

Required fields are shown with yellow backgrounds and asterisks.

Filing by The Nasdaq Stock Market LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<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	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

**Description**

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

A proposal to amend the Exchanges transaction fees at Rule 7014(j) and Rule 7018(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 * Brett	Last Name * Kitt
Title * Senior Associate General Counsel	
E-mail * brett.kitt@nasdaq.com	
Telephone * (301) 978-8132	Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 05/31/2018	Executive Vice President and General Counsel
By Edward S. Knight	<div style="border: 1px solid black; width: 100%; height: 20px;"></div>
(Name *)	

edward.knight@nasdaq.com

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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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 \***

Add Remove View

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 Advance 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, security-based swap submission, or advance notice 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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Exhibit Sent As Paper Document

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 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s transaction fees at Rule 7014(j) and Rule 7018(a), as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on June 1, 2018.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on September 19, 2017. 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  
Senior Associate General Counsel  
Nasdaq, Inc.  
(301) 978-8132.

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

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

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

a. Purpose

The Exchange is proposing to: (i) eliminate a credit that it provides to members for displayed liquidity under Rule 7018(a); and (ii) re-establish a tier in the Nasdaq Growth Program under Rule 7014(j).

First Change

Currently, the Exchange provides a credit of \$ 0.00305 per share executed to a member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity if the member has: (i) shares of liquidity provided in all securities during the month representing at least 0.15% of Consolidated Volume<sup>3</sup> during the month, through one or more of its Nasdaq Market Center Market Participant Identifiers; and (ii) adds Nasdaq Options Market ("NOM") Market Maker liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 0.90% or more of total industry average daily volume in the customer clearing range for Equity and Exchange Traded Fund option contracts per day in a month on NOM. The Exchange provides the credit with the same criteria to securities of all three Tapes<sup>4</sup> under Rule 7018(a)(1) – (3).

The Exchange offers these credits as a means of improving market quality by providing its members with an incentive to increase their provision of liquidity on both

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<sup>3</sup> As used in Rule 7018(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.

<sup>4</sup> There are three Tapes, which are based on the listing venue of the security: Tape C securities are Nasdaq-listed; Tape A securities are New York Stock Exchange-listed; and Tape B securities are listed on exchanges other than Nasdaq and NYSE.

the Exchange and NOM. However, the Exchange has observed over time that these credits are not serving their intended purpose. Indeed, no members presently qualify for receipt of the credits. Accordingly, the Exchange proposes to eliminate them.

### Second Change

The Exchange is proposing to revive, under Rule 7014(j), a portion of the Nasdaq Growth Program that it previously eliminated.

Nasdaq introduced the Growth Program in 2016.<sup>5</sup> The purpose of the Growth Program is to provide a credit per share executed for members that meet certain growth criteria. The credit is designed to provide an incentive to members that do not qualify for other credits under Rule 7018 in excess of the Growth Program credit to increase their participation on the Exchange.

Presently, the Growth Program provides a member with a \$0.0027 per share executed credit in securities priced \$1 or more per share. The credit is provided in lieu of other credits provided to the member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity under Rule 7018, if the credit under the Growth Program is greater than the credit attained under Rule 7018.

Until late 2017, the Growth Program also included a second credit tier.<sup>6</sup> That is, it provided a member with either a \$0.0027 per share executed credit in securities priced

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<sup>5</sup> See Securities Exchange Act Release No. 78977 (September 29, 2016), 81 FR 69140 (October 5, 2016) (SR-NASDAQ-2016-132).

<sup>6</sup> The Growth Program originally included only the \$0.0025 credit. See *id.* It added the \$0.0027 credit in June 2017. See Securities Exchange Act Release No. 34-80997 (June 28, 2017), 82 FR 29348 (June 22, 2017) (SR-NASDAQ-2017-060).

\$1 or more per share, or a \$0.0025 per share executed credit in securities priced at \$1 or more, if the member met certain criteria. Again, these credit were provided in lieu of other credits provided to the member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity under Rule 7018, if the credit under the Growth Program was greater than the credit attained under Rule 7018.

Rule 7014(j) provided three ways in which a member could qualify for the \$0.0025 rebate in a given month. First, the member could qualify for this rebate by: (i) adding greater than 750,000 shares a day on average during the month through one or more of its Nasdaq Market Center MPIDs; and (ii) increasing its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 20% versus the member's Growth Baseline.<sup>7</sup> Second, the member could qualify for the \$0.0025 rebate by: (i) adding greater than 750,000 shares a day on average during the month through one or more of its Nasdaq Market Center MPIDs; (ii) increasing its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 20% versus the member's Growth Baseline in the preceding month, and (iii) maintaining or increasing its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume as compared to the preceding month. Third, a member could

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<sup>7</sup> The Growth Baseline was defined as the member's shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume during the last month a member qualified for the Nasdaq Growth Program under Rule 7014(j)(1)(B)(i) (increasing its Consolidated Volume by 20% versus its Growth Baseline). If a member had not yet qualified for a credit under this program, its August 2016 share of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume was used to establish a baseline.

qualify for the Growth Program by: (i) adding greater than 750,000 shares a day on average during the month through one or more of its Nasdaq Market Center MPIDs in three separate months; (ii) increasing its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 20% versus the member's Growth Baseline in three separate months; and (iii) maintaining or increasing its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume compared to the Growth Baseline established when the member met the criteria for the third month.

In 2017, the Exchange eliminated the \$0.0025 rebate tier, stating that it wished to simplify the operation of the Growth Program.<sup>8</sup> However, the \$0.0027 credit remains a part of the Growth Program, as set forth in Rule 7014(j).

Since it eliminated the \$0.0025 rebate tier, the Exchange has received interest in reviving it, and it proposes to do so now. However, the Exchange proposes modifications to the \$0.0025 rebate tier that will simplify and update it. In particular, the Exchange proposes to omit one of the three means that it previously provided to qualify for the \$0.0025 rebate tier – namely, the provision that qualified a member that (i) adds greater than 750,000 shares a day on average during the month through one or more of its Nasdaq Market Center MPIDs; (ii) increases its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 20% versus the member's Growth Baseline in the preceding month, and (iii) maintains or increases its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume as compared to the preceding month.

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<sup>8</sup> See Securities Exchange Act Release No. 34-82062 (Nov. 13, 2017), 82 FR 54457 (Nov. 17, 2017) (SR-NASDAQ-2017-119).

The Exchange also proposes to reset the Growth Baseline as a member's May 2018 share of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume.

b. Statutory Basis

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

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>11</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>12</sup> (“NetCoalition”) the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that

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

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

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

<sup>12</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).



Congress mandated a cost-based approach.<sup>13</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>14</sup>

Further, “[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’ . . .”<sup>15</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

#### First Change

The proposal to eliminate the \$ 0.00305 per share executed credits for all three Tapes is reasonable because these credits have not been effective in achieving their intended objective of incentivizing members to provide liquidity to the Exchange and to NOM. The Exchange has limited resources available to it to devote to the operation of special pricing programs and as such, it is reasonable and equitable for the Exchange to allocate those resources to those programs that are effective and away from those programs that are ineffective. The proposals are also equitable and not unfairly

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<sup>13</sup> See NetCoalition, at 534 - 535.

<sup>14</sup> Id. at 537.

<sup>15</sup> Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

discriminatory because the proposed changes to the credits will apply uniformly to all similarly situated members.

### Second Change

The Exchange believes that re-establishing a \$0.0025 per share executed credit as part of the Nasdaq Growth Program is reasonable for the reasons that the Exchange set forth in its original proposal to establish that credit.<sup>16</sup> In addition, the Exchange believes that it is reasonable to re-establish the credit tier notwithstanding the fact that it previously eliminated the tier, because the Exchange believes that the program is more likely to be successful now than it was previously in achieving its objective of increasing participation on the Exchange. In particular, the Exchange notes that it has recently received member interest in re-establishing the tier and has determined that it is worthwhile to respond to such interest if doing so will promote increased Exchange participation. The Exchange notes that it intends to monitor the Growth Program closely to determine whether it does, in fact, attract qualifying interest and incentivize greater participation. If it does not do so, the Exchange will either further modify or once again move to eliminate the \$0.0025 rebate tier.

The Exchange also believes that it is reasonable to modify the rebate tier from its prior formulation as a means of streamlining the qualifications for the tier and rendering it easier for the Exchange to administer and members to understand. The Exchange furthermore believes that it is reasonable to reset the Growth Baseline to May 2018 as that is the last month of activity prior to the restart of the program.

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<sup>16</sup> See Securities Exchange Act Release No. 78977 (September 29, 2016), 81 FR 69140 (October 5, 2016) (SR-NASDAQ-2016-132).

Again, the Exchange believes that the proposal to re-establish the \$0.0025 rebate tier is an equitable allocation and is not unfairly discriminatory for the reasons that the Exchange set forth in its original proposal to establish that credit.<sup>17</sup> The Exchange also believes that its proposed changes to the prior iteration of the rebate tier are equitable and non-discriminatory because they will apply uniformly to members and will simplify the Growth Program. The Exchange further notes that reviving this tier will benefit members and the markets by providing additional means by which members may obtain credits in exchange for increasing their participation in the markets.

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 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 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 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.

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<sup>17</sup> See id.

In this instance, the proposed elimination of the \$0.00305 per share executed credit and the revival of the \$0.0025 credit will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues.

The proposed changes to the credits are reflective of a robust and competitive securities market, where trading venues must provide incentives to participants in the form of credits to attract order flow and adjust those incentives to make them more competitive or to allow the Exchange to provide other market-improving incentives elsewhere.

Moreover, trading venues are free to adjust their fees and credits in response to any changes that the Exchange makes to its fees and credits. If any of 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 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,<sup>18</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

Not applicable.

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.

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2018-042)

May \_\_, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Transaction Fees at Rule 7014(j) and Rule 7018(a)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 31, 2018, 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 fees at Rule 7014(j) and Rule 7018(a), as described below. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on June 1, 2018.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaq.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

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

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

1. Purpose

The Exchange is proposing to: (i) eliminate a credit that it provides to members for displayed liquidity under Rule 7018(a); and (ii) re-establish a tier in the Nasdaq Growth Program under Rule 7014(j).

First Change

Currently, the Exchange provides a credit of \$ 0.00305 per share executed to a member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity if the member has: (i) shares of liquidity provided in all securities during the month representing at least 0.15% of Consolidated Volume<sup>3</sup> during the month, through one or more of its Nasdaq Market Center Market Participant Identifiers; and (ii) adds Nasdaq Options Market ("NOM") Market Maker liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 0.90% or more of total industry average daily volume in the customer clearing range for Equity and Exchange Traded

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<sup>3</sup> As used in Rule 7018(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.

Fund option contracts per day in a month on NOM. The Exchange provides the credit with the same criteria to securities of all three Tapes<sup>4</sup> under Rule 7018(a)(1) – (3).

The Exchange offers these credits as a means of improving market quality by providing its members with an incentive to increase their provision of liquidity on both the Exchange and NOM. However, the Exchange has observed over time that these credits are not serving their intended purpose. Indeed, no members presently qualify for receipt of the credits. Accordingly, the Exchange proposes to eliminate them.

#### Second Change

The Exchange is proposing to revive, under Rule 7014(j), a portion of the Nasdaq Growth Program that it previously eliminated.

Nasdaq introduced the Growth Program in 2016.<sup>5</sup> The purpose of the Growth Program is to provide a credit per share executed for members that meet certain growth criteria. The credit is designed to provide an incentive to members that do not qualify for other credits under Rule 7018 in excess of the Growth Program credit to increase their participation on the Exchange.

Presently, the Growth Program provides a member with a \$0.0027 per share executed credit in securities priced \$1 or more per share. The credit is provided in lieu of other credits provided to the member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity under Rule

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<sup>4</sup> There are three Tapes, which are based on the listing venue of the security: Tape C securities are Nasdaq-listed; Tape A securities are New York Stock Exchange-listed; and Tape B securities are listed on exchanges other than Nasdaq and NYSE.

<sup>5</sup> See Securities Exchange Act Release No. 78977 (September 29, 2016), 81 FR 69140 (October 5, 2016) (SR-NASDAQ-2016-132).



7018, if the credit under the Growth Program is greater than the credit attained under Rule 7018.

Until late 2017, the Growth Program also included a second credit tier.<sup>6</sup> That is, it provided a member with either a \$0.0027 per share executed credit in securities priced \$1 or more per share, or a \$0.0025 per share executed credit in securities priced at \$1 or more, if the member met certain criteria. Again, these credit were provided in lieu of other credits provided to the member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity under Rule 7018, if the credit under the Growth Program was greater than the credit attained under Rule 7018.

Rule 7014(j) provided three ways in which a member could qualify for the \$0.0025 rebate in a given month. First, the member could qualify for this rebate by: (i) adding greater than 750,000 shares a day on average during the month through one or more of its Nasdaq Market Center MPIDs; and (ii) increasing its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 20% versus the member's Growth Baseline.<sup>7</sup> Second, the member could qualify for the \$0.0025 rebate by: (i) adding greater than 750,000 shares a

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<sup>6</sup> The Growth Program originally included only the \$0.0025 credit. See id. It added the \$0.0027 credit in June 2017. See Securities Exchange Act Release No. 34-80997 (June 28, 2017), 82 FR 29348 (June 22, 2017) (SR-NASDAQ-2017-060).

<sup>7</sup> The Growth Baseline was defined as the member's shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume during the last month a member qualified for the Nasdaq Growth Program under Rule 7014(j)(1)(B)(i) (increasing its Consolidated Volume by 20% versus its Growth Baseline). If a member had not yet qualified for a credit under this program, its August 2016 share of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume was used to establish a baseline.

day on average during the month through one or more of its Nasdaq Market Center MPIDs; (ii) increasing its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 20% versus the member's Growth Baseline in the preceding month, and (iii) maintaining or increasing its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume as compared to the preceding month. Third, a member could qualify for the Growth Program by: (i) adding greater than 750,000 shares a day on average during the month through one or more of its Nasdaq Market Center MPIDs in three separate months; (ii) increasing its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 20% versus the member's Growth Baseline in three separate months; and (iii) maintaining or increasing its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume compared to the Growth Baseline established when the member met the criteria for the third month.

In 2017, the Exchange eliminated the \$0.0025 rebate tier, stating that it wished to simplify the operation of the Growth Program.<sup>8</sup> However, the \$0.0027 credit remains a part of the Growth Program, as set forth in Rule 7014(j).

Since it eliminated the \$0.0025 rebate tier, the Exchange has received interest in reviving it, and it proposes to do so now. However, the Exchange proposes modifications to the \$0.0025 rebate tier that will simplify and update it. In particular, the Exchange proposes to omit one of the three means that it previously provided to qualify for the \$0.0025 rebate tier – namely, the provision that qualified a member that (i) adds greater

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<sup>8</sup> See Securities Exchange Act Release No. 34-82062 (Nov. 13, 2017), 82 FR 54457 (Nov. 17, 2017) (SR-NASDAQ-2017-119).

than 750,000 shares a day on average during the month through one or more of its Nasdaq Market Center MPIDs; (ii) increases its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 20% versus the member's Growth Baseline in the preceding month, and (iii) maintains or increases its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume as compared to the preceding month. The Exchange also proposes to reset the Growth Baseline as a member's May 2018 share of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume.

## 2. Statutory Basis

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

The 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

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

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

market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>11</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>12</sup> (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>13</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>14</sup>

Further, “[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’ . . .”<sup>15</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

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

<sup>12</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>13</sup> See NetCoalition, at 534 - 535.

<sup>14</sup> Id. at 537.

<sup>15</sup> Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

First Change

The proposal to eliminate the \$ 0.00305 per share executed credits for all three Tapes is reasonable because these credits have not been effective in achieving their intended objective of incentivizing members to provide liquidity to the Exchange and to NOM. The Exchange has limited resources available to it to devote to the operation of special pricing programs and as such, it is reasonable and equitable for the Exchange to allocate those resources to those programs that are effective and away from those programs that are ineffective. The proposals are also equitable and not unfairly discriminatory because the proposed changes to the credits will apply uniformly to all similarly situated members.

Second Change

The Exchange believes that re-establishing a \$0.0025 per share executed credit as part of the Nasdaq Growth Program is reasonable for the reasons that the Exchange set forth in its original proposal to establish that credit.<sup>16</sup> In addition, the Exchange believes that it is reasonable to re-establish the credit tier notwithstanding the fact that it previously eliminated the tier, because the Exchange believes that the program is more likely to be successful now than it was previously in achieving its objective of increasing participation on the Exchange. In particular, the Exchange notes that it has recently received member interest in re-establishing the tier and has determined that it is worthwhile to respond to such interest if doing so will promote increased Exchange participation. The Exchange notes that it intends to monitor the Growth Program closely to determine whether it does, in fact, attract qualifying interest and incentivize greater

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<sup>16</sup> See Securities Exchange Act Release No. 78977 (September 29, 2016), 81 FR 69140 (October 5, 2016) (SR-NASDAQ-2016-132).

participation. If it does not do so, the Exchange will either further modify or once again move to eliminate the \$0.0025 rebate tier.

The Exchange also believes that it is reasonable to modify the rebate tier from its prior formulation as a means of streamlining the qualifications for the tier and rendering it easier for the Exchange to administer and members to understand. The Exchange furthermore believes that it is reasonable to reset the Growth Baseline to May 2018 as that is the last month of activity prior to the restart of the program.

Again, the Exchange believes that the proposal to re-establish the \$0.0025 rebate tier is an equitable allocation and is not unfairly discriminatory for the reasons that the Exchange set forth in its original proposal to establish that credit.<sup>17</sup> The Exchange also believes that its proposed changes to the prior iteration of the rebate tier are equitable and non-discriminatory because they will apply uniformly to members and will simplify the Growth Program. The Exchange further notes that reviving this tier will benefit members and the markets by providing additional means by which members may obtain credits in exchange for increasing their participation in the markets.

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 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

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<sup>17</sup> See id.

must continually adjust its 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 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 this instance, the proposed elimination of the \$0.00305 per share executed credit and the revival of the \$0.0025 credit will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues.

The proposed changes to the credits are reflective of a robust and competitive securities market, where trading venues must provide incentives to participants in the form of credits to attract order flow and adjust those incentives to make them more competitive or to allow the Exchange to provide other market-improving incentives elsewhere.

Moreover, trading venues are free to adjust their fees and credits in response to any changes that the Exchange makes to its fees and credits. If any of 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 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.<sup>18</sup>

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2018-042 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.

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).



All submissions should refer to File Number SR-NASDAQ-2018-042. 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-2018-042 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**The Nasdaq Stock Market Rules****Equity Rules**

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**Marketplace Rules (4000-7000)**

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**7014. Market Quality Incentive Programs**

(a) – (i) No change.

**Nasdaq Growth Program**

(j) Nasdaq will provide a credit per share executed in securities priced at \$1 or more per share for members meeting certain growth criteria.

This credit will be provided in lieu of Credit to member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity under rule 7018 if the credit under this program is greater than the credit attained under 7018.

(1) To be eligible for a \$0.0025 per share executed rebate a member must:

(A) Add greater than 750,000 shares a day on average during the month through one or more of its Nasdaq Market Center MPIDs; and

(B) (i) Increase its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 20% versus the member's Growth Baseline or (ii) have met the growth criteria in Rule 7014(j)(1)(A) and (j)(1)(B)(i) in three separate months and maintained or increased its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume compared to the Growth Baseline established when the member met the criteria for the third month.

The Growth Baseline will be defined as the member's shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume during the last month a member qualified for the Nasdaq Growth Program under Rule 7014(j)(1)(B)(i). If a member has not qualified for a credit under this program, its May 2018 share of liquidity provided in all securities through one or more of

its Nasdaq Market Center MPIDs as a percent of Consolidated Volume will be used to establish a baseline.

(2) To be eligible for a \$0.0027 per share executed rebate a member must:

- (A) Add at least 0.04% or more of Consolidated Volume during the month through non-displayed orders through one or more of its Nasdaq Market Center MPIDs; and
- (B) Increase its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs in all securities during the month as a percent of Consolidated Volume by at least 50% versus its August 2016 share of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume.

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### **7018. 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 rule, 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.

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

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[member (i) with shares of liquidity provided in all securities during the month representing at least 0.15% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) Adds NOM Market Maker liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 0.90% or more of total industry ADV in the customer clearing range for Equity and ETF option contracts per day in a month on The Nasdaq Options Market:]	[\$0.00305 per share executed]
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#### **(2) Fees for Execution and Routing of Securities Listed on NYSE**

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[member (i) with shares of liquidity provided in all securities during the month representing at least 0.15% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) Adds NOM Market Maker liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 0.90% or more of total industry ADV in the customer clearing range for Equity and ETF option contracts per day in a month on The Nasdaq Options Market:]

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

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[member (i) with shares of liquidity provided in all securities during the month representing at least 0.15% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) Adds NOM Market Maker liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 0.90% or more of total industry ADV in the customer clearing range for Equity and ETF option contracts per day in a month on The Nasdaq Options Market:]

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**(b) – (m)** No change.

\* 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 rule, 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.

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