believes that the proposed changes to the volume requirements in note 5 is equitable and not unfairly discriminatory because the Exchange will apply the proposed requirements uniformly to all qualifying NOM Market Makers. The Exchange does not believe that it is unfairly discriminatory to offer the note 5 incentives to only NOM Market Makers because these market participants add value through continuous quoting and the commitment of capital.¹⁰ Because NOM Market Makers have these obligations to the market and regulatory requirements that normally do not apply to other market participants, the Exchange believes that offering the note 5 incentives to only NOM Market Makers is equitable and not unfairly discriminatory in

⁹ See supra note 4.

¹⁰ See Options 2, Sections 4 and 5.

light of their obligations. Finally, encouraging NOM Market Makers to add greater liquidity benefits all market participants in the quality of order interaction.

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

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

In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. As discussed above, while the Exchange's proposal targets certain activity on NOM (i.e., NOM Market Makers adding liquidity in Non-Penny Symbols), the proposed changes are ultimately aimed at attracting greater order flow to the Exchange, which benefits all market participants by providing more trading opportunities.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of

Participants or competing exchanges to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹¹ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

Not applicable.

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

Not applicable.

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2022-040)

July __, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Certain NOM Market Maker Non-Penny Discounts in Options 7, Section 2

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 July 1, 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 Options 7, Section 2(1), which governs pricing for Nasdaq participants using The Nasdaq Options Market (“NOM”), Nasdaq’s facility for executing and routing standardized equity and index options.

The text of the proposed rule change is detailed below: proposed new language is underlined and proposed deletions are in brackets.

* * * * *

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.

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

Pursuant to Options 7, Section 2(1), the Exchange currently assesses NOM Market Makers³ a \$0.35 per contract Fee to Add Liquidity in Non-Penny Symbols. This fee applies unless Participants meet the volume thresholds set forth in note 5. Note 5 currently stipulates that Participants that add NOM Market Maker liquidity in Non-Penny Symbols of 10,000 to 14,999 average daily volume ("ADV") contracts per day in a month will be assessed a \$0.00 per contract Non-Penny Options Fee for Adding Liquidity in that month. Participants that add NOM Market Maker liquidity in Non-Penny Symbols of 15,000 or more ADV contracts per day in a month will receive the Non-

³ The term "NOM Market Maker" or ("M") is a Participant that has registered as a Market Maker on NOM pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

Penny Rebate to Add Liquidity (currently \$0.30 per contract) for that month instead of paying the Non-Penny Fee for Adding Liquidity. Accordingly, qualifying Participants are offered an opportunity to reduce the \$0.35 fee or earn a rebate if they meet the volume-based requirements under note 5.

The Exchange now proposes to replace the current ADV thresholds in note 5 with new thresholds that will be based on a percentage of total industry volume. Specifically, Participants will be eligible for free executions instead of paying the \$0.35 per contract fee if they add NOM Market Maker liquidity in Non-Penny Symbols of 0.05% to 0.07% of total industry customer equity and ETF option ADV contracts (“TCV”) per day in a month (currently 10,000 to 14,999 ADV contracts per day in a month). Further, Participants will receive the \$0.30 per contract rebate instead of paying the \$0.35 per contract fee if they add NOM Market Maker liquidity in Non-Penny Symbols of above 0.07% TCV (currently 15,000 or more ADV contracts) per day in a month. As proposed, note 5 will state:

The NOM Market Maker Fee for Adding Liquidity in Non-Penny Symbols will apply unless Participants meet the volume thresholds set forth in this note. Participants that add NOM Market Maker liquidity in Non-Penny Symbols of 0.05% to 0.07% of total industry customer equity and ETF option ADV contracts per day in a month will be assessed a \$0.00 per contract Non-Penny Options Fee for Adding Liquidity in that month. Participants that add NOM Market Maker liquidity in Non-Penny Symbols of above 0.07% of total industry customer equity and ETF option ADV contracts per day in a month will receive the Non-Penny Rebate to Add Liquidity for that month instead of paying the Non-Penny Fee for Adding Liquidity.

Only the volume requirements for the note 5 incentives will be amended with this proposal, not the related fees or rebates. The Exchange notes that the new volume

requirements are more stringent than the current ADV volume requirements.⁴ The Exchange is proposing to effectively raise the volume requirements to align with increasing Participant activity on the Exchange over time. While the proposed tiered requirements are more stringent, the Exchange believes that the note 5 incentives will continue to encourage NOM Market Makers to add Non-Penny Symbol liquidity on NOM to the benefit of all market participants.

2. Statutory Basis

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

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

⁴ For example, 0.05% TCV is currently representative of approximately 16,150 contracts ADV and 0.07% TCV is currently representative of approximately 22,610 contracts ADV.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

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’”⁷

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.”⁸

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

⁷ 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)).

⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

The Exchange believes that its proposal to replace the current ADV thresholds in note 5 with the new TCV% thresholds described above is reasonable for the reasons that follow. The Exchange is proposing to base the note 5 incentives on a percentage of industry volume in recognition of the fact that the volume executed by a member may rise or fall with industry volume. A percentage of industry volume calculation allows the Exchange's tiers to be calibrated to current market volumes rather than requiring the same amount of volume regardless of market conditions. While the amount of volume required by the proposed tiers in note 5 may change in any given month due to increases or decreases in industry volume, the Exchange believes that the proposed tier requirements are set at appropriate levels. While the proposed TCV% requirements are more stringent than the current ADV requirements, the Exchange is proposing to effectively raise the volume thresholds in note 5 to align with increased Participant activity over time.⁹ Furthermore, the Exchange believes that the more stringent volume requirements will encourage NOM Market Makers to add a greater amount of liquidity on NOM in order to receive the note 5 incentives. The Exchange believes that encouraging additional NOM Market Maker liquidity in this manner would increase overall liquidity and trading opportunities on NOM to the benefit of all market participants.

The Exchange believes that its proposal is equitable and not unfairly discriminatory. As described above, the proposed volume requirements will primarily impact NOM Market Makers that are eligible to receive the note 5 incentives for Non-Penny Symbols. The Exchange, however, anticipates minimal impact with the proposed

⁹ See supra note 4.

changes as no NOM Market Maker would fall in or out of the new TCV% tiers as a result of this change. The Exchange further believes that the proposed changes to the volume requirements in note 5 is equitable and not unfairly discriminatory because the Exchange will apply the proposed requirements uniformly to all qualifying NOM Market Makers. The Exchange does not believe that it is unfairly discriminatory to offer the note 5 incentives to only NOM Market Makers because these market participants add value through continuous quoting and the commitment of capital.¹⁰ Because NOM Market Makers have these obligations to the market and regulatory requirements that normally do not apply to other market participants, the Exchange believes that offering the note 5 incentives to only NOM Market Makers is equitable and not unfairly discriminatory in light of their obligations. Finally, encouraging NOM Market Makers to add greater liquidity benefits all market participants in the quality of order interaction.

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

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

In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. As discussed above, while the Exchange's proposal targets certain activity on NOM (i.e., NOM Market Makers adding liquidity in Non-Penny Symbols), the proposed changes are ultimately aimed at attracting greater order flow to the Exchange, which benefits all market participants by providing more trading opportunities.

¹⁰ See Options 2, Sections 4 and 5.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Participants or competing exchanges to maintain their competitive standing in the financial markets.

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.¹¹

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

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2022-040 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-2022-040. 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-2022-040 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.¹²

J. Matthew DeLesDernier
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The Nasdaq Stock Market LLC Rules

* * * * *

Options 7 Pricing Schedule

* * * * *

Section 2 Nasdaq Options Market - Fees and Rebates

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

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

* * * * *

Fees and Rebates to Add Liquidity in Non-Penny Symbols

Customer 9,10,12	(\$0.80)
Professional 9,10,12	(\$0.80)
Broker-Dealer	\$0.45
Firm	\$0.45
Non-NOM	\$0.45
Market Maker	
NOM Market Maker ^{5,6}	\$0.35/(\$0.30)

* * * * *

⁵ The NOM Market Maker Fee for Adding Liquidity in Non-Penny Symbols will apply unless Participants meet the volume thresholds set forth in this note. Participants that add NOM Market Maker liquidity in Non-Penny Symbols of [10,000 to 14,999]0.05% to 0.07% of total industry customer equity and ETF option ADV contracts per day in a month will be assessed a \$0.00 per contract Non-Penny Options Fee for Adding Liquidity in that month. Participants that add NOM Market Maker liquidity in Non-Penny Symbols of [15,000 or more]above 0.07% of total industry customer equity and ETF option ADV contracts per day in a month will receive the Non-Penny Rebate to Add Liquidity for that month instead of paying the Non-Penny Fee for Adding Liquidity.

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