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Page 1 of \* 41

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

File No. \* SR 2023 - \* 013

Amendment No. (req. for Amendments \*)

Filing by The Nasdaq Stock Market LLC

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

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

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

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

Section 806(e)(2) \*

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

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

**Description**

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

A proposal to: (i) eliminate various transaction credits at Equity 7, Section 118(a); and (ii) amend Equity 7, Section 118 (a) and Section 118(j) to exclude certain days for purposes of calculating Consolidated Volume and trading activity.

**Contact Information**

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

First Name \*  Last Name \*

Title \*

E-mail \*

Telephone \*  Fax

**Signature**

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

Date  (Title \*)

By

(Name \*)

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

 Date: 2023.05.02  
15:08:28 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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SR-NASDAQ-2023-013 19b-4.doc

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

**Exhibit 1 - Notice of Proposed Rule Change \***

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SR-NASDAQ-2023-013 Exhibit 1.doc

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

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

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

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

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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SR-NASDAQ-2023-013 Exhibit 5.doc

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<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: (i) eliminate various transaction credits at Equity 7, Section 118(a); and (ii) amend Equity 7, Section 118(a) and Section 118(j) to exclude certain days for purposes of calculating Consolidated Volume and trading activity, as described further below.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

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

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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: (i) eliminate various transaction credits at Equity 7, Section 118(a); and (ii) amend Equity 7, Section 118(a) and Section 118(j) to exclude certain days for purposes of calculating Consolidated Volume and trading activity.<sup>3</sup>

Elimination of Credits

The Exchange proposes to eliminate 14 credits in its fee schedule at Equity 7, Section 118(a), including: (i) six credits currently offered to members for displayed quotes / orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange; (ii) three supplemental credits currently offered to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange; and (iii) five credits currently offered for non-displayed orders (other than Supplemental orders) that provide liquidity to the Exchange.

The Exchange proposes to eliminate the following credits currently offered to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange:

- \$0.00305 per share executed credit for securities in Tapes A, B, and C for a member (i) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.20% or more of

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<sup>3</sup> The Exchange initially filed the proposed pricing changes on May 1, 2023 (SR-NASDAQ-2023-012). The instant filing replaces SR-NASDAQ-2023-012, which was withdrawn on May 2, 2023.

Consolidated Volume; (ii) executes 0.40% or more of Consolidated Volume through providing midpoint orders and through M-ELO; and (iii) removes at least 1.45% of Consolidated Volume;

- \$0.0030 per share executed for securities in Tapes A, B, and C for a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.25% or more of Consolidated Volume, which includes shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent 0.40% or more of Consolidated Volume;
- \$0.00305 per share executed for securities in Tapes A, B, and C for a member (i) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 1.20% of Consolidated Volume, and (ii) with at least 0.25% of Consolidated Volume that sets the NBBO;
- \$0.0027 per share executed for securities in Tapes A, B, and C for a member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.60% of Consolidated Volume, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.25% of Consolidated Volume;
- \$0.0029 per share executed for securities in Tapes A, B, and C for a member with (i) shares of liquidity provided in all securities during the month representing more than 0.15% of Consolidated Volume, through one or more

of its Nasdaq Market Center MPIDs, and (ii) Total Volume, as defined in Options 7, Section 2 of The Nasdaq Options Market rules, of 0.90% or more of total industry ADV in the Customer clearing range for Equity and ETF option contracts per day in a month on The Nasdaq Options Market; and

- \$0.0027 per share executed for securities in Tapes A, B, and C for a 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 0.20% of Consolidated Volume; (ii) increases the extent to which it provides liquidity in all securities as a percentage of Consolidated Volume by 35% or more during the month relative to the month of May 2021; and (iii) has a ratio of at least 60% NBBO liquidity provided (as defined in Equity 7, Section 114(g)) to liquidity provided by displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) during the month.

In addition, the Exchange proposes to eliminate the following supplemental credits currently offered to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange:

- \$0.00005 per share executed for securities in Tape B for a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent at least 1.75% of Consolidated Volume, including shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent at least 0.60% of Consolidated Volume;

- \$0.00005 per share executed for securities in Tape A for a member with (i) shares of liquidity provided in Tape A securities through one or more of its Nasdaq Market Center MPIDs that represent at least 0.75% of Consolidated Volume, and (ii) shares of liquidity provided in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent at least 0.60% of Consolidated Volume; and
- \$0.000025 per share executed for securities in Tapes A and C for a member with (i) shares of liquidity provided in Tape A securities during the month representing at least 1.40% of Consolidated Volume, and (ii) shares of liquidity provided in Tape C representing at least 1.40% of Consolidated Volume.

Finally, the Exchange proposes to eliminate the following credits currently offered for non-displayed orders (other than Supplemental orders) that provide liquidity to the Exchange:

- \$0.00175 per share executed for securities in Tapes A and B and \$0.00125 per share executed for securities in Tape C for other non-displayed orders if the member (i) provides 0.225% or more of Consolidated Volume through non-displayed orders (other than midpoint orders) and (ii) provides 0.165% or more of Consolidated Volume through midpoint orders;
- \$0.0020 per share executed for securities in Tapes A and B and \$0.0015 per share executed for securities in Tape C for other non-displayed orders if the member (i) provides 0.275% or more of Consolidated Volume through non-

displayed orders (other than midpoint orders) and (ii) provides 0.175% or more of Consolidated Volume through midpoint orders;

- \$0.00125 per share executed for securities in Tapes A and B and \$0.00075 per share executed for securities in Tape C for other non-displayed orders if the member, during the month (i) provides 0.30% or more of Consolidated Volume through non-displayed orders (other than midpoint orders); and (ii) increases providing liquidity through non-displayed orders (including midpoint orders) by 10% or more relative to the member's February 2021 ADV provided through non-displayed orders (including midpoint orders);
- \$0.00075 per share executed for securities in Tape C for other non-displayed orders if the member, during the month (i) provides 0.90% or more of Consolidated Volume; (ii) increases providing liquidity through non-displayed orders (other than midpoint orders) by 10% or more relative to the member's July 2020 Consolidated Volume provided through non-displayed orders (other than midpoint orders) and; (iii) provides 0.20% or more of Consolidated Volume through non-displayed orders (other than midpoint orders); and
- \$0.0001 per share executed for securities in Tapes A, B, and C if the member, during the month (i) provides at least 10 million shares of midpoint liquidity per day during the month; and (ii) increases providing liquidity through midpoint orders by 50% or more relative to the member's July 2022 Consolidated Volume provided through midpoint orders.

The Exchange proposes to eliminate these credits in order to simplify its fee schedule. In its effort to simplify its fee schedule, the Exchange proposes to eliminate



credits that are not being heavily utilized and have not been successful in accomplishing their objectives, including the objective to induce members to increase liquidity on the Exchange. The Exchange has limited resources to allocate to incentives and it must, from time to time, reallocate those resources to maximize their net impact on the Exchange, market quality, and participants. Going forward, the Exchange plans to reallocate the resources to other incentives that it hopes will be more impactful.

Furthermore, several of the credits that the Exchange proposes to eliminate reference baseline months for the growth elements of the tiers that are no longer relevant benchmarks. As such, these credits no longer provide growth incentives that are aligned with the Exchange's needs. Again, the Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

#### Amendments to Calculation of Consolidated Volume and Trading Activity

The Exchange also proposes to amend Equity 7, Section 118(a) and Section 118(j) to exclude the following from calculations of total Consolidated Volume and the member's trading activity for purposes of volume calculations for equity pricing tiers/incentives: (1) the dates on which stock options, stock index options, and stock index futures expire (i.e., the third Friday of March, June, September, and December) ("Triple Witch Dates"); (2) the dates on which the MSCI Equity Indexes are rebalanced (i.e., on a quarterly basis) ("MSCI Rebalance Dates"); (3) the dates on which the S&P 400, S&P 500, and S&P 600 Indexes are rebalanced (i.e., on a quarterly basis) ("S&P Rebalance Dates"); and (4) the date of the annual reconstitution of the Nasdaq-100 and Nasdaq Biotechnology Indexes ("Nasdaq Reconstitution Date"). Currently, the

Exchange excludes the date of the annual reconstitution of the Russell Investments Indexes from calculations of total Consolidated Volume and the member's trading activity for purposes of volume calculations for equity pricing tiers/incentives.

For the same reasons that the Exchange currently excludes the date of the annual reconstitution of the Russell Investments Indexes from these calculations, the Exchange believes it is appropriate to exclude Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date from these calculations in the same manner, as trading volumes on such days are generally far in excess of volumes on other days during the month, and market participants that are not otherwise active on the Exchange to a great extent often participate on the Exchange on such dates to rebalance holdings, or in the case of Triple Witch Dates, to close out or roll over positions prior to expiration. The Exchange believes this change to normal activity may affect a member's ability to meet the applicable volume thresholds under its volume-based tiers. The Exchange notes that the proposed exclusion of Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date from the relevant calculations would be applied in the same manner that the Exchange currently excludes the date of the annual reconstitution of the Russell Investments Indexes from such calculations.

b. Statutory Basis

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

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

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

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

The Exchange's proposed changes to its schedule of credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ....”<sup>6</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

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<sup>6</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)).

broader forms that are most important to investors and listed companies.”<sup>7</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. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to eliminate various of the Exchange’s transaction credits. As described above, the Exchange seeks to simplify and streamline its schedule of credits by eliminating 14 credits in its fee schedule at Equity 7, Section 118(a), including: (i) six credits currently offered to members for displayed quotes / orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange; (ii) three supplemental credits currently offered to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange; and (iii) five credits currently offered for non-displayed orders (other than Supplemental orders) that provide liquidity to the Exchange.

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

The Exchange proposes to eliminate various credits in order to simplify its fee schedule. In doing so, the Exchange proposes to eliminate credits that have not been successful in accomplishing their objectives as well as eliminate several credits that reference baseline months for the growth elements of tiers that are no longer relevant benchmarks. The proposed changes are designed to better align with the Exchange's needs. The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

Those participants that are dissatisfied with the eliminations from the Exchange's schedule of credits are free to shift their order flow to competing venues that provide more generous incentives or less stringent qualifying criteria.

The Exchange also believes it is reasonable, equitable, and not unfairly discriminatory to exclude Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date from calculations of total Consolidated Volume and the member's trading activity for purposes of volume calculations for equity pricing tiers/incentives. As described above, Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date typically have extraordinarily high and/or abnormally distributed trading volumes which, in turn, may affect a member's ability to meet the applicable volume thresholds under its transaction pricing tiers/incentives, and the Exchange believes that excluding such days from the relevant calculations for purposes of determining a member's qualification for such tiers/incentives would help to avoid penalizing members that might otherwise have met the requirements to qualify for such tiers/incentives. The proposal would diminish the

likelihood of a de facto price increase occurring because a member is not able to reach a volume percentage on that date that it reaches on other trading days during the month.

Because trading activity on Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date will be excluded from determinations of a member's percentage of Consolidated Volume, the Exchange believes it will be easier for members to determine the volume required to meet a certain percentage of participation than would otherwise be the case. To the extent that a member has been active on the Exchange at a significant level throughout the month, excluding the Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date, on which its percentage of Consolidated Volume is likely to be lower than on other days, will increase its overall percentage for the month. Conversely, even if a member was more active on Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date than on other dates, it is unlikely that its activity on one day would be able to increase its overall monthly percentage to a meaningful extent.

Thus, the Exchange believes that the change will benefit members that are in a position to achieve volume levels required by the Exchange's pricing schedule but without harming the ability of any members to reach such levels. This proposal would help to preserve or improve the pricing status that would apply to members' trading activity in the absence of Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date, and therefore will not impact the ability of such members to compete. The proposed rule change would apply to all members uniformly, in that each member's volume activities for purposes of pricing tiers/incentives would continue to be

calculated in a uniform manner and would now exclude Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date.

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

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

Intramarket Competition

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

The Exchange intends for its proposed changes to eliminate credits at Equity 7, Section 118(a) to simplify its fee schedule, eliminate unsuccessful rebates, preserve its limited resources for optimized effect, and better align the schedule of credits with the Exchange's overall mix of objectives. The Exchange intends for its proposed changes to amend the calculation of Consolidated Volume and trading activity at Equity 7, Section 118(a) and Section 118(j) to avoid penalizing members that might otherwise have met the applicable volume thresholds to qualify for the Exchange's transaction pricing tiers/incentives if not for the abnormal trading volumes and market conditions typically experienced in the equities markets on the Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date. The proposed exclusion of such dates from the relevant calculations would apply to all members uniformly and in the same manner that the Exchange currently excludes the date of the annual reconstitution of the Russell Investments Indexes from such calculations.

The Exchange notes that its members are free to trade on other venues to the extent they believe that these proposals 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.

#### Intermarket Competition

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

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.

Additionally, the Exchange believes the proposal to exclude certain dates from calculating Consolidated Volume and trading activity is not concerned with competitive



issues, but rather relates to calculation methodologies applicable to its pricing tiers/incentives.

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>8</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.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2023-013)

May \_\_, 2023

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Equity 7, Section 118

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 2, 2023, 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 (i) eliminate various transaction credits at Equity 7, Section 118(a); and (ii) amend Equity 7, Section 118(a) and Section 118(j) to exclude certain days for purposes of calculating Consolidated Volume and trading activity, 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: (i) eliminate various transaction credits at Equity 7, Section 118(a); and (ii) amend Equity 7, Section 118(a) and Section 118(j) to exclude certain days for purposes of calculating Consolidated Volume and trading activity.<sup>3</sup>

Elimination of Credits

The Exchange proposes to eliminate 14 credits in its fee schedule at Equity 7, Section 118(a), including: (i) six credits currently offered to members for displayed quotes / orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange; (ii) three supplemental credits currently offered to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange; and (iii) five credits currently

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<sup>3</sup> The Exchange initially filed the proposed pricing changes on May 1, 2023 (SR-NASDAQ-2023-012). The instant filing replaces SR-NASDAQ-2023-012, which was withdrawn on May 2, 2023.

offered for non-displayed orders (other than Supplemental orders) that provide liquidity to the Exchange.

The Exchange proposes to eliminate the following credits currently offered to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange:

- \$0.00305 per share executed credit for securities in Tapes A, B, and C for a member (i) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.20% or more of Consolidated Volume; (ii) executes 0.40% or more of Consolidated Volume through providing midpoint orders and through M-ELO; and (iii) removes at least 1.45% of Consolidated Volume;
- \$0.0030 per share executed for securities in Tapes A, B, and C for a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.25% or more of Consolidated Volume, which includes shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent 0.40% or more of Consolidated Volume;

- \$0.00305 per share executed for securities in Tapes A, B, and C for a member (i) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 1.20% of Consolidated Volume, and (ii) with at least 0.25% of Consolidated Volume that sets the NBBO;
- \$0.0027 per share executed for securities in Tapes A, B, and C for a member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.60% of Consolidated Volume, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.25% of Consolidated Volume;
- \$0.0029 per share executed for securities in Tapes A, B, and C for a member with (i) shares of liquidity provided in all securities during the month representing more than 0.15% of Consolidated Volume, through one or more of its Nasdaq Market Center MPIDs, and (ii) Total Volume, as defined in Options 7, Section 2 of The Nasdaq Options Market rules, of 0.90% or more of total industry ADV in the Customer clearing range for Equity and ETF option contracts per day in a month on The Nasdaq Options Market; and
- \$0.0027 per share executed for securities in Tapes A, B, and C for a 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 0.20% of Consolidated Volume; (ii) increases the extent to which it provides liquidity in all securities as a percentage of Consolidated Volume by 35% or

more during the month relative to the month of May 2021; and (iii) has a ratio of at least 60% NBBO liquidity provided (as defined in Equity 7, Section 114(g)) to liquidity provided by displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) during the month.

In addition, the Exchange proposes to eliminate the following supplemental credits currently offered to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange:

- \$0.00005 per share executed for securities in Tape B for a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent at least 1.75% of Consolidated Volume, including shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent at least 0.60% of Consolidated Volume;
- \$0.00005 per share executed for securities in Tape A for a member with (i) shares of liquidity provided in Tape A securities through one or more of its Nasdaq Market Center MPIDs that represent at least 0.75% of Consolidated Volume, and (ii) shares of liquidity provided in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent at least 0.60% of Consolidated Volume; and
- \$0.000025 per share executed for securities in Tapes A and C for a member with (i) shares of liquidity provided in Tape A securities during the month representing at least 1.40% of Consolidated Volume, and (ii) shares of

liquidity provided in Tape C representing at least 1.40% of Consolidated Volume.

Finally, the Exchange proposes to eliminate the following credits currently offered for non-displayed orders (other than Supplemental orders) that provide liquidity to the Exchange:

- \$0.00175 per share executed for securities in Tapes A and B and \$0.00125 per share executed for securities in Tape C for other non-displayed orders if the member (i) provides 0.225% or more of Consolidated Volume through non-displayed orders (other than midpoint orders) and (ii) provides 0.165% or more of Consolidated Volume through midpoint orders;
- \$0.0020 per share executed for securities in Tapes A and B and \$0.0015 per share executed for securities in Tape C for other non-displayed orders if the member (i) provides 0.275% or more of Consolidated Volume through non-displayed orders (other than midpoint orders) and (ii) provides 0.175% or more of Consolidated Volume through midpoint orders;
- \$0.00125 per share executed for securities in Tapes A and B and \$0.00075 per share executed for securities in Tape C for other non-displayed orders if the member, during the month (i) provides 0.30% or more of Consolidated Volume through non-displayed orders (other than midpoint orders); and (ii) increases providing liquidity through non-displayed orders (including midpoint orders) by 10% or more relative to the member's February 2021 ADV provided through non-displayed orders (including midpoint orders);



- \$0.00075 per share executed for securities in Tape C for other non-displayed orders if the member, during the month (i) provides 0.90% or more of Consolidated Volume; (ii) increases providing liquidity through non-displayed orders (other than midpoint orders) by 10% or more relative to the member's July 2020 Consolidated Volume provided through non-displayed orders (other than midpoint orders) and; (iii) provides 0.20% or more of Consolidated Volume through non-displayed orders (other than midpoint orders); and
- \$0.0001 per share executed for securities in Tapes A, B, and C if the member, during the month (i) provides at least 10 million shares of midpoint liquidity per day during the month; and (ii) increases providing liquidity through midpoint orders by 50% or more relative to the member's July 2022 Consolidated Volume provided through midpoint orders.

The Exchange proposes to eliminate these credits in order to simplify its fee schedule. In its effort to simplify its fee schedule, the Exchange proposes to eliminate credits that are not being heavily utilized and have not been successful in accomplishing their objectives, including the objective to induce members to increase liquidity on the Exchange. The Exchange has limited resources to allocate to incentives and it must, from time to time, reallocate those resources to maximize their net impact on the Exchange, market quality, and participants. Going forward, the Exchange plans to reallocate the resources to other incentives that it hopes will be more impactful.

Furthermore, several of the credits that the Exchange proposes to eliminate reference baseline months for the growth elements of the tiers that are no longer relevant benchmarks. As such, these credits no longer provide growth incentives that are aligned

with the Exchange's needs. Again, the Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

Amendments to Calculation of Consolidated Volume and Trading Activity

The Exchange also proposes to amend Equity 7, Section 118(a) and Section 118(j) to exclude the following from calculations of total Consolidated Volume and the member's trading activity for purposes of volume calculations for equity pricing tiers/incentives: (1) the dates on which stock options, stock index options, and stock index futures expire (i.e., the third Friday of March, June, September, and December) ("Triple Witch Dates"); (2) the dates on which the MSCI Equity Indexes are rebalanced (i.e., on a quarterly basis) ("MSCI Rebalance Dates"); (3) the dates on which the S&P 400, S&P 500, and S&P 600 Indexes are rebalanced (i.e., on a quarterly basis) ("S&P Rebalance Dates"); and (4) the date of the annual reconstitution of the Nasdaq-100 and Nasdaq Biotechnology Indexes ("Nasdaq Reconstitution Date"). Currently, the Exchange excludes the date of the annual reconstitution of the Russell Investments Indexes from calculations of total Consolidated Volume and the member's trading activity for purposes of volume calculations for equity pricing tiers/incentives.

For the same reasons that the Exchange currently excludes the date of the annual reconstitution of the Russell Investments Indexes from these calculations, the Exchange believes it is appropriate to exclude Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date from these calculations in the same manner, as trading volumes on such days are generally far in excess of volumes on other days during the month, and market participants that are not otherwise active on the

Exchange to a great extent often participate on the Exchange on such dates to rebalance holdings, or in the case of Triple Witch Dates, to close out or roll over positions prior to expiration. The Exchange believes this change to normal activity may affect a member's ability to meet the applicable volume thresholds under its volume-based tiers. The Exchange notes that the proposed exclusion of Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date from the relevant calculations would be applied in the same manner that the Exchange currently excludes the date of the annual reconstitution of the Russell Investments Indexes from such calculations.

## 2. Statutory Basis

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

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

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

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

buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”<sup>6</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>7</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

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<sup>6</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>7</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to eliminate various of the Exchange's transaction credits. As described above, the Exchange seeks to simplify and streamline its schedule of credits by eliminating 14 credits in its fee schedule at Equity 7, Section 118(a), including: (i) six credits currently offered to members for displayed quotes / orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange; (ii) three supplemental credits currently offered to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange; and (iii) five credits currently offered for non-displayed orders (other than Supplemental orders) that provide liquidity to the Exchange.

The Exchange proposes to eliminate various credits in order to simplify its fee schedule. In doing so, the Exchange proposes to eliminate credits that have not been successful in accomplishing their objectives as well as eliminate several credits that reference baseline months for the growth elements of tiers that are no longer relevant benchmarks. The proposed changes are designed to better align with the Exchange's needs. The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

Those participants that are dissatisfied with the eliminations from the Exchange's schedule of credits are free to shift their order flow to competing venues that provide more generous incentives or less stringent qualifying criteria.

The Exchange also believes it is reasonable, equitable, and not unfairly discriminatory to exclude Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date from calculations of total Consolidated Volume and the member's trading activity for purposes of volume calculations for equity pricing tiers/incentives. As described above, Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date typically have extraordinarily high and/or abnormally distributed trading volumes which, in turn, may affect a member's ability to meet the applicable volume thresholds under its transaction pricing tiers/incentives, and the Exchange believes that excluding such days from the relevant calculations for purposes of determining a member's qualification for such tiers/incentives would help to avoid penalizing members that might otherwise have met the requirements to qualify for such tiers/incentives. The proposal would diminish the likelihood of a de facto price increase occurring because a member is not able to reach a volume percentage on that date that it reaches on other trading days during the month. Because trading activity on Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date will be excluded from determinations of a member's percentage of Consolidated Volume, the Exchange believes it will be easier for members to determine the volume required to meet a certain percentage of participation than would otherwise be the case. To the extent that a member has been active on the Exchange at a significant level throughout the month, excluding the Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date, on which its percentage of Consolidated Volume is likely to be lower than on other days, will increase its overall percentage for the month. Conversely, even if a member was

more active on Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date than on other dates, it is unlikely that its activity on one day would be able to increase its overall monthly percentage to a meaningful extent.

Thus, the Exchange believes that the change will benefit members that are in a position to achieve volume levels required by the Exchange's pricing schedule but without harming the ability of any members to reach such levels. This proposal would help to preserve or improve the pricing status that would apply to members' trading activity in the absence of Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date, and therefore will not impact the ability of such members to compete. The proposed rule change would apply to all members uniformly, in that each member's volume activities for purposes of pricing tiers/incentives would continue to be calculated in a uniform manner and would now exclude Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date.

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

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

Intramarket Competition

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

The Exchange intends for its proposed changes to eliminate credits at Equity 7, Section 118(a) to simplify its fee schedule, eliminate unsuccessful rebates, preserve its limited resources for optimized effect, and better align the schedule of credits with the Exchange's overall mix of objectives. The Exchange intends for its proposed changes to

amend the calculation of Consolidated Volume and trading activity at Equity 7, Section 118(a) and Section 118(j) to avoid penalizing members that might otherwise have met the applicable volume thresholds to qualify for the Exchange's transaction pricing tiers/incentives if not for the abnormal trading volumes and market conditions typically experienced in the equities markets on the Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date. The proposed exclusion of such dates from the relevant calculations would apply to all members uniformly and in the same manner that the Exchange currently excludes the date of the annual reconstitution of the Russell Investments Indexes from such calculations.

The Exchange notes that its members are free to trade on other venues to the extent they believe that these proposals 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.

#### Intermarket Competition

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



which credit or fee changes in this market may impose any burden on competition is extremely limited. The proposal is reflective of this competition.

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.

Additionally, the Exchange believes the proposal to exclude certain dates from calculating Consolidated Volume and trading activity is not concerned with competitive issues, but rather relates to calculation methodologies applicable to its pricing tiers/incentives.

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>8</sup>

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2023-013 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-NASDAQ-2023-013. 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-2023-013 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>9</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>9</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 Rules**

\* \* \* \* \*

**Equity 7: Pricing Schedule**

\* \* \* \* \*

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

(a) The following charges shall apply to the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at \$1 or more that it trades. For purposes of calculating Consolidated Volume and the extent of a member's trading activity, the following shall be excluded from both total Consolidated Volume and the member's trading activity: (1) the date of the annual reconstitution of the Russell Investments Indexes; (2) the dates on which stock options, stock index options, and stock index futures expire (i.e., the third Friday of March, June, September, and December); (3) the dates of the rebalance of the MSCI Equities Indexes (i.e., on a quarterly basis); (4) the dates of the rebalance of the S&P 400, S&P 500, and S&P 600 Indexes (i.e., on a quarterly basis); and (5) the date of the annual reconstitution of the Nasdaq-100 and Nasdaq Biotechnology Indexes. [ shall be excluded from both total Consolidated Volume and the member's trading activity.] For the purposes of calculating the extent of a member's trading activity during the month on Nasdaq and determining the charges and credits applicable to such member's activity, all M-ELO Orders that a member executes on Nasdaq during the month will count as liquidity-adding activity on Nasdaq. Volume from ETC Eligible LOC Orders and ETC Orders shall not be utilized to determine eligibility for any pricing tiers set forth in Section 118(a) to the extent that such eligibility is based upon MOC or LOC volume.

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

- "ADV" means Average Daily Volume;
- "Consolidated Volume" shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot.
- A "Designated Retail Order" is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is

submitted to Nasdaq by a member that designates it pursuant to this section, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An order from a "natural person" can include orders on behalf of accounts that are held in a corporate legal form - such as an Individual Retirement Account, Corporation, or a Limited Liability Company - that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. Members must submit a signed written attestation, in a form prescribed by Nasdaq, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as "Designated Retail Orders" comply with these requirements. Orders may be designated on an order by-order basis, or by designating all orders on a particular order entry port as Designated Retail Orders. If a member's total rebate for non-Designated Retail Orders (including any supplemental credits provided in Section 114 and Section 118, except the NBBO Program credit provided in Section 114(g)) is greater than its rebate for Designated Retail Orders (including supplemental credits provided in Section 114 and Section 118), then the member shall receive the higher rebate.

**(1) Fees for Execution and Routing of Orders**

\* \* \* \* \*

<b>Credit to member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity (per share executed):</b>			
	Tape A	Tape B	Tape C
* * * * *	* * * * *	* * * * *	* * * * *
[member (i) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.20% or more of Consolidated Volume; (ii) executes 0.40% or more of Consolidated Volume through providing midpoint orders and through M-ELO; and (iii) removes at least 1.45% of Consolidated Volume:]	[\$0.00305]	[\$0.00305]	[\$0.00305]
* * * * *	* * * * *	* * * * *	* * * * *
[member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.25% or more of Consolidated Volume, which includes shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent 0.40% or more of Consolidated Volume:]	[\$0.0030]	[\$0.0030]	[\$0.0030]
* * * * *	* * * * *	* * * * *	* * * * *
[member (i) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs	[\$0.00305]	[\$0.00305]	[\$0.00305]

that represent more than 1.20% of Consolidated Volume, and (ii) with at least 0.25% of Consolidated Volume that sets the NBBO:]			
*****	*****	*****	*****
[member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.60% of Consolidated Volume, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.25% of Consolidated Volume:]	[\$0.0027]	[\$0.0027]	[\$0.0027]
*****	*****	*****	*****
[member with (i) shares of liquidity provided in all securities during the month representing more than 0.15% of Consolidated Volume, through one or more of its Nasdaq Market Center MPIDs, and (ii) Total Volume, as defined in Options 7, Section 2 of The Nasdaq Options Market rules, of 0.90% or more of total industry ADV in the Customer clearing range for Equity and ETF option contracts per day in a month on The Nasdaq Options Market:]	[\$0.0029]	[\$0.0029]	[\$0.0029]
*****	*****	*****	*****
[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 0.20% of Consolidated Volume; (ii) increases the extent to which it provides liquidity in all securities as a percentage of Consolidated Volume by 35% or more during the month relative to the month of May 2021; and (iii) has a ratio of at least 60% NBBO liquidity provided (as defined in Equity 7, Section 114(g)) to liquidity provided by displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) during the month:]	[\$0.0027]	[\$0.0027]	[\$0.0027]
*****	*****	*****	*****
<b>Supplemental credit to member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity (per share executed):</b>			
	Tape A	Tape B	Tape C
[member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent at least 1.75% of Consolidated Volume, including shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that	[N/A]	[\$0.00005]	[N/A]

represent at least 0.60% of Consolidated Volume:]			
*****	*****	*****	*****
[member with (i) shares of liquidity provided in Tape A securities through one or more of its Nasdaq Market Center MPIDs that represent at least 0.75% of Consolidated Volume, and (ii) shares of liquidity provided in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent at least 0.60% of Consolidated Volume:]	[\$0.00005]	[N/A]	[N/A]
[member with (i) shares of liquidity provided in Tape A securities during the month representing at least 1.40% of Consolidated Volume, and (ii) shares of liquidity provided in Tape C representing at least 1.40% of Consolidated Volume:]	[\$0.000025]	[N/A]	[\$0.000025]
*****	*****	*****	*****
<b>Credit for non-displayed orders (other than Supplemental Orders) that provide liquidity (per share executed):</b>			
	Tape A	Tape B	Tape C
1. A member will receive a supplemental credit for midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO), in addition to the credits set forth below for non-displayed orders that provide liquidity, if the member executes a requisite ADV of shares through M-ELO, as follows:			
*****	*****	*****	*****
[other non-displayed orders if the member (i) provides 0.225% or more of Consolidated Volume through non-displayed orders (other than midpoint orders) and (ii) provides 0.165% or more of Consolidated Volume through midpoint orders:]	[\$0.00175]	[\$0.00175]	[\$0.00125]
[other non-displayed orders if the member (i) provides 0.275% or more of Consolidated Volume through non-displayed orders (other than midpoint orders) and (ii) provides 0.175% or more of Consolidated Volume through midpoint orders:]	[\$0.0020]	[\$0.0020]	[\$0.0015]
*****	*****	*****	*****

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

(b) – (i) No change.

(j) For purposes of determining average daily volume and total consolidated volume for equity tier calculations under this section, any day that the market is not open for the entire trading day will be excluded from such calculation. In addition, for purposes of calculating Consolidated Volume and the extent of a member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the following shall be excluded from



both total Consolidated Volume and the member's trading activity: (1) the date of the annual reconstitution of the Russell Investments Indexes; (2) the dates on which stock options, stock index options, and stock index futures expire (i.e., the third Friday of March, June, September, and December); (3) the dates of the rebalance of the MSCI Equities Indexes (i.e., on a quarterly basis); (4) the dates of the rebalance of the S&P 400, S&P 500, and S&P 600 Indexes (i.e., on a quarterly basis); and (5) the date of the annual reconstitution of the Nasdaq-100 and Nasdaq Biotechnology Indexes. [ shall be excluded from both total Consolidated Volume and the member's trading activity.] The removal of days for purposes of determining options tier calculations under this section will be pursuant to Options 7, Section 2(5)(b) of The Nasdaq Options Market rules.

(k) – (m) No change.

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