

Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2022 - * 063

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 *).

A proposal to amend the Exchanges schedule of credits at Equity 7, Section 118(a)

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 * Last Name *

Title *

E-mail *

Telephone * 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 (Title *)

By
(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: 2022.11.04 11:40:34 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-NASDAQ-2022-063 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-2022-063 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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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-2022-063 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 schedule of credits at Equity 7, Section 118(a), 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:

Katie Hopkins
Associate General Counsel
Nasdaq, Inc.
301-232-4067

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to amend the Exchange's schedule of credits, at Equity 7, Section 118(a).³ Specifically, with respect to its schedule of credits for non-displayed midpoint orders (other than Supplemental Orders) that provide liquidity, the Exchange proposes to add a new supplemental credit in Tapes A, B and C and make conforming changes to its schedule of credits.

The Exchange proposes to provide a new supplemental credit for midpoint orders (excluding buy (sell) orders with midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) that provide liquidity to the Exchange. Specifically, the Exchange proposes to provide a supplemental credit of \$0.0001 per share executed for midpoint orders (excluding buy (sell) orders with midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) if the member executes at least 0.35% of Consolidated Volume through providing midpoint orders and through Midpoint Extended Life Orders ("M-ELO") during the month, and (ii) executes at least 0.20% of Consolidated Volume through providing midpoint orders during the month.

The proposed credit will be in addition to other credits otherwise available to members for adding non-displayed liquidity to the Exchange, meaning that this supplemental credit is cumulative. Members that receive this new supplemental credit will be entitled to a combined credit (regular and supplemental) up to a maximum of

³ The Exchange initially filed the proposed pricing changes on November 1, 2022 (SR-NASDAQ-2022-062). The instant filing replaces SR-NASDAQ-2022-062, which was withdrawn on November 4, 2022.

\$0.0028 per share executed for midpoint orders. Members that do not receive this new supplemental credit are entitled to a combined credit (regular and supplemental) up to a maximum of \$0.0027 per share executed for midpoint orders.

The purpose of the new credit is to provide extra incentive to members that provide non-displayed liquidity to the Exchange to do so through midpoint orders. The Exchange believes that if such incentive is effective, then any ensuing increase in liquidity to the Exchange will improve market quality, to the benefit of all participants.

b. Statutory Basis

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

The Exchange's proposed changes to its schedule of credits are 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,

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

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’....”⁶

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.”⁷

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.

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

⁶ 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)).

⁷ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

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 it is reasonable to establish a supplemental credit of \$0.0001 per share executed for midpoint orders (excluding buy (sell) orders with midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) if the member executes at least 0.35% of Consolidated Volume through providing midpoint orders and through M-ELO during the month, and (ii) executes at least 0.20% of Consolidated Volume through providing midpoint orders during the month. This proposal is reasonable because it will provide extra incentive to members that provide non-displayed liquidity to the Exchange to do so through midpoint orders. The Exchange believes that if such incentive is effective, then any ensuing increase in liquidity to the Exchange will improve market quality, to the benefit of all participants.

The Exchange believes that it is reasonable to exclude from the supplemental credit orders with midpoint pegging which execute at prices less aggressive than the midpoint of the NBBO because such orders already receive price improvements, such that members do not require additional inducements to enter these orders on the Exchange.

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

The Proposal is an Equitable Allocation of Credits

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

The Exchange believes that it is an equitable allocation to establish a new transaction credit because the proposal will encourage the addition of non-displayed liquidity to the Exchange through midpoint orders. To the extent that the Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, then the Exchange will experience improvements in its market quality, which stands to benefit all market participants.

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

The Proposal is not Unfairly Discriminatory

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

The Exchange believes that its proposal to adopt a new credit is not unfairly discriminatory because the credit is available to all members. Moreover, the proposal stands to improve the overall market quality of the Exchange, to the benefit of all market

participants, by incentivizing members to increase liquidity adding activity in midpoint orders on the Exchange. Any participant that is dissatisfied with the proposal is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

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

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

Intramarket Competition

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

As noted above, the Exchange's proposal to add a new transaction credit is intended to have market-improving effects, to the benefit of all members. Any member may elect to achieve the level of liquidity in midpoint orders and volume in M-ELO required in order to qualify for the new credit.

The Exchange notes that its members are free to trade on other venues to the extent they believe that the Exchange's fee schedule is not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate

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

The proposed new credit is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume only has 17-18% 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 more than 40% of industry volume in recent months.

The Exchange's proposal to add a new transaction credit is pro-competitive in that the Exchange intends for the credit to increase liquidity addition activity in midpoint orders on the Exchange, thereby rendering the Exchange a more attractive and vibrant venue to market participants.

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 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,⁸ 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.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

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

Not applicable.

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

Not applicable.

11. Exhibits

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

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2022-063)

November __, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Schedule of Credits at Equity 7, Section 118(a)

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 November 4, 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 schedule of credits at Equity 7, Section 118(a), as described further below.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's schedule of credits, at Equity 7, Section 118(a).³ Specifically, with respect to its schedule of credits for non-displayed midpoint orders (other than Supplemental Orders) that provide liquidity, the Exchange proposes to add a new supplemental credit in Tapes A, B and C and make conforming changes to its schedule of credits.

The Exchange proposes to provide a new supplemental credit for midpoint orders (excluding buy (sell) orders with midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) that provide liquidity to the Exchange. Specifically, the Exchange proposes to provide a supplemental credit of \$0.0001 per share executed for midpoint orders (excluding buy (sell) orders with midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) if the member executes at least 0.35% of Consolidated Volume through providing midpoint

³ The Exchange initially filed the proposed pricing changes on November 1, 2022 (SR-NASDAQ-2022-062). The instant filing replaces SR-NASDAQ-2022-062, which was withdrawn on November 4, 2022.

orders and through Midpoint Extended Life Orders (“M-ELO”) during the month, and (ii) executes at least 0.20% of Consolidated Volume through providing midpoint orders during the month.

The proposed credit will be in addition to other credits otherwise available to members for adding non-displayed liquidity to the Exchange, meaning that this supplemental credit is cumulative. Members that receive this new supplemental credit will be entitled to a combined credit (regular and supplemental) up to a maximum of \$0.0028 per share executed for midpoint orders. Members that do not receive this new supplemental credit are entitled to a combined credit (regular and supplemental) up to a maximum of \$0.0027 per share executed for midpoint orders.

The purpose of the new credit is to provide extra incentive to members that provide non-displayed liquidity to the Exchange to do so through midpoint orders. The Exchange believes that if such incentive is effective, then any ensuing increase in liquidity to the Exchange will improve market quality, to the benefit of all participants.

2. Statutory Basis

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

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

The Proposal is Reasonable

The Exchange's proposed changes to its schedule of credits are 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’”⁶

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.”⁷

⁶ 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)).

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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 it is reasonable to establish a supplemental credit of \$0.0001 per share executed for midpoint orders (excluding buy (sell) orders with midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) if the member executes at least 0.35% of Consolidated Volume through providing midpoint orders and through M-ELO during the month, and (ii) executes at least 0.20% of Consolidated Volume through providing midpoint orders during the month. This proposal is reasonable because it will provide extra incentive to members that provide non-displayed liquidity to the Exchange to do so through midpoint orders. The Exchange believes that if such incentive is effective, then any ensuing increase in liquidity to the Exchange will improve market quality, to the benefit of all participants.

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that members do not require additional inducements to enter these orders on the Exchange.

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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 believes that its proposal to adopt a new credit is not unfairly discriminatory because the credit is available to all members. Moreover, the proposal stands to improve the overall market quality of the Exchange, to the benefit of all market participants, by incentivizing members to increase liquidity adding activity in midpoint orders on the Exchange. Any participant that is dissatisfied with the proposal is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

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

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

Intramarket Competition

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

As noted above, the Exchange's proposal to add a new transaction credit is intended to have market-improving effects, to the benefit of all members. Any member may elect to achieve the level of liquidity in midpoint orders and volume in M-ELO required in order to qualify for the new credit.

The Exchange notes that its members are free to trade on other venues to the extent they believe that the Exchange's fee schedule is not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited.

The proposed new credit is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume only has 17-18% 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 more than 40% of industry volume in recent months.

The Exchange's proposal to add a new transaction credit is pro-competitive in that the Exchange intends for the credit to increase liquidity addition activity in midpoint orders on the Exchange, thereby rendering the Exchange a more attractive and vibrant venue to market participants.

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 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.⁸

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

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2022-063 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-2022-063. 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-2022-063 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.⁹

J. Matthew DeLesDernier
Assistant Secretary

⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

THE NASDAQ STOCK MARKET LLC RULES

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Equity Rules

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Equity 7: Pricing Schedule

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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 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.

As used in this section the following terms shall have the following meanings:

- “ADV” means Average Daily Volume;
- "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.
- A “Designated Retail Order” is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this section, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An order from a "natural person" can include orders on behalf of accounts that are held in a corporate legal form - such as an Individual

Retirement Account, Corporation, or a Limited Liability Company - that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. Members must submit a signed written attestation, in a form prescribed by Nasdaq, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as "Designated Retail Orders" comply with these requirements. Orders may be designated on an order by-order basis, or by designating all orders on a particular order entry port as Designated Retail Orders. If a member's total rebate for non-Designated Retail Orders (including any supplemental credits provided in Section 114 and Section 118, except the NBBO Program credit provided in Section 114(g)) is greater than its rebate for Designated Retail Orders (including supplemental credits provided in Section 114 and Section 118), then the member shall receive the higher rebate.

(1) Fees for Execution and Routing of Orders

* * * * *

Credit for non-displayed orders (other than Supplemental Orders) that provide liquidity (per share executed):			
	Tape A	Tape B	Tape C
1. A member will receive a supplemental credit for midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO), in addition to the credits set forth below for non-displayed orders that provide liquidity, if the member executes a requisite ADV of shares through M-ELO, as follows:			
(a) for midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) if the member executes an ADV of at least 2.5 million up to, but not including 4 million shares through M-ELO;	(a) \$0.0001	(a) \$0.0001	(a) \$0.0001
or	or	or	or
(b) for midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) if the member executes an ADV of 4 million or more shares through M-ELO:	(b) \$0.0002	(b) \$0.0002	(b) \$0.0002
midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) if the member provides an ADV of 5 million or more shares through midpoint orders during the month and adds 8 million shares of non-displayed liquidity:	\$0.0025	\$0.0025	\$0.0025

midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) if the member provides an ADV of 6 million or more shares through midpoint orders during the month:	\$0.0022	\$0.0022	\$0.0022
midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) if the member provides an ADV of 3 million or more shares through midpoint orders during the month:	\$0.0020	\$0.0020	\$0.0020
midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) if the member provides an ADV of 1 million or more shares through midpoint orders during the month:	\$0.0018	\$0.0018	N/A
all other midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO):	\$0.0014	\$0.0014	\$0.0010
other non-displayed orders if the member (i) provides 0.10% or more of Consolidated Volume through non-displayed orders (other than midpoint orders) and (ii) provides 0.15% or more of Consolidated Volume through midpoint orders:	\$0.0015	\$0.0015	\$0.0010
other non-displayed orders if the member (i) provides 0.225% or more of Consolidated Volume through non-displayed orders (other than midpoint orders) and (ii) provides 0.165% or more of Consolidated Volume through midpoint orders:	\$0.00175	\$0.00175	\$0.00125
other non-displayed orders if the member (i) provides 0.275% or more of Consolidated Volume through non-displayed orders (other than midpoint orders) and (ii) provides 0.175% or more of Consolidated Volume through midpoint orders:	\$0.0020	\$0.0020	\$0.0015
other non-displayed orders if the member provides 0.03% or more of Consolidated Volume through midpoint orders or other non-displayed orders:	\$0.0010	\$0.0010	\$0.0005
other non-displayed orders if the member, during the month (i) provides 0.30% or more of Consolidated Volume through non-displayed orders (including midpoint orders) and through M-ELO Orders; and (ii) increases providing liquidity through non-displayed orders (including midpoint orders) and through M-ELO Orders by 0.06% or more as a percentage of Consolidated	\$0.0010	\$0.0010	\$0.00075

Volume relative to the member's August 2020 Consolidated Volume provided through non-displayed orders (including midpoint orders) and through M-ELO:			
other non-displayed orders if the member, during the month (i) provides 0.30% or more of Consolidated Volume through non-displayed orders (other than midpoint orders); and (ii) increases providing liquidity through non-displayed orders (including midpoint orders) by 10% or more relative to the member's February 2021 ADV provided through non-displayed orders (including midpoint orders):	\$0.00125	\$0.00125	\$0.00075
other non-displayed orders if the member, during the month (i) provides 0.90% or more of Consolidated Volume; (ii) increases providing liquidity through non-displayed orders (other than midpoint orders) by 10% or more relative to the member's July 2020 Consolidated Volume provided through non-displayed orders (other than midpoint orders) and; (iii) provides 0.20% or more of Consolidated Volume through non-displayed orders (other than midpoint orders):	N/A	N/A	\$0.00075
2. A supplemental credit for midpoint orders (excluding buy (sell) orders with midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) (A member receiving this supplemental midpoint credit may receive only one but not all of the supplemental credits described herein as well as combined credits (regular and supplemental) of up to a maximum of \$0.0027 per share executed, <u>with the exception of members that qualify for the supplemental credit of \$0.0001 listed in section 3 immediately following this section 2</u>):			
if the member, during the month (i) provides at least 10 million shares of midpoint liquidity per day during the month; and (ii) increases providing liquidity through midpoint orders by 50% or more relative to the member's July 2022 Consolidated Volume provided through midpoint orders:	\$0.0001	\$0.0001	\$0.0001
if the member, during the month (i) provides at least 15 million shares of midpoint liquidity per day during the month; and (ii) increases providing liquidity through midpoint orders by 30% or more relative to the member's May 2021 ADV provided through midpoint orders:	\$0.0002	\$0.0002	\$0.0002
3. A supplemental credit for midpoint orders (excluding buy (sell) orders with <u>midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO</u>) (A member receiving this supplemental midpoint credit may receive combined credits (regular and supplemental) of up to a maximum of \$0.0028 per share executed):			
<u>member that (i) executes at least 0.35% of Consolidated</u>	<u>\$0.0001</u>	<u>\$0.0001</u>	<u>\$0.0001</u>

<u>Volume through providing midpoint orders and through M-ELO during the month, and (ii) executes at least 0.20% of Consolidated Volume through providing midpoint orders during the month.</u>			
<u>4[3]. All other non-displayed orders</u>			
	No charge	No charge	No charge

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