

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 55	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2021 - * 006 Amendment No. (req. for Amendments *)
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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"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
Date Expires * <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) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

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

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

A proposal to amend the Exchange's transaction credits at Equity 7, Sections 114 and 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 \* Brett Last Name \* Kitt  
 Title \* AVP, Principal Associate General Counsel  
 E-mail \* Brett.Kitt@nasdaq.com  
 Telephone \* (301) 978-8132 Fax

**Signature**

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

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

(Title \*)  
 Date 02/01/2021  
 By John Zecca  
 EVP and Chief Legal Counsel  
 john.zecca@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 \***

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

**Exhibit 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 credits at Equity 7, Sections 114 and 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”) on November 5, 2020. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Brett M. Kitt  
AVP, Principal 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 purpose of the proposed rule change is to amend the Exchange's schedule of credits, at Equity 7, Sections 114 and 118(a).

Proposed Changes to Qualified Market Maker Rebates

Presently, in Equity 7, Section 114, the Exchange offers several special pricing programs that are based, in part, upon members' activities in securities priced at or more than \$1 relative to total "Consolidated Volume."<sup>3</sup> Among them is a program that provides rebates to Qualified Market Makers ("QMMs").<sup>4</sup> Pursuant to Equity 7, Section 114(e), a member that qualifies as a QMM is entitled to receive a rebate per share executed with respect to all displayed orders (other than Designated Retail Orders, as defined in Equity 7, Section 118) in securities priced at \$1 or more per share that provide liquidity in each of Tapes A, B, and C. Such a rebate is in addition to any rebate payable under Equity 7, Section 118(a). Specifically, the Exchange offers several tiers of rebates to QMMs. Among them, it offers a Tier 1 rebate of \$0.0001 per share executed to any

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<sup>3</sup> Pursuant to Equity 7, Section 114(h), the term "Consolidated Volume" shares the meaning of that term set forth in Equity 7, Section 118(a). Equity 7, Section 118(a) defines "Consolidated Volume" to 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 is excluded from both total Consolidated Volume and the member's trading activity.

<sup>4</sup> Pursuant to Equity 7, Section 114(d), a member may be designated as a QMM if: (1) the member is not assessed any "Excess Order Fee" under Equity 7, Section 118 during the month; and (2) the member quotes at the NBBO at least 25% of the time during regular market hours in an average of at least 1,000 securities per day during the month.

QMM that executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.70% up to, and including, 0.90% of Consolidated Volume during the month. Additionally, the Exchange offers a Tier 2 rebate of \$0.0002 per share executed to any QMM that executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.90% of Consolidated Volume during the month.

For the month of December 2020 only, the Exchange amended the definition of “Consolidated Volume” in Equity 7, Section 114,<sup>5</sup> to account for an unexpected rise in sub-dollar trading which stood to adversely impact members’ qualifications for tiered pricing programs – including the QMM pricing program – because such qualifications depend upon members achieving threshold percentages of volumes as a percentage of Consolidated Volume, and the rise in sub-dollar volume had diluted these percentage calculations. Specifically, the Exchange amended the definition of “Consolidated Volume” to state that for purposes of determining which credits were applicable to a member during the month of December 2020, the Exchange would calculate the member’s volume and total Consolidated Volume twice. First, it would calculate the member’s volume and Consolidated Volume as presently set forth in Equity 7, Section 118(a). Second, it would calculate the member’s volume and Consolidated Volume by excluding volume and Consolidated Volume that consists of executed orders in securities priced less than \$1. Thereafter, the Exchange would evaluate which of these two member volume and Consolidated Volume calculations would qualify members for the most advantageous credits and charges for the month of December 2020 and then it would

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<sup>5</sup> See Securities Exchange Act Release No. 34-90719 (December 18, 2020), 85 FR 84437 (December 28, 2020) (SR-NASDAQ-2020-87).

apply those credits and charges to its members. Thus, if but for the rise of sub-dollar volume in December, a member would have qualified for a higher credit or a lower fee tier that month, then the Exchange would have applied that higher credit or lower fee tier to the member's trading activity during the month.

In making this change, the Exchange reasoned that it would have been unfair for its members that execute significant dollar volumes in securities priced at or above \$1 on the Exchange to fail to achieve or to lose their existing qualifications for special pricing in December 2020 due to anomalous behavior to which they did not contribute. The Exchange noted that although the change applied only to pricing in December 2020, it would monitor sub-dollar volumes going forward, and assess whether additional pricing adjustments are warranted if sub-dollar volumes remained elevated relative to the norm.

In fact, the Exchange has observed that the rise in sub-dollar volume has not abated, and that it continues to threaten the ability of some Exchange members to qualify for their pricing tiers. In January 2021, sub-dollar volume comprised 13.65 percent of Consolidated Volume. By comparison, sub-dollar volume comprised only 9.28 percent of Consolidated Volume, on average, during all of 2020. In particular, the sub-dollar phenomenon continues to threaten the ability of QMMs to attain their Tier 1 and Tier 2 credit tiers. In January 2021, several QMMs experienced these adverse impacts.

Accordingly, the Exchange proposes to amend the definition of "Consolidated Volume" in Equity 7, Section 114(h) to apply the December 2020 pricing formulation going forward for purposes of determining whether a QMM qualifies for Tier 1 or Tier 2

QMM rebates.<sup>6</sup> That is, the Exchange will calculate a QMM's volume and total Consolidated Volume twice. First, it will calculate the QMM's volume and Consolidated Volume as presently set forth in Equity 7, Section 118(a). Second, with certain modifications discussed below, it will calculate the QMM's volume and Consolidated Volume by excluding volume and Consolidated Volume that consists of executed orders in securities priced less than \$1. Thereafter, the Exchange will evaluate which of these two QMM volume and Consolidated Volume calculations would qualify QMMs for the most advantageous credit tier and then it will apply those credits.

The Exchange believes that its QMM program plays an important role in improving the quality of, deepening liquidity in, and tightening spreads in its market. The QMM pricing program, in turn, offers rebates that are critical to incenting members to meet the quoting requirements for acting as QMMs. To the extent that a rise in sub-dollar trading by non-QMMs imperils the ability of QMMs to qualify for the rebates that motivate members to serve as QMMs, the Exchange believes that it is appropriate to act to preserve the effectiveness of these rebates, including by potentially excluding sub-dollar volume from the rebate eligibility criteria.

Where the Exchange proposes to exclude sub-dollar volume from the QMM rebate qualification formulas, the Exchange also proposes to raise the threshold percentages of Consolidated Volume that a QMM must achieve to qualify for Tier

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<sup>6</sup> The Exchange also proposes to delete rule text in Equity 7, Section 118 that set forth the same special methodology for calculating volumes as a percentage of Consolidated Volume during the month of December 2020. At this time, the Exchange does not propose to apply this special methodology beyond December 2020 to its schedule of transaction fees and credits, at Equity 7, Section 118. This, for purposes of calculating the pricing tiers set forth in Equity 7, Section 118, the Exchange does not exclude sub-dollar volume. The Exchange proposes to remove the special methodology from the rule text, as it is no longer operative.

rebates. The Exchange proposes to raise the eligibility threshold for the Tier 1 rebate to ensure that it is calibrated appropriately. That is, while the Exchange proposes to exclude sub-dollar volume to prevent the rebate qualification criteria from becoming too difficult to attain, the Exchange also wants to ensure that, exclusive of sub-dollar volume, these criteria do not become too easy to attain and that they continue to incentivize QMMs to add more liquidity to the Exchange in securities priced at \$1 or more. The Exchange believes that a small upward adjustment to the Consolidated Volume threshold will ensure that the Tier 1 rebate remains reasonably challenging for QMMs to achieve if sub-dollar volume is excluded. Specifically, to qualify for the Tier 1 rebate (when excluding sub-dollar volume), the Exchange proposes that a QMM must execute shares of liquidity in securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.80%, up to and including, 0.90% of Consolidated Volume during a month. Meanwhile, to qualify for the Tier 2 rebate (again, when excluding sub-dollar volume), the Exchange proposes that the qualification requirements will remain unchanged: a QMM must execute shares of liquidity in securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.90% of Consolidated Volume during a month.

The following example illustrates the operation of the proposed changes to the QMM rebate tiers when taken together. During a month, a QMM adds 90 million shares to the Exchange, of which 300,000 shares consists of volume in sub-dollar securities. Meanwhile, total Consolidated Volume for that month is 13 billion shares, of which 1.8 billion shares consists of executions in sub-dollar securities. To determine whether the QMM qualifies for a Tier 1 QMM rebate under the proposal, the Exchange would first

determine whether the QMM's volume, inclusive of its sub-dollar activity, is between 0.70% and 0.90% of Consolidated Volume (including sub-dollar volume). In this example, the QMM would not qualify for Tier 1 under this formula because the QMM added only 0.69% of Consolidated Volume during the month. Nevertheless, the Exchange would determine next whether the QMM would qualify for the Tier 1 rebate under the alternative formula in which the QMM's sub-dollar volume and sub-dollar-attributable Consolidated Volume are excluded from the calculation, while also raising the QMM's qualifying threshold percentages of Consolidated Volume to between 0.80% and 0.90%. Under this alternative formula, the QMM would qualify for Tier 1 rebates as it added 0.80% of Consolidated Volume (exclusive of sub-dollar volume). Insofar as the proposal would provide for the Exchange to apply the calculation results that are most advantageous to the QMM, the Exchange in this example would apply the Tier 1 rebate to the QMM.

#### Proposed Amendments to Existing Transaction Credits

In addition to the above, the Exchange proposes to amend three of the credits it offers to members in displayed quotes or orders in securities in all three Tapes (other than Supplemental Orders or Designated Retail Orders) that add liquidity to the Exchange, as set forth in Equity 7, Section 118(a).

First, the Exchange proposes to amend a credit it presently offers of \$0.00295 per share executed to a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.90% or more of Consolidated Volume during the month, which includes shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that

represent 0.25% or more of Consolidated Volume. The Exchange proposes to decrease the threshold percentage of Consolidated Volume necessary to qualify for this credit from 0.90% to 0.85%. The Exchange proposes to lower this threshold to render it easier for members to qualify for the \$0.00295 per share executed credit. More members may seek to attain this credit to the extent that it is more accessible to them. If more members increase their liquidity adding activity on the Exchange to attain this credit, then the quality of the market will improve, to the benefit of all participants.

Second, the Exchange proposes to amend a credit it presently offers of \$0.0029 per share executed to a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.70% of Consolidated Volume during the month. The Exchange proposes to decrease the threshold percentage of Consolidated Volume necessary to qualify for this credit from 0.70% to 0.675%. The Exchange also proposes to lower this threshold to render it easier for members to qualify for the \$0.0029 per share executed credit. Again, more members may seek to attain this credit to the extent that it is more accessible to them. If more members increase their liquidity adding activity on the Exchange to attain this credit, then the quality of the market will improve, to the benefit of all participants.

Third, the Exchange proposes to amend a credit it presently offers of \$0.0025 per share executed to a member that provides a daily average of at least 4 million shares of liquidity, of which greater than 1.5 million shares per day must comprise non-displayed liquidity, excluding midpoint orders. The Exchange proposes to amend the credit to state that the “greater than 1.5 million shares per day” requirement may be satisfied, not only by adding non-displayed liquidity (excluding midpoint orders), but also by using

Midpoint Extended Life Orders (“M-ELOs”). The Exchange proposes this change to provide a new incentive for members to increase significant liquidity each day in M-ELO Orders, as well as to render the credit easier for members to attain, thereby enticing more members to try to grow their liquidity adding activity on the Exchange to do so. To the extent that the proposed amended credit succeeds in increasing the number of its members that attain the credit, and in increasing the volume of liquidity provided to the Exchange, then the quality of the market will improve for all participants.

#### New Proposed Growth Tier

Finally, the Exchange proposes to amend Equity 7, Section 118(a), to establish a new \$0.0029 per share executed credit to a member, for displayed quotes or orders in securities in all three Tapes (other than Supplemental Orders or Designated Retail Orders) that add liquidity to the Exchange, to the extent that the member, through one or more of its Nasdaq Market Center MPIDs: (i) provides shares of liquidity in all securities that represent equal to or greater than 0.65% of Consolidated Volume during the month; (ii) increases its average daily volume of M-ELO Orders executed by 150% or more during the month relative to the month of January 2021; and (iii) executes an average daily volume of at least 750,000 shares in M-ELO Orders for the month. The Exchange intends for this new credit to encourage members to grow the extent to which they utilize the M-ELO Order Type on the Exchange, and to reward those members that do so in significant volumes. The Exchange believes that any ensuing increase in M-ELO liquidity on the Exchange will improve the quality of the Nasdaq market generally as well as the experiences of those members that choose to interact with the market through M-ELO. To the extent that the proposed new credit succeeds in having its members

attain the credit, and in increasing the volume of liquidity provided to the Exchange, then the quality of the market will improve for all participants.

b. Statutory Basis

The Exchange believes that its proposals are consistent with Section 6(b) of the Act,<sup>7</sup> in general, and further the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>8</sup> in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposals are also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposals are Reasonable

The Exchange's proposals 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

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ....”<sup>9</sup>

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>10</sup>

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 respective pricing schedules. Within the foregoing context, the proposals represent reasonable attempts by the Exchange to increase its liquidity and market share relative to its competitors.

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<sup>9</sup> 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)).

<sup>10</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

As to the Exchange's proposal to potentially exclude sub-dollar volume for purposes of determining QMMs' qualifications for Tier 1 and Tier 2 rebates, the Exchange believes that this proposal is reasonable because in its absence, QMMs may fail to qualify for their existing QMM pricing tiers or fail to qualify for better pricing tiers. The Exchange does not wish to penalize QMMs that engage in significant activity on the Exchange in securities priced at or above \$1 due to the sub-dollar trading activities of other firms. The proposed rule change would seek to avoid such a penalty by calculating eligibility for Tier 1 and Tier 2 rebates by first including and then excluding sub-dollar volume, and then by applying the calculation that would result in the pricing determination that is most advantageous to each QMM.

At the same time, the Exchange believes that it is reasonable, when excluding sub-dollar volume from its QMM Tier eligibility formulas, to increase the threshold percentages of Consolidated Volume that a QMM must achieve to qualify for the Tier 1 rebate. This proposal will help to properly calibrate eligibility criteria for the QMM Tier 1 rebate so that, when excluding sub-dollar volume, the Tier is neither too hard nor too easy for QMMs to attain. That is, even though excluding sub-dollar volume from the calculations may help QMMs to remain in their existing Tiers even as sub-dollar activity by other firms rises, the Exchange also wants to be sure that the Tiers continue to challenge QMMs to add additional volume in stocks priced at or above \$1. The Exchange notes that if QMMs are unable to meet the higher Consolidated Volume percentage requirements for Tier 1, they still may qualify for the Tier under the existing qualification formula, which includes sub-dollar volume but applies lower Consolidated Volume percentage requirements.

As to the Exchange's proposals to ease the qualification criteria for three of its transaction credits, at Equity 7, Section 118(a), the Exchange believes that these proposals are reasonable because they will ease or broaden the eligibility criteria for the credits and, in doing so, they will encourage more members to try to attain the credits by adding additional liquidity to the Exchange. If more members increase their liquidity adding activity on the Exchange to attain these credits, then the quality of the market will improve, and the Exchange will become more attractive to existing and prospective participants.

Finally, the Exchange believes that its proposal is reasonable to establish a new add credit with a growth component tied to M-ELO activity. The proposal will encourage members to increase the extent to which they utilize M-ELO Orders on the Exchange, and it will reward members that do so in significant volumes. The Exchange believes that any ensuing increase in M-ELO liquidity on the Exchange will improve the quality of the Nasdaq market generally as well as the experiences of those members that choose to interact with the market through M-ELO. Additionally, if members increase their liquidity adding activity on the Exchange to attain this new credit, then the quality of the market will improve, and the Exchange will become more attractive to existing and prospective participants. The Exchange notes that it selected January 2021 as the baseline for the growth requirements because it is the month immediately preceding the establishment of the new tier.

The Exchange notes that those market participants that are dissatisfied with the proposals are free to shift their order flow to competing venues that offer them lower charges or higher or more readily attainable credits.

The Proposals are Equitable Allocations of Credits

The Exchange believes its proposals will allocate its credits fairly among its market participants.

The Exchange believes that its proposal to amend the qualification criteria for Tier 1 and Tier 2 QMM rebates is an equitable allocation because it would bolster the effectiveness of QMM rebates, which are imperiled by a rise in sub-dollar trading. Maintaining the attainability of QMM rebates is crucial to ensuring participation in the QMM program, which in turn is an important contributor to the quality of the Nasdaq market. Although the recent spike in sub-dollar pricing also threatens to upend the ability of members to qualify for Nasdaq's other volume-based tiers of credits and charges, the Exchange believes that its most pressing need is to address the threat to the QMM program given that several QMMs are already experiencing adverse pricing effects from the sub-dollar phenomenon. The Exchange notes that it continues to assess whether and how to modify its other volume-based pricing programs going forward to accommodate the rise in sub-dollar volumes.

The Exchange also believes that it an equitable allocation, when excluding sub-dollar volume from the QMM Tier 1 eligibility formula, to increase the threshold percentage of Consolidated Volume that a QMM must achieve to qualify for the credit. The Exchange believes that it is fair to calibrate eligibility criteria for the Tier 1 rebate so that the Tiers are neither too hard nor too easy for QMMs to attain. That is, just as the Exchange believes that it is equitable, for the reasons discussed above, to help QMMs to remain in their existing Tiers by excluding sub-dollar activity, the Exchange also believes it is beneficial to market quality to continue to challenge QMMs to add additional volume

in stocks priced at or above \$1. The Exchange notes that if QMMs are unable to meet the higher Consolidated Volume percentage requirement for the Tier 1 rebate, they still may qualify for the Tier under the existing qualification formula, which includes sub-dollar volume but applies lower Consolidated Volume percentage requirements.

It is also equitable for the Exchange to amend three of its transaction credits, by lowering and broadening their eligibility requirements, respectively, as a means of encouraging more members to try to attain the credits by adding additional liquidity to the Exchange, including in M-ELO Orders. To the extent that the Exchange succeeds in increasing liquidity on the Exchange, including in M-ELO Orders, then the Exchange will experience improvements in its market quality, which will benefit all market participants.

Lastly, the Exchange believes that it is equitable to establish a new add credit tier that is tied to the growth of M-ELO activity. The M-ELO Order Type provides a valuable means by which like-minded participants, with shared time horizons, can safely interact on the market and mitigate the risk of adverse selection and information leakage. The addition of this new proposed credit tier will encourage members to increase the extent of their use of M-ELO Orders on the Exchange, and it will reward members that do so in significant volumes. The Exchange believes that any increase in M-ELO liquidity on the Exchange that follows from the introduction of this new credit will improve the quality of the Nasdaq market generally as well as the experiences of those members that choose to interact with the market through M-ELO Orders. Additionally, if members increase their liquidity adding activity on the Exchange to attain this credit, then

the quality of the market will improve, and the Exchange will become more attractive to existing and prospective participants.

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

The Proposals are not Unfairly Discriminatory

The Exchange believes that its proposals are 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 incentivize 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 incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange believes that its proposal to amend the qualification criteria for Tier 1 and Tier 2 QMM rebates is not unfairly discriminatory. Although the rise in sub-dollar trading affects the attainability of many of Nasdaq's volume-based pricing tiers, it is fair for the Exchange to address the impact on QMM rebates, in particular, because maintaining the attainability of QMM rebates is crucial to maintaining participation in the QMM program, which in turn is an important contributor to the quality of the Nasdaq market. Even as the Exchange continues to assess whether and how to generally modify

its volume-based pricing programs going forward to accommodate the rise in sub-dollar volumes, the Exchange believes that a pressing need exists now to address the particular threat this phenomenon poses to the QMM program given that several QMMs are already experiencing adverse pricing effects.

At the same time, it is not unfairly discriminatory to increase the threshold percentage of Consolidated Volume that a QMM must achieve to qualify for the Tier 1 rebate when the Exchange also excludes sub-dollar volume from the eligibility calculation. The Exchange believes that it is fair to calibrate eligibility criteria for the QMM Tier 1 rebate so that the Tiers are neither too hard nor too easy for QMMs to attain. That is, just as the Exchange believes that it is not unfairly discriminatory, for the reasons discussed above, to help QMMs to remain in their existing Tiers by excluding sub-dollar activity, the Exchange also believes it is beneficial to market quality to continue to challenge QMMs to add additional volume in stocks priced at or above \$1. The Exchange notes that if QMMs are unable to meet the higher Consolidated Volume percentage requirement for Tier 1, they still may qualify for the Tier under the existing qualification formula, which includes sub-dollar volume but applies lower Consolidated Volume percentage requirements.

Moreover, the Exchange believes that its three proposed amendments to its transaction credits are not unfairly discriminatory because they stand to improve the overall market quality of the Exchange, to the benefit of all market participants, by incentivizing more members to provide additional liquidity to the Exchange, including M-ELO liquidity.

Likewise, the Exchange believes that its new proposed add credit with a growth component is not unfairly discriminatory because it is aimed at encouraging the growth of M-ELO Orders on the Exchange, which if successful, stands to improve the quality of the Nasdaq market generally, to the benefit of all market participants, as well as improve the experiences of those members that choose to interact with the market through M-ELO. Additionally, if members increase their liquidity adding activity on the Exchange to attain this credit, then the quality of the market will improve, and the Exchange will become more attractive to existing and prospective participants.

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

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

The Exchange does not believe that the proposed rule changes 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 proposal to amend the Exchange's QMM rebate pricing methodology will help to ensure that no QMM suffers a pricing disadvantage due to the ongoing spike in sub-dollar volumes, while at the same time it will provide an appropriately-calibrated incentive for QMMs to continue to add additional liquidity to the Exchange in securities priced at or above \$1. It is not intended to provide a competitive advantage to any particular QMM.

Meanwhile, the proposed changes to the qualifying criteria for three of the Exchange's transaction credits will make it easier for members to attain these credits, and will thereby encourage more members to try to attain these credits by increasing their market-improving behavior. Any member may elect to provide the levels or types of liquidity required in order to receive the credits. Furthermore, all members of the Exchange will benefit from any increase in market activity that the proposals effectuate.

Likewise, the proposed addition of a rebate tied to a member's activity in M-ELO Orders will encourage growth in that activity, to the benefit of users of those Order Types as well as the quality of the market in general. Any member may elect to engage in the levels of M-ELO liquidity required to qualify for this new credit.

The Exchange notes that its members are free to trade on other venues to the extent they believe that the proposed amended credits are too low or the qualification criteria are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that its pricing tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

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

The Exchange's proposals are pro-competitive in that the Exchange intends for them to preserve and enhance its incentive programs, as well as to increase liquidity adding activity 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 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>11</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.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2020-006)

February \_\_, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Transaction Credits at Equity 7, Sections 114 and 118(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 February 1, 2021, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction credits at Equity 7, Sections 114 and 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.

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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 purpose of the proposed rule change is to amend the Exchange’s schedule of credits, at Equity 7, Sections 114 and 118(a).

Proposed Changes to Qualified Market Maker Rebates

Presently, in Equity 7, Section 114, the Exchange offers several special pricing programs that are based, in part, upon members’ activities in securities priced at or more than \$1 relative to total “Consolidated Volume.”<sup>3</sup> Among them is a program that provides rebates to Qualified Market Makers (“QMMs”).<sup>4</sup> Pursuant to Equity 7, Section

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<sup>3</sup> Pursuant to Equity 7, Section 114(h), the term "Consolidated Volume" shares the meaning of that term set forth in Equity 7, Section 118(a). Equity 7, Section 118(a) defines “Consolidated Volume” to 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 is excluded from both total Consolidated Volume and the member's trading activity.

<sup>4</sup> Pursuant to Equity 7, Section 114(d), a member may be designated as a QMM if: (1) the member is not assessed any “Excess Order Fee” under Equity 7, Section 118 during the month; and (2) the member quotes at the NBBO at least 25% of

114(e), a member that qualifies as a QMM is entitled to receive a rebate per share executed with respect to all displayed orders (other than Designated Retail Orders, as defined in Equity 7, Section 118) in securities priced at \$1 or more per share that provide liquidity in each of Tapes A, B, and C. Such a rebate is in addition to any rebate payable under Equity 7, Section 118(a). Specifically, the Exchange offers several tiers of rebates to QMMs. Among them, it offers a Tier 1 rebate of \$0.0001 per share executed to any QMM that executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.70% up to, and including, 0.90% of Consolidated Volume during the month. Additionally, the Exchange offers a Tier 2 rebate of \$0.0002 per share executed to any QMM that executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.90% of Consolidated Volume during the month.

For the month of December 2020 only, the Exchange amended the definition of “Consolidated Volume” in Equity 7, Section 114,<sup>5</sup> to account for an unexpected rise in sub-dollar trading which stood to adversely impact members’ qualifications for tiered pricing programs – including the QMM pricing program – because such qualifications depend upon members achieving threshold percentages of volumes as a percentage of Consolidated Volume, and the rise in sub-dollar volume had diluted these percentage calculations. Specifically, the Exchange amended the definition of “Consolidated Volume” to state that for purposes of determining which credits were applicable to a

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the time during regular market hours in an average of at least 1,000 securities per day during the month.

<sup>5</sup> See Securities Exchange Act Release No. 34-90719 (December 18, 2020), 85 FR 84437 (December 28, 2020) (SR-NASDAQ-2020-87).

member during the month of December 2020, the Exchange would calculate the member's volume and total Consolidated Volume twice. First, it would calculate the member's volume and Consolidated Volume as presently set forth in Equity 7, Section 118(a). Second, it would calculate the member's volume and Consolidated Volume by excluding volume and Consolidated Volume that consists of executed orders in securities priced less than \$1. Thereafter, the Exchange would evaluate which of these two member volume and Consolidated Volume calculations would qualify members for the most advantageous credits and charges for the month of December 2020 and then it would apply those credits and charges to its members. Thus, if but for the rise of sub-dollar volume in December, a member would have qualified for a higher credit or a lower fee tier that month, then the Exchange would have applied that higher credit or lower fee tier to the member's trading activity during the month.

In making this change, the Exchange reasoned that it would have been unfair for its members that execute significant dollar volumes in securities priced at or above \$1 on the Exchange to fail to achieve or to lose their existing qualifications for special pricing in December 2020 due to anomalous behavior to which they did not contribute. The Exchange noted that although the change applied only to pricing in December 2020, it would monitor sub-dollar volumes going forward, and assess whether additional pricing adjustments are warranted if sub-dollar volumes remained elevated relative to the norm.

In fact, the Exchange has observed that the rise in sub-dollar volume has not abated, and that it continues to threaten the ability of some Exchange members to qualify for their pricing tiers. In January 2021, sub-dollar volume comprised 13.65 percent of Consolidated Volume. By comparison, sub-dollar volume comprised only 9.28 percent

of Consolidated Volume, on average, during all of 2020. In particular, the sub-dollar phenomenon continues to threaten the ability of QMMs to attain their Tier 1 and Tier 2 credit tiers. In January 2021, several QMMs experienced these adverse impacts.

Accordingly, the Exchange proposes to amend the definition of “Consolidated Volume” in Equity 7, Section 114(h) to apply the December 2020 pricing formulation going forward for purposes of determining whether a QMM qualifies for Tier 1 or Tier 2 QMM rebates.<sup>6</sup> That is, the Exchange will calculate a QMM’s volume and total Consolidated Volume twice. First, it will calculate the QMM’s volume and Consolidated Volume as presently set forth in Equity 7, Section 118(a). Second, with certain modifications discussed below, it will calculate the QMM’s volume and Consolidated Volume by excluding volume and Consolidated Volume that consists of executed orders in securities priced less than \$1. Thereafter, the Exchange will evaluate which of these two QMM volume and Consolidated Volume calculations would qualify QMMs for the most advantageous credit tier and then it will apply those credits.

The Exchange believes that its QMM program plays an important role in improving the quality of, deepening liquidity in, and tightening spreads in its market. The QMM pricing program, in turn, offers rebates that are critical to incenting members to meet the quoting requirements for acting as QMMs. To the extent that a rise in sub-dollar trading by non-QMMs imperils the ability of QMMs to qualify for the rebates that

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<sup>6</sup> The Exchange also proposes to delete rule text in Equity 7, Section 118 that set forth the same special methodology for calculating volumes as a percentage of Consolidated Volume during the month of December 2020. At this time, the Exchange does not propose to apply this special methodology beyond December 2020 to its schedule of transaction fees and credits, at Equity 7, Section 118. This, for purposes of calculating the pricing tiers set forth in Equity 7, Section 118, the Exchange does not exclude sub-dollar volume. The Exchange proposes to remove the special methodology from the rule text, as it is no longer operative.

motivate members to serve as QMMs, the Exchange believes that it is appropriate to act to preserve the effectiveness of these rebates, including by potentially excluding sub-dollar volume from the rebate eligibility criteria.

Where the Exchange proposes to exclude sub-dollar volume from the QMM rebate qualification formulas, the Exchange also proposes to raise the threshold percentages of Consolidated Volume that a QMM must achieve to qualify for Tier 1 rebates. The Exchange proposes to raise the eligibility threshold for the Tier 1 rebate to ensure that it is calibrated appropriately. That is, while the Exchange proposes to exclude sub-dollar volume to prevent the rebate qualification criteria from becoming too difficult to attain, the Exchange also wants to ensure that, exclusive of sub-dollar volume, these criteria do not become too easy to attain and that they continue to incentivize QMMs to add more liquidity to the Exchange in securities priced at \$1 or more. The Exchange believes that a small upward adjustment to the Consolidated Volume threshold will ensure that the Tier 1 rebate remains reasonably challenging for QMMs to achieve if sub-dollar volume is excluded. Specifically, to qualify for the Tier 1 rebate (when excluding sub-dollar volume), the Exchange proposes that a QMM must execute shares of liquidity in securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.80%, up to and including, 0.90% of Consolidated Volume during a month. Meanwhile, to qualify for the Tier 2 rebate (again, when excluding sub-dollar volume), the Exchange proposes that the qualification requirements will remain unchanged: a QMM must execute shares of liquidity in securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.90% of Consolidated Volume during a month.

The following example illustrates the operation of the proposed changes to the QMM rebate tiers when taken together. During a month, a QMM adds 90 million shares to the Exchange, of which 300,000 shares consists of volume in sub-dollar securities. Meanwhile, total Consolidated Volume for that month is 13 billion shares, of which 1.8 billion shares consists of executions in sub-dollar securities. To determine whether the QMM qualifies for a Tier 1 QMM rebate under the proposal, the Exchange would first determine whether the QMM's volume, inclusive of its sub-dollar activity, is between 0.70% and 0.90% of Consolidated Volume (including sub-dollar volume). In this example, the QMM would not qualify for Tier 1 under this formula because the QMM added only 0.69% of Consolidated Volume during the month. Nevertheless, the Exchange would determine next whether the QMM would qualify for the Tier 1 rebate under the alternative formula in which the QMM's sub-dollar volume and sub-dollar-attributable Consolidated Volume are excluded from the calculation, while also raising the QMM's qualifying threshold percentages of Consolidated Volume to between 0.80% and 0.90%. Under this alternative formula, the QMM would qualify for Tier 1 rebates as it added 0.80% of Consolidated Volume (exclusive of sub-dollar volume). Insofar as the proposal would provide for the Exchange to apply the calculation results that are most advantageous to the QMM, the Exchange in this example would apply the Tier 1 rebate to the QMM.

#### Proposed Amendments to Existing Transaction Credits

In addition to the above, the Exchange proposes to amend three of the credits it offers to members in displayed quotes or orders in securities in all three Tapes (other than

Supplemental Orders or Designated Retail Orders) that add liquidity to the Exchange, as set forth in Equity 7, Section 118(a).

First, the Exchange proposes to amend a credit it presently offers of \$0.00295 per share executed to a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.90% or more of Consolidated Volume during the month, which includes shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent 0.25% or more of Consolidated Volume. The Exchange proposes to decrease the threshold percentage of Consolidated Volume necessary to qualify for this credit from 0.90% to 0.85%. The Exchange proposes to lower this threshold to render it easier for members to qualify for the \$0.00295 per share executed credit. More members may seek to attain this credit to the extent that it is more accessible to them. If more members increase their liquidity adding activity on the Exchange to attain this credit, then the quality of the market will improve, to the benefit of all participants.

Second, the Exchange proposes to amend a credit it presently offers of \$0.0029 per share executed to a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.70% of Consolidated Volume during the month. The Exchange proposes to decrease the threshold percentage of Consolidated Volume necessary to qualify for this credit from 0.70% to 0.675%. The Exchange also proposes to lower this threshold to render it easier for members to qualify for the \$0.0029 per share executed credit. Again, more members may seek to attain this credit to the extent that it is more accessible to them. If more

members increase their liquidity adding activity on the Exchange to attain this credit, then the quality of the market will improve, to the benefit of all participants.

Third, the Exchange proposes to amend a credit it presently offers of \$0.0025 per share executed to a member that provides a daily average of at least 4 million shares of liquidity, of which greater than 1.5 million shares per day must comprise non-displayed liquidity, excluding midpoint orders. The Exchange proposes to amend the credit to state that the “greater than 1.5 million shares per day” requirement may be satisfied, not only by adding non-displayed liquidity (excluding midpoint orders), but also by using Midpoint Extended Life Orders (“M-ELOs”). The Exchange proposes this change to provide a new incentive for members to increase significant liquidity each day in M-ELO Orders, as well as to render the credit easier for members to attain, thereby enticing more members to try to grow their liquidity adding activity on the Exchange to do so. To the extent that the proposed amended credit succeeds in increasing the number of its members that attain the credit, and in increasing the volume of liquidity provided to the Exchange, then the quality of the market will improve for all participants.

#### New Proposed Growth Tier

Finally, the Exchange proposes to amend Equity 7, Section 118(a), to establish a new \$0.0029 per share executed credit to a member, for displayed quotes or orders in securities in all three Tapes (other than Supplemental Orders or Designated Retail Orders) that add liquidity to the Exchange, to the extent that the member, through one or more of its Nasdaq Market Center MPIDs: (i) provides shares of liquidity in all securities that represent equal to or greater than 0.65% of Consolidated Volume during the month; (ii) increases its average daily volume of M-ELO Orders executed by 150% or more

during the month relative to the month of January 2021; and (iii) executes an average daily volume of at least 750,000 shares in M-ELO Orders for the month. The Exchange intends for this new credit to encourage members to grow the extent to which they utilize the M-ELO Order Type on the Exchange, and to reward those members that do so in significant volumes. The Exchange believes that any ensuing increase in M-ELO liquidity on the Exchange will improve the quality of the Nasdaq market generally as well as the experiences of those members that choose to interact with the market through M-ELO. To the extent that the proposed new credit succeeds in having its members attain the credit, and in increasing the volume of liquidity provided to the Exchange, then the quality of the market will improve for all participants.

## 2. Statutory Basis

The Exchange believes that its proposals are consistent with Section 6(b) of the Act,<sup>7</sup> in general, and further the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>8</sup> in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposals are also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

### The Proposals are Reasonable

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

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

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’ ....”<sup>9</sup>

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>10</sup>

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

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<sup>9</sup> 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)).

<sup>10</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

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 respective pricing schedules. Within the foregoing context, the proposals represent reasonable attempts by the Exchange to increase its liquidity and market share relative to its competitors.

As to the Exchange's proposal to potentially exclude sub-dollar volume for purposes of determining QMMs' qualifications for Tier 1 and Tier 2 rebates, the Exchange believes that this proposal is reasonable because in its absence, QMMs may fail to qualify for their existing QMM pricing tiers or fail to qualify for better pricing tiers. The Exchange does not wish to penalize QMMs that engage in significant activity on the Exchange in securities priced at or above \$1 due to the sub-dollar trading activities of other firms. The proposed rule change would seek to avoid such a penalty by calculating eligibility for Tier 1 and Tier 2 rebates by first including and then excluding sub-dollar volume, and then by applying the calculation that would result in the pricing determination that is most advantageous to each QMM.

At the same time, the Exchange believes that it is reasonable, when excluding sub-dollar volume from its QMM Tier eligibility formulas, to increase the threshold percentages of Consolidated Volume that a QMM must achieve to qualify for the Tier 1 rebate. This proposal will help to properly calibrate eligibility criteria for the QMM Tier 1 rebate so that, when excluding sub-dollar volume, the Tier is neither too hard nor too easy for QMMs to attain. That is, even though excluding sub-dollar volume from the

calculations may help QMMs to remain in their existing Tiers even as sub-dollar activity by other firms rises, the Exchange also wants to be sure that the Tiers continue to challenge QMMs to add additional volume in stocks priced at or above \$1. The Exchange notes that if QMMs are unable to meet the higher Consolidated Volume percentage requirements for Tier 1, they still may qualify for the Tier under the existing qualification formula, which includes sub-dollar volume but applies lower Consolidated Volume percentage requirements.

As to the Exchange's proposals to ease the qualification criteria for three of its transaction credits, at Equity 7, Section 118(a), the Exchange believes that these proposals are reasonable because they will ease or broaden the eligibility criteria for the credits and, in doing so, they will encourage more members to try to attain the credits by adding additional liquidity to the Exchange. If more members increase their liquidity adding activity on the Exchange to attain these credits, then the quality of the market will improve, and the Exchange will become more attractive to existing and prospective participants.

Finally, the Exchange believes that its proposal is reasonable to establish a new add credit with a growth component tied to M-ELO activity. The proposal will encourage members to increase the extent to which they utilize M-ELO Orders on the Exchange, and it will reward members that do so in significant volumes. The Exchange believes that any ensuing increase in M-ELO liquidity on the Exchange will improve the quality of the Nasdaq market generally as well as the experiences of those members that choose to interact with the market through M-ELO. Additionally, if members increase their liquidity adding activity on the Exchange to attain this new credit, then the quality

of the market will improve, and the Exchange will become more attractive to existing and prospective participants. The Exchange notes that it selected January 2021 as the baseline for the growth requirements because it is the month immediately preceding the establishment of the new tier.

The Exchange notes that those market participants that are dissatisfied with the proposals are free to shift their order flow to competing venues that offer them lower charges or higher or more readily attainable credits.

The Proposals are Equitable Allocations of Credits

The Exchange believes its proposals will allocate its credits fairly among its market participants.

The Exchange believes that its proposal to amend the qualification criteria for Tier 1 and Tier 2 QMM rebates is an equitable allocation because it would bolster the effectiveness of QMM rebates, which are imperiled by a rise in sub-dollar trading. Maintaining the attainability of QMM rebates is crucial to ensuring participation in the QMM program, which in turn is an important contributor to the quality of the Nasdaq market. Although the recent spike in sub-dollar pricing also threatens to upend the ability of members to qualify for Nasdaq's other volume-based tiers of credits and charges, the Exchange believes that its most pressing need is to address the threat to the QMM program given that several QMMs are already experiencing adverse pricing effects from the sub-dollar phenomenon. The Exchange notes that it continues to assess whether and how to modify its other volume-based pricing programs going forward to accommodate the rise in sub-dollar volumes.

The Exchange also believes that it is an equitable allocation, when excluding sub-dollar volume from the QMM Tier 1 eligibility formula, to increase the threshold percentage of Consolidated Volume that a QMM must achieve to qualify for the credit. The Exchange believes that it is fair to calibrate eligibility criteria for the Tier 1 rebate so that the Tiers are neither too hard nor too easy for QMMs to attain. That is, just as the Exchange believes that it is equitable, for the reasons discussed above, to help QMMs to remain in their existing Tiers by excluding sub-dollar activity, the Exchange also believes it is beneficial to market quality to continue to challenge QMMs to add additional volume in stocks priced at or above \$1. The Exchange notes that if QMMs are unable to meet the higher Consolidated Volume percentage requirement for the Tier 1 rebate, they still may qualify for the Tier under the existing qualification formula, which includes sub-dollar volume but applies lower Consolidated Volume percentage requirements.

It is also equitable for the Exchange to amend three of its transaction credits, by lowering and broadening their eligibility requirements, respectively, as a means of encouraging more members to try to attain the credits by adding additional liquidity to the Exchange, including in M-ELO Orders. To the extent that the Exchange succeeds in increasing liquidity on the Exchange, including in M-ELO Orders, then the Exchange will experience improvements in its market quality, which will benefit all market participants.

Lastly, the Exchange believes that it is equitable to establish a new add credit tier that is tied to the growth of M-ELO activity. The M-ELO Order Type provides a valuable means by which like-minded participants, with shared time horizons, can safely interact on the market and mitigate the risk of adverse selection and information leakage.

The addition of this new proposed credit tier will encourage members to increase the extent of their use of M-ELO Orders on the Exchange, and it will reward members that do so in significant volumes. The Exchange believes that any increase in M-ELO liquidity on the Exchange that follows from the introduction of this new credit will improve the quality of the Nasdaq market generally as well as the experiences of those members that choose to interact with the market through M-ELO Orders. Additionally, if members increase their liquidity adding activity on the Exchange to attain this credit, then the quality of the market will improve, and the Exchange will become more attractive to existing and prospective participants.

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

#### The Proposals are not Unfairly Discriminatory

The Exchange believes that its proposals are 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 incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange believes that its proposal to amend the qualification criteria for Tier 1 and Tier 2 QMM rebates is not unfairly discriminatory. Although the rise in sub-dollar trading affects the attainability of many of Nasdaq's volume-based pricing tiers, it is fair for the Exchange to address the impact on QMM rebates, in particular, because maintaining the attainability of QMM rebates is crucial to maintaining participation in the QMM program, which in turn is an important contributor to the quality of the Nasdaq market. Even as the Exchange continues to assess whether and how to generally modify its volume-based pricing programs going forward to accommodate the rise in sub-dollar volumes, the Exchange believes that a pressing need exists now to address the particular threat this phenomenon poses to the QMM program given that several QMMs are already experiencing adverse pricing effects.

At the same time, it is not unfairly discriminatory to increase the threshold percentage of Consolidated Volume that a QMM must achieve to qualify for the Tier 1 rebate when the Exchange also excludes sub-dollar volume from the eligibility calculation. The Exchange believes that it is fair to calibrate eligibility criteria for the QMM Tier 1 rebate so that the Tiers are neither too hard nor too easy for QMMs to attain. That is, just as the Exchange believes that it is not unfairly discriminatory, for the reasons discussed above, to help QMMs to remain in their existing Tiers by excluding sub-dollar activity, the Exchange also believes it is beneficial to market quality to continue to challenge QMMs to add additional volume in stocks priced at or above \$1. The Exchange notes that if QMMs are unable to meet the higher Consolidated Volume percentage requirement for Tier 1, they still may qualify for the Tier under the existing

qualification formula, which includes sub-dollar volume but applies lower Consolidated Volume percentage requirements.

Moreover, the Exchange believes that its three proposed amendments to its transaction credits are not unfairly discriminatory because they stand to improve the overall market quality of the Exchange, to the benefit of all market participants, by incentivizing more members to provide additional liquidity to the Exchange, including M-ELO liquidity.

Likewise, the Exchange believes that its new proposed add credit with a growth component is not unfairly discriminatory because it is aimed at encouraging the growth of M-ELO Orders on the Exchange, which if successful, stands to improve the quality of the Nasdaq market generally, to the benefit of all market participants, as well as improve the experiences of those members that choose to interact with the market through M-ELO. Additionally, if members increase their liquidity adding activity on the Exchange to attain this credit, then the quality of the market will improve, and the Exchange will become more attractive to existing and prospective participants.

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

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

The Exchange does not believe that the proposed rule changes 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 proposal to amend the Exchange's QMM rebate pricing methodology will help to ensure that no QMM suffers a pricing disadvantage due to the ongoing spike in sub-dollar volumes, while at the same time it will provide an appropriately-calibrated incentive for QMMs to continue to add additional liquidity to the Exchange in securities priced at or above \$1. It is not intended to provide a competitive advantage to any particular QMM.

Meanwhile, the proposed changes to the qualifying criteria for three of the Exchange's transaction credits will make it easier for members to attain these credits, and will thereby encourage more members to try to attain these credits by increasing their market-improving behavior. Any member may elect to provide the levels or types of liquidity required in order to receive the credits. Furthermore, all members of the Exchange will benefit from any increase in market activity that the proposals effectuate.

Likewise, the proposed addition of a rebate tied to a member's activity in M-ELO Orders will encourage growth in that activity, to the benefit of users of those Order Types as well as the quality of the market in general. Any member may elect to engage in the levels of M-ELO liquidity required to qualify for this new credit.

The Exchange notes that its members are free to trade on other venues to the extent they believe that the proposed amended credits are too low or the qualification criteria are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely

between exchanges in reaction to fee and credit changes. The Exchange notes that its pricing tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

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

The Exchange's proposals are pro-competitive in that the Exchange intends for them to preserve and enhance its incentive programs, as well as to increase liquidity adding activity 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 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>11</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.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

#### 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-2021-006 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-2021-006. 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-2021-006 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>12</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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

**EXHIBIT 5**

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

**The Nasdaq Stock Market LLC Rules**

\* \* \* \* \*

**Equity 7 Pricing Schedule**

...

**Section 114. Market Quality Incentive Programs**

(a) – (c) No change

**Qualified Market Maker ("QMM") Program**

(d) A member may be designated as a QMM if:

(1) the member is not assessed any "Excess Order Fee" under Equity 7, Section 118 during the month; and

(2) the member quotes at the NBBO at least 25% of the time during regular market hours in an average of at least 1,000 securities per day during the month. For purposes of this section, a member is considered to be quoting at the NBBO if one of its MPIDs has a displayed order (other than a Designated Retail Order) at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, Nasdaq will determine the number of securities in which each of a member's MPIDs satisfied the 25% NBBO requirement. Nasdaq will aggregate all of a member's MPIDs to determine the number of securities for purposes of the 25% NBBO requirement. To qualify for QMM designation, the member must meet the requirement for an average of 1,000 securities per day over the course of the month.

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

	<b>QMM Tiers</b>	<b>Tape A QMM Incentive</b>	<b>Tape B QMM Incentive</b>	<b>Tape C QMM Incentive</b>
Tier 1	QMM executes shares of liquidity	\$0.0001	\$0.0001	\$0.0001

	<b>QMM Tiers</b>	<b>Tape A QMM Incentive</b>	<b>Tape B QMM Incentive</b>	<b>Tape C QMM Incentive</b>
	<p>provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.70% up to, and including, 0.90% of Consolidated Volume during the month <u>(inclusive of volume and Consolidated Volume that consists of securities priced less than \$1)</u>;</p> <p><u>or</u></p> <p><u>QMM executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.80% up to, and including, 0.90% of Consolidated Volume during the month (exclusive of volume and Consolidated Volume that consists of securities priced less than \$1)</u></p>			
Tier 2	QMM executes shares of liquidity	\$0.0002	\$0.0002	\$0.0002

	<b>QMM Tiers</b>	<b>Tape A QMM Incentive</b>	<b>Tape B QMM Incentive</b>	<b>Tape C QMM Incentive</b>
	<p>provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.90% of Consolidated Volume during the month <u>(inclusive of volume and Consolidated Volume that consists of securities priced less than \$1)</u>;</p> <p><u>or</u></p> <p><u>QMM executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.90% of Consolidated Volume during the month (exclusive of volume and Consolidated Volume that consists of securities priced less than \$1)</u></p>			

Nasdaq will provide an additional rebate of \$0.000075 per share executed in Tapes A and C and \$0.00005 per share executed in Tape B for a QMM's MPID if the MPID (i) executes shares of liquidity provided that represents above 1.25% of Consolidated Volume during the month; (ii) quotes at the NBBO at least 50% of the time during the month during regular market hours in an average of at least 2,700 symbols per day; (iii) quotes at the NBBO at least 50% of the time during the month during regular market

hours in an average of at least 1,200 symbols in securities in Tape A per day; and (iv) executes shares of liquidity provided that represents an increase of at least 0.50% of Consolidated Volume relative to May 2020. For purposes of this rebate, an MPID is considered to be quoting at the NBBO if the MPID has a displayed order (other than a Designated Retail Order) at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, Nasdaq will determine the number of securities that satisfy the 50% NBBO requirements for the MPID.

Nasdaq will charge a QMM a fee of \$0.0030 per share executed for orders in Nasdaq-listed securities priced at \$1 or more per share that access liquidity on the Nasdaq Market Center, and charge a QMM a fee of \$0.00295 per share executed for orders in securities listed on exchanges other than Nasdaq priced at \$1 or more per share that access liquidity on the Nasdaq Market Center; provided, however, that the QMM's volume of liquidity added through one or more of its Nasdaq Market Center MPIDs during the month (as a percentage of Consolidated Volume) is not less than 1.00%. Nasdaq will charge a QMM that meets the criteria of Tier 2 a fee of \$0.0029 per share executed for orders in securities listed on exchanges other than Nasdaq priced at \$1 or more per share that access liquidity on the Nasdaq Market Center if the QMM has a combined Consolidated Volume (adding and removing liquidity) of at least 3.70%, MOC/LOC volume greater than 0.35% of Consolidated Volume, and provides 0.15% or more of Consolidated Volume through midpoint orders.

...

## Definitions and Certifications

### (h) Definitions

For purposes of this Section, the terms set forth below shall have the following meanings:

(1) – (4) No change.

(5) The term "Consolidated Volume" shall have the same meaning as the term has under Equity 7, Section 118(a). *(For purposes of calculating a member's qualifications for Tiers 1 and 2 of the [charges and] QMM Program credits set forth in paragraph (e) of this Section[ during the month of December 2020], the Exchange will calculate a member's volume and total Consolidated Volume twice. First, the Exchange will calculate a member's volume and total Consolidated Volume inclusive of volume that consists of executions in securities priced less than \$1. Second, the Exchange will calculate a member's volume and total Consolidated Volume exclusive of volume that consists of executions in securities priced less than \$1, while also applying distinct qualifying volume thresholds to each Tier, as set forth above in paragraph (e). The Exchange will then assess which of these two calculations would qualify the member for the most advantageous credits [and charges ]for the month[ of December] and then it will apply those credits [and charges ]to the member.)*

(6) – (9) No change.

...

\* \* \* \* \*

**Section 118. Nasdaq Market Center Order Execution and Routing**

(a) The following charges shall apply to the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at \$1 or more that it trades. For purposes of determining a member's shares of liquidity routed, TFTY, MOPB, MOPP, SAVE, SOLV, CART, QDRK, QCST and directed orders are not counted. As used in this section, the term "Consolidated Volume" shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity.

*[(For purposes of calculating a member’s qualifications for the charges and credits set forth below during the month of December 2020, the Exchange will calculate a member’s volume and total Consolidated Volume twice. First, the Exchange will calculate a member’s volume and total Consolidated Volume inclusive of volume that consists of executions in securities priced less than \$1. Second, the Exchange will calculate a member’s volume and total Consolidated Volume exclusive of volume that consists of executions in securities priced less than \$1. The Exchange will then assess which of these two calculations would qualify the member for the most advantageous credits and charges for the month of December and then it will apply those credits and charges to the member.)]*

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

...	
Credit to member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity:	
...	
member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.85[90]% or more of Consolidated Volume during the month, which includes shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent	\$0.00295 per share executed

0.25% or more of Consolidated Volume:	
...	
member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[70]675% of Consolidated Volume during the month:	\$0.0029 per share executed
...	
member that provides a daily average of at least 4 million shares of liquidity, of which [includes greater]more than 1.5 million shares per day <u>must consist of non-displayed liquidity, excluding midpoint orders, or Midpoint Extended Life Orders:</u>	\$0.0025 per share executed
<u>member that, through one or more of its Nasdaq Market Center MPIDs: (i) provides shares of liquidity in all securities that represent equal to or greater than 0.65% of Consolidated Volume during the month; (ii) increases its average daily volume of Midpoint Extended Life Orders executed by 150% or more during the month relative to the month of January 2021; and (iii) executes an average daily volume of at least 750,000 shares in Midpoint Extended Life Orders for the month.</u>	<u>\$0.0029 per share executed</u>
...	

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

...	
Credit to member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity:	
...	
member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.85[90]% or more of Consolidated Volume during the month, which includes shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent 0.25% or more of Consolidated Volume:	\$0.00295 per share executed
...	
member with shares of liquidity provided in all securities	\$0.0029 per share

through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[70]675% of Consolidated Volume during the month:	executed
...	
member that provides a daily average of at least 4 million shares of liquidity, of which [includes greater]more than 1.5 million shares per day <u>must consist of non-displayed liquidity, excluding midpoint orders, or Midpoint Extended Life Orders:</u>	\$0.0025 per share executed
<u>member that, through one or more of its Nasdaq Market Center MPIDs: (i) provides shares of liquidity in all securities that represent equal to or greater than 0.65% of Consolidated Volume during the month; (ii) increases its average daily volume of Midpoint Extended Life Orders executed by 150% or more during the month relative to the month of January 2021; and (iii) executes an average daily volume of at least 750,000 shares in Midpoint Extended Life Orders for the month.</u>	<u>\$0.0029 per share executed</u>
...	

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

...	
Credit to member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity:	
...	
member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.85[90]% or more of Consolidated Volume during the month, which includes shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent 0.25% or more of Consolidated Volume:	\$0.00295 per share executed
...	
member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[70]675% of Consolidated Volume during the month:	\$0.0029 per share executed

...	
member that provides a daily average of at least 4 million shares of liquidity, <u>of which [includes greater]more than 1.5 million shares per day must consist of non-displayed liquidity, excluding midpoint orders, or Midpoint Extended Life Orders:</u>	\$0.0025 per share executed
<u>member that, through one or more of its Nasdaq Market Center MPIDs: (i) provides shares of liquidity in all securities that represent equal to or greater than 0.65% of Consolidated Volume during the month; (ii) increases its average daily volume of Midpoint Extended Life Orders executed by 150% or more during the month relative to the month of January 2021; and (iii) executes an average daily volume of at least 750,000 shares in Midpoint Extended Life Orders for the month.</u>	<u>\$0.0029 per share executed</u>
...	

(b) – (c) No change.

\* \* \* \* \*