

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 46

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

File No. * SR 2025 - * 028

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"/>
---	--------------------------------------	-------------------------------------	---	---	--

Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
--------------------------------	---	-------------------------------------

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) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
--	--

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 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"/>

Description

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

A proposal to (i) introduce a new fee credit under Equity 7, Section 118(a)(1) and amend the fee schedule; (ii) introduce new fees and credits under Equity 7, Section 118(b), (iii) amend Equity 7, Section 118(e) and introduce a new fee credit; and (iv) eliminate the Excess Order Fee credits at Equity 7, Section 118(m) and remove related language in Equity 7, Section 114(d)(1).

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 * Dane	Last Name * Dixon
Title * Associate General Counsel	
E-mail * Dane.Dixon@Nasdaq.com	
Telephone * (470) 432-4607	Fax

Signature

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

Date 03/13/2025	(Title *)
By John A. Zecca	EVP and Chief Legal Officer
(Name *)	

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



Date: 2025.03.13
14:26:49 -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 *

Add Remove View

SR-NASDAQ-2025-028 19b-4.docx.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 *

Add Remove View

SR-NASDAQ-2025-028 Exhibit 1.docx

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 *

Add Remove View

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

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

Add Remove View

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

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

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

Add Remove View

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

Exhibit 5 - Proposed Rule Text

Add Remove View

SR-NASDAQ-2025-028 Exhibit 5.docx

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

Add Remove View

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

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to (i) introduce a new fee credit under Equity 7, Section 118(a)(1) (Fees for Execution and Routing of Orders) and amend the fee schedule; (ii) introduce new fees and credits under Equity 7, Section 118(b), (iii) amend Equity 7, Section 118(e) (Opening Cross) and introduce a new fee credit; and (iv) eliminate the Excess Order Fee credits at Equity 7, Section 118(m) and remove related language in Equity 7, Section 114(d)(1).

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Dane Dixon
Associate General Counsel
Nasdaq, Inc.
470-432-4607

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) introduce a new fee credit under Equity 7, Section 118(a)(1) (Fees for Execution and Routing of Orders) and amend charges to members that execute orders in the Nasdaq Market Center; (ii) introduce new fees and credits under Equity 7, Section 118(b), (iii) amend Equity 7, Section 118(e) (Opening Cross); and introduce a new fee credit; and (iv) eliminate the Excess Order Fee credits at Equity 7, Section 118(m) and remove related language in Section 114(d)(1).

Introduction of New Fee Credit Under Section 118(a)(1)

The Exchange proposes to amend its schedule of credits, at Equity 7, Section 118(a)(1). Specifically, the Exchange proposes to introduce a new credit applicable to Tapes A, B, and C for displayed quotes (other than Supplemental Orders or Designated Retail Orders) that provide liquidity. Under the proposed rule change, members will be eligible for the new credit of \$0.0030 if they meet the following criteria in securities priced at or greater than \$1: (1) the member adds at least 1% of the Consolidated Volume, with at least 0.30% of such volume being Tape B securities; and (2) the member adds at least 0.25% of Consolidated Volume of non-displayed liquidity (other than midpoint orders) and Midpoint Extended Life Orders ("M-ELO").

This proposed change will apply to Tapes A, B, and C. The purpose of the new credit structure is to incentivize members to increase their liquidity adding activity on the

Exchange. By providing an additional incentive for members to contribute displayed liquidity, the Exchange aims to enhance market quality and improve liquidity.

The new proposed credit of \$0.0030 is in addition to other credits the Exchange already offers to member for providing displayed liquidity. The Exchange believes that if this incentive successfully drives additional liquidity, the resulting increase will enhance overall market quality, benefiting all participants.

Additionally, the Exchange proposes to amend its schedule of fees, at Equity 7, Section 118(a)(1), which incentivizes members to grow the extent to which they participate in the Exchange's routing strategy for Designated Retail Orders ("RFTY").

RFTY is an order routing option designed to enhance execution quality and benefit retail investors by providing price improvement opportunities to Designated Retail Orders ("DROs").³ As set forth in Equity 7, Section 118(a), for securities in each Tape, the Exchange presently charges a \$0.0030 per share executed fee to a member for shares executed above 4 million shares during the month for RFTY orders that remove liquidity from the Nasdaq Market Center or that execute in a venue with a protected quotation under Regulation NMS other than the Nasdaq Market Center. For purposes of calculating the 4 million share threshold described above and assessing the charge set

³ See Securities Exchange Act Release No. 34-75987 (September 25, 2015), 80 FR 59210 (October 1, 2015) (SR-NASDAQ-2015-112). A DRO is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this rule, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An order from a "natural person" can include orders on behalf of accounts that are held in a corporate legal form -- such as an Individual Retirement Account, Corporation, or a Limited Liability Company -- that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. Members must submit a signed written attestation, in a form prescribed by Nasdaq, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as "Designated Retail Orders" comply with these requirements.

forth herein, the Exchange excludes RFTY orders that execute at taker-maker venues. Currently, the Exchange charges no fee per share executed to a member for shares executed up to 4 million shares or above 4 million shares, provided that the member grows its volume of shares executed in RFTY during regular Market Hours during the month by at least 100 percent relative to March 2022, for RFTY orders that remove liquidity from the Nasdaq Market Center or that execute in a venue with a protected quotation under Regulation NMS.

The Exchange now proposes to amend the RFTY fee structure to adjust the execution volume threshold from 4 million shares per month to 8 million shares per month, reduce the charge for shares executed above 8 million shares per month from \$0.0030 to \$0.0025, and introduce a new requirement that members must add a daily average of at least 3 million shares of Designated Retail Orders during the month to qualify for the \$0.0000 per executed share rate. The current 4 million share threshold for determining execution fees for RFTY Orders will be increased to 8 million shares per month. This change applies to RFTY Orders that remove liquidity from the Nasdaq Market Center or execute in a venue with a protected quotation under Regulation NMS other than the Nasdaq Market Center. For shares executed above 8 million shares per month, the charge will be reduced from \$0.0030 to \$0.0025 per share executed. For shares executed up to 8 million shares per month, or for shares above the 8 million share threshold where the member adds a daily average of at least 3 million shares of Designated Retail Orders during the month, the charge will remain \$0.0000 per executed share. RFTY Orders that execute at taker-maker venues remain excluded from the volume calculation. Members seeking to qualify for the \$0.0000 per executed share rate

must now also add a daily average of at least 3 million shares of Designated Retail Orders during the month. Additionally, requirements stating that provided that the member grows its volume of shares executed in RFTY during regular Market Hours during the month by at least 100 percent relative to March 2022 will be removed. The proposed changes are designed to encourage greater participation from retail liquidity providers while maintaining a competitive pricing structure.

Credits and Fees for Orders in securities priced Below \$1.00 During the Pre-Market Session

The Exchange proposes to amend Equity 7, Section 118(b) to introduce new credits and fees specifically for orders in securities priced below \$1.00 during the Pre-Market Session.⁴ Under the proposed change, members entering an order that executes in the Nasdaq Market Center during the Pre-Market Session for securities priced below \$1.00 and provides liquidity will receive a credit of 0.05% of the total dollar volume per executed share. Members entering an order that routes and executes at an away market during the Pre-Market Session for securities priced below \$1 will be charged 0.3% of the total dollar value per executed share. Members entering an order that executes in the Nasdaq Market Center will be charged 0.15% of the total dollar volume per executed share. The proposed changes aim to incentivize market participants to provide liquidity within the Exchange during early trading hours while ensuring fair and transparent execution costs for orders routed externally.

⁴ Nasdaq Rule Equity 1, Section 1(a) (9) defines Pre-Market Sessions to mean the period of time beginning at 4:00 a.m. ET and ending immediately prior to the commencement of Market Hours

Opening Cross Amendment

The Exchange proposes to amend Equity 7, Section 118(e) (Opening Cross), which provides fees for orders executed in the Exchange's Opening Cross. Currently, Equity 7, Section 118(e)(1) provides that Market-on-Open, Good-till-Cancelled, and Immediate-or-Cancel orders executed in the Exchange's Opening Cross is \$0.0015 per share executed, and all other quotes and orders executed in the Exchange's Opening Cross is \$0.0011 per share executed. Equity 7, Section 118(e)(2) provides firms that execute orders in the Exchange's Opening Cross will be subject to fees for such executions up to a monthly maximum of \$35,000, provided, however that such firms add at least one million shares of liquidity, on average per day, per month. The Exchange proposes to amend Equity, 7 Section 118(e)(2) to provide firms that execute orders in the Exchange's Opening Cross (in securities priced at or above \$1.00) will be capped at \$35,000 per month, if firms add at least one million shares of liquidity, on average per day, per month, and to introduce a new fee credit of 0.25% of the total dollar volume for Opening Cross Orders in shares priced below \$1. Specifically, the Exchange proposes to introduce explicit language stating that the monthly maximum execution fees for the Opening Cross apply only to securities priced at or above \$1. The proposed fee of 0.25% of the total dollar volume for Opening Cross Orders in shares priced below \$1 incentivizes participants by introducing a fair and transparent order fee for participants that execute orders below \$1. The proposed changes ensure fair and transparent pricing

for Opening Cross participants while aligning the fee structure with the Exchange's broader market pricing practices.

Elimination of Excess Order Fee

The Exchange proposes to eliminate the Excess Order Fee in its fee schedule at Equity 7, Section 118(m), which exists to deter members from inefficient order entry practices that place excessive burdens on the system of the Exchange and other members and that may negatively impact the usefulness of market data. Under the Excess Order Fee, the Exchange imposes an Excess Order Fee on members with an "Order Entry Ratio" of more than 100. The Order Ratio is calculated, and the Excess Order Fee is imposed on a monthly basis. All calculations under the rule are based on orders received during regular market hours (generally, 9:30am to 4:00pm) and excludes orders received at other times, even if they are executed during regular market hours.

For each member, the Order Entry Ratio is the ratio of (i) the member's "Weighted Order Total" to (ii) the greater of one (1) or the number of displayed, non-marketable orders sent to the Exchange by the member that execute in full or in part. The Weighted Order Total is the number of displayed, non-marketable orders sent to NASDAQ through the MPID, as adjusted by a "Weighting Factor." The applicable Weighting Factor is applied to each order based on its price in comparison to the NBBO at the time of order entry:

<u>Order's Price versus NBBO at Entry</u>	<u>Weighting Factor</u>
Less than 0.20% away	0x
0.20% to 0.99% away	1x
1.00% to 1.99% away	2x
2.00% or more away	3x

Thus, in calculating the Weighted Order Total, an order that was more than 2.0% away from the NBBO would be equivalent to three orders that were 0.50% away. Due to the applicable Weighting Factor of 0x, orders entered less than 0.20% away from the NBBO would not be included in the Weighted Order Total but would be included in the “executed” orders component of the Order Entry Ratio if they execute in full or part. Orders sent by market makers in securities in which they are registered, through the market participant identifier (“MPID”) applicable to the registration, are excluded from both components of the ratio. In addition, MPIDs with a daily average Weighted Order Total of less than 100,000 during the month or registered in a daily average of 100 or more issues in a given month will not be subject to the Excess Order Fee.

The following example illustrates the calculation of the Order Entry Ratio:

- A member enters 35,000,000 displayed, liquidity-providing orders:
 - The member is registered as a market maker with respect to 20,000,000 of the orders. These orders are excluded from the calculation.
 - 10,000,000 orders are entered at the NBBO. The Weighting Factor for these orders is 0x.
 - 5,000,000 orders are entered at a price that is 1.50% away from the NBBO. The Weighting Factor for these orders is 2x.
- Of the 15,000,000 orders included in the calculation, 90,000 are executed.
- The Weighted Order Total is $(10,000,000 \times 0) + (5,000,000 \times 2) = 10,000,000$. The Order Entry Ratio is $10,000,000 / 90,000 = 111$

If an MPID has an Order Entry Ratio of more than 100, the amount of the Order Entry Fee will be calculated by determining the MPID's "Excess Weighted Orders." Excess Weighted Orders are calculated by subtracting (i) the Weighted Order Total that would result in the MPID having an Order Entry Ratio of 100 from (ii) the MPID's actual Weighted Order Total. In the example above, the Weighted Order Total that would result in an Order Entry Ratio of 100 is 9,000,000, since $9,000,000 / 90,000 = 100$. Accordingly, the Excess Weighted Orders would be $10,000,000 - 9,000,000 = 1,000,000$.

The Excess Order Fee charged to the member will then be determined by multiplying the "Applicable Rate" by the number of Excess Weighted Orders. The Applicable Rate is determined based on the MPID's Order Entry Ratio:

<u>Order Entry Ratio</u>	<u>Applicable Rate</u>
101 – 1,000	\$0.005
More than 1,000	\$0.01

In the example above, the Applicable Rate would be \$0.005, based on the MPID's Order Entry Ratio of 111. Accordingly, the monthly Excess Order Fee would be $1,000,000 \times \$0.005 = \$5,000$.

The Exchange proposes to eliminate the Excess Order Fee Program due to low application and limited impact on market behavior. Additionally, the Exchange is removing language in Equity 7, Section 114(d)(1) (Qualified Market Maker) Program that referenced the Excess Order Fee Program. Currently, Equity 7, Section 114(d) provides that a member may be designated as a Qualified Market Maker 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 Qualified Market Maker designation, the member must meet the requirement for an average of 1,000 securities per day over the course of the month. The Exchange's proposed removal of Equity 7, Section 114(d)(1) is necessary to remove outdated language that no longer serves a practical function in the Exchange's rules.

b. Statutory Basis

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

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”⁷

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁸

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for 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.

⁷ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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

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.

Introduction of New Fee Credit Under Section 118(a)(1)

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to establish a new credit for members that add displayed liquidity under Equity 7, Section 118(a)(1). The additional new credit is reasonable because it will incentivize liquidity adding activity and provide an incentive to members that provide additional displayed liquidity to the Exchange. The Exchange believes that if such incentive is effective, then any ensuing increase in liquidity to the Exchange will improve market quality, to the benefit of all participants. To the extent that the Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, the Exchange will experience improvements in its market quality, which stands to benefit all market participants. The Exchange further believes that the proposed new credit of \$0.0030 for members providing additional liquidity is equitable because it will be applied uniformly to all members that meet the specified criteria.

The Exchange's proposed new credit is not intended to advantage any particular member and will be applied uniformly to all members that meet the qualifying criteria. Moreover, the proposal stands to improve the overall market quality of the Exchange, to the benefit of all market participants, by incentivizing members to increase the extent of their liquidity adding activity. Any participant that is dissatisfied with the proposal is

free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

Additionally, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to make the proposed changes to RFTY Orders at, Equity 7, Section 118(a)(1). The increase in volume threshold from 4 million shares to 8 million shares aligns with the Exchange's objectives of encouraging greater trading activity and reducing the per-share-charge for executions above 8 million shares per month incentivizes high-volume participants and fosters liquidity growth. Introducing a requirement for members to add a daily average of 3 million shares of Designated Retail Orders each month encourages retail liquidity providers' participation while maintaining competitive pricing. The proposed changes apply uniformly to all market participants that meet the specified thresholds and provide members with equal access to the fee benefits, provided they meet the execution and retail order flow requirement. The proposed changes further balance incentives between liquidity providers and retail order flow contributors, ensuring a fair allocation of pricing benefits.

Credits and Fees for Orders Executed in Securities Priced Below \$1.00 During the Pre-Market Session

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to introduce new credits and fees for orders in securities priced below \$1.00 during the Pre-Market Session. The introduction of the proposed new credit provides market participants with an incentive to contribute liquidity at the start of the trading day, which will benefit overall market efficiency. The introduction of the 0.15% charge on orders that route and execute at an away market during the Pre-Market Session for securities priced below \$1.00 ensures that members that remove liquidity from the

Exchange contribute appropriately to the cost of market operation while maintaining fair access to external venues. The proposed structure seeks to maintain commitment to a competitive and transparent trading environment while ensuring that participants executing orders in securities priced below \$1.00 receive economic incentives for providing liquidity during early trading hours.

Opening Cross Amendment

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to amend the Opening Cross Program to establish that fees under Equity 7, Section 118(e) are only applicable to securities priced at or above \$1, and to introduce a new order fee of 0.25% of total dollar volume for Opening Cross Orders that are executed in securities priced below \$1. The amendment clarifying the Opening Cross monthly maximum fee applies only to securities priced at or above \$1, ensures alignment with other Nasdaq fee structures. The introduction of the new order fee is reasonable because it ensures that all order execution types are appropriately accounted for. Furthermore, the changes are not unfairly discriminatory because all firms executing the specified order types in the Opening cross have fair access to credits and fees if they meet the relevant requirements. The proposed changes enhance the Exchange's competitive standing, promote fair fee allocation, and incentivize liquidity in the Opening Cross process.

Excess Order Fee

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to eliminate the Excess Order Fee Program due to low application and limited impact on market behavior. The proposed elimination of the Excess Order Fee Program does not impose any new costs or requirements and removes a fee that no longer

serves a meaningful purpose. The Exchange has limited resources to allocate to incentive programs like this one 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 it devotes to the Excess Order Fee Program to other incentive programs that it hopes will be more impactful.

Additionally, the removal of related language in Equity 7, Section 114(d)(1) eliminates references to the Excess Order Fee Program that is being eliminated. This is necessary to improve and keep clarity amongst the Exchanges rules for market participants.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the introduction of new fee credits under Equity 7, Section 118(a)(1) and 118(b) is intended to incentivize liquidity provision and order execution on the Exchange and does not impose a burden on competition. By offering credits to

market participants that meet certain criteria, the Exchange is enhancing its appeal as a trading venue and encouraging increased participation in its order execution and routing processes. These changes do not disadvantage any specific group of participants. Instead, it provides equitable incentives that are available to all members that meet the applicable criteria.

The proposed amendments introducing credits and fees for Orders Executed in securities priced Below \$1.00 During the Pre-Market Session do not impose a burden on competition. Instead, the proposal promotes a more efficient and competitive trading environment through the introduction of its credit for orders executed in the Nasdaq Market Center and its charge for orders routed and executed at an away market. These changes do not unfairly favor or disadvantage any particular group because all members have the opportunity to benefit from the credit by choosing to execute on the Nasdaq Market Center or alternatively pay the routing fee if they opt to access liquidity at an away market.

The Exchange's proposed amendments to its Opening Cross fees do not impose a burden on competition. The proposed amendments seek to enhance clarity, fairness and market efficiency while maintaining a competitive pricing structure. The changes simply clarify that the monthly maximum execution fees for Opening Cross only apply to securities priced at or above \$1.00. The new order fee of 0.25% of total dollar volume for Opening Cross Orders that are executed in securities priced below \$1 also does not impose a burden on competition because it does not disproportionately favor or disadvantage any particular type of market participant. Rather, it promotes equitable treatment by applying fees consistently across all members participating in the Opening

Cross. Additionally, the proposed elimination of the Excess Order Fee Program does not impose a burden on competition. The elimination of the underutilized program allows the Exchange to reallocate resources elsewhere and foster a more competitive trading environment.

In sum, if the change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,⁹ 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

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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-2025-028)

March , 2025

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to (i) introduce a new fee credit under Equity 7, Section 118(a)(1) (Fees for Execution and Routing of Orders) and amend the fee schedule; (ii) introduce new fees and credits under Equity 7, Section 118(b), (iii) amend Equity 7, Section 118(e) (Opening Cross) and introduce a new fee credit; and (iv) eliminate the Excess Order Fee credits at Equity 7, Section 118(m) and remove related language in Equity 7, Section 114(d)(1)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on March 13, 2025, 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) introduce a new fee credit under Equity 7, Section 118(a)(1) (Fees for Execution and Routing of Orders) and amend the fee schedule; (ii) introduce new fees and credits under Equity 7, Section 118(b), (iii) amend Equity 7, Section 118(e) (Opening Cross) and introduce a new fee credit; and (iv) eliminate the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Excess Order Fee credits at Equity 7, Section 118(m) and remove related language in Equity 7, Section 114(d)(1).

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

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

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

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

1. Purpose

The purpose of the proposed rule change is to: (i) introduce a new fee credit under Equity 7, Section 118(a)(1) (Fees for Execution and Routing of Orders) and amend charges to members that execute orders in the Nasdaq Market Center; (ii) introduce new fees and credits under Equity 7, Section 118(b), (iii) amend Equity 7, Section 118(e) (Opening Cross) and introduce a new fee credit; and (iv) eliminate the Excess Order Fee credits at Equity 7, Section 118(m) and remove related language in Section 114(d)(1).

Introduction of New Fee Credit Under Section 118(a)(1)

The Exchange proposes to amend its schedule of credits, at Equity 7, Section 118(a)(1). Specifically, the Exchange proposes to introduce a new credit applicable to Tapes A, B, and C for displayed quotes (other than Supplemental Orders or Designated

Retail Orders) that provide liquidity. Under the proposed rule change, members will be eligible for the new credit of \$0.0030 if they meet the following criteria in securities priced at or greater than \$1: (1) the member adds at least 1% of the Consolidated Volume, with at least 0.30% of such volume being Tape B securities; and (2) the member adds at least 0.25% of Consolidated Volume of non-displayed liquidity (other than midpoint orders) and Midpoint Extended Life Orders (“M-ELO”).

This proposed change will apply to Tapes A, B, and C. The purpose of the new credit structure is to incentivize members to increase their liquidity adding activity on the Exchange. By providing an additional incentive for members to contribute displayed liquidity, the Exchange aims to enhance market quality and improve liquidity.

The new proposed credit of \$0.0030 is in addition to other credits the Exchange already offers to member for providing displayed liquidity. The Exchange believes that if this incentive successfully drives additional liquidity, the resulting increase will enhance overall market quality, benefiting all participants.

Additionally, the Exchange proposes to amend its schedule of fees, at Equity 7, Section 118(a)(1), which incentivizes members to grow the extent to which they participate in the Exchange’s routing strategy for Designated Retail Orders (“RFTY”).

RFTY is an order routing option designed to enhance execution quality and benefit retail investors by providing price improvement opportunities to Designated Retail Orders (“DROs”).³ As set forth in Equity 7, Section 118(a), for securities in each

³ See Securities Exchange Act Release No. 34-75987 (September 25, 2015), 80 FR 59210 (October 1, 2015) (SR-NASDAQ-2015-112). A DRO is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this rule, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An order from a “natural person” can include orders on behalf of accounts that are held in a corporate legal form -- such as an Individual

Tape, the Exchange presently charges a \$0.0030 per share executed fee to a member for shares executed above 4 million shares during the month for RFTY orders that remove liquidity from the Nasdaq Market Center or that execute in a venue with a protected quotation under Regulation NMS other than the Nasdaq Market Center. For purposes of calculating the 4 million share threshold described above and assessing the charge set forth herein, the Exchange excludes RFTY orders that execute at taker-maker venues. Currently, the Exchange charges no fee per share executed to a member for shares executed up to 4 million shares or above 4 million shares, provided that the member grows its volume of shares executed in RFTY during regular Market Hours during the month by at least 100 percent relative to March 2022, for RFTY orders that remove liquidity from the Nasdaq Market Center or that execute in a venue with a protected quotation under Regulation NMS.

The Exchange now proposes to amend the RFTY fee structure to adjust the execution volume threshold from 4 million shares per month to 8 million shares per month, reduce the charge for shares executed above 8 million shares per month from \$0.0030 to \$0.0025, and introduce a new requirement that members must add a daily average of at least 3 million shares of Designated Retail Orders during the month to qualify for the \$0.0000 per executed share rate. The current 4 million share threshold for determining execution fees for RFTY Orders will be increased to 8 million shares per month. This change applies to RFTY Orders that remove liquidity from the Nasdaq

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.

Market Center or execute in a venue with a protected quotation under Regulation NMS other than the Nasdaq Market Center. For shares executed above 8 million shares per month, the charge will be reduced from \$0.0030 to \$0.0025 per share executed. For shares executed up to 8 million shares per month, or for shares above the 8 million share threshold where the member adds a daily average of at least 3 million shares of Designated Retail Orders during the month, the charge will remain \$0.0000 per executed share. RFTY Orders that execute at taker-maker venues remain excluded from the volume calculation. Members seeking to qualify for the \$0.0000 per executed share rate must now also add a daily average of at least 3 million shares of Designated Retail Orders during the month. Additionally, requirements stating that provided that the member grows its volume of shares executed in RFTY during regular Market Hours during the month by at least 100 percent relative to March 2022 will be removed. The proposed changes are designed to encourage greater participation from retail liquidity providers while maintaining a competitive pricing structure.

Credits and Fees for Orders in securities priced Below \$1.00 During the Pre-Market Session

The Exchange proposes to amend Equity 7, Section 118(b) to introduce new credits and fees specifically for orders in securities priced below \$1.00 during the Pre-Market Session.⁴ Under the proposed change, members entering an order that executes in the Nasdaq Market Center during the Pre-Market Session for securities priced below \$1.00 and provides liquidity will receive a credit of 0.05% of the total dollar volume per executed share. Members entering an order that routes and executes at an away market

⁴ Nasdaq Rule Equity 1, Section 1(a) (9) defines Pre-Market Sessions to mean the period of time beginning at 4:00 a.m. ET and ending immediately prior to the commencement of Market Hours

during the Pre-Market Session for securities priced below \$1 will be charged 0.3% of the total dollar value per executed share. Members entering an order that executes in the Nasdaq Market Center will be charged 0.15% of the total dollar volume per executed share. The proposed changes aim to incentivize market participants to provide liquidity within the Exchange during early trading hours while ensuring fair and transparent execution costs for orders routed externally.

Opening Cross Amendment

The Exchange proposes to amend Equity 7, Section 118(e) (Opening Cross), which provides fees for orders executed in the Exchange's Opening Cross. Currently, Equity 7, Section 118(e)(1) provides that Market-on-Open, Good-till-Cancelled, and Immediate-or-Cancel orders executed in the Exchange's Opening Cross is \$0.0015 per share executed, and all other quotes and orders executed in the Exchange's Opening Cross is \$0.0011 per share executed. Equity 7, Section 118(e)(2) provides firms that execute orders in the Exchange's Opening Cross will be subject to fees for such executions up to a monthly maximum of \$35,000, provided, however that such firms add at least one million shares of liquidity, on average per day, per month. The Exchange proposes to amend Equity, 7 Section 118(e)(2) to provide firms that execute orders in the Exchange's Opening Cross (in securities priced at or above \$1.00) will be capped at \$35,000 per month, if firms add at least one million shares of liquidity, on average per day, per month, and to introduce a new fee credit of 0.25% of the total dollar volume for Opening Cross Orders in shares priced below \$1. Specifically, the Exchange proposes to introduce explicit language stating that the monthly maximum execution fees for the Opening Cross apply only to securities priced at or above \$1. The proposed fee of 0.25%

of the total dollar volume for Opening Cross Orders in shares priced below \$1 incentivizes participants by introducing a fair and transparent order fee for participants that execute orders below \$1. The proposed changes ensure fair and transparent pricing for Opening Cross participants while aligning the fee structure with the Exchange's broader market pricing practices.

Elimination of Excess Order Fee

The Exchange proposes to eliminate the Excess Order Fee in its fee schedule at Equity 7, Section 118(m), which exists to deter members from inefficient order entry practices that place excessive burdens on the system of the Exchange and other members and that may negatively impact the usefulness of market data. Under the Excess Order Fee, the Exchange imposes an Excess Order Fee on members with an "Order Entry Ratio" of more than 100. The Order Ratio is calculated, and the Excess Order Fee is imposed on a monthly basis. All calculations under the rule are based on orders received during regular market hours (generally, 9:30am to 4:00pm) and excludes orders received at other times, even if they are executed during regular market hours.

For each member, the Order Entry Ratio is the ratio of (i) the member's "Weighted Order Total" to (ii) the greater of one (1) or the number of displayed, non-marketable orders sent to the Exchange by the member that execute in full or in part. The Weighted Order Total is the number of displayed, non-marketable orders sent to NASDAQ through the MPID, as adjusted by a "Weighting Factor." The applicable Weighting Factor is applied to each order based on its price in comparison to the NBBO at the time of order entry:

<u>Order's Price versus NBBO at Entry</u>	<u>Weighting Factor</u>
Less than 0.20% away	0x
0.20% to 0.99% away	1x
1.00% to 1.99% away	2x
2.00% or more away	3x

Thus, in calculating the Weighted Order Total, an order that was more than 2.0% away from the NBBO would be equivalent to three orders that were 0.50% away. Due to the applicable Weighting Factor of 0x, orders entered less than 0.20% away from the NBBO would not be included in the Weighted Order Total but would be included in the “executed” orders component of the Order Entry Ratio if they execute in full or part. Orders sent by market makers in securities in which they are registered, through the market participant identifier (“MPID”) applicable to the registration, are excluded from both components of the ratio. In addition, MPIDs with a daily average Weighted Order Total of less than 100,000 during the month or registered in a daily average of 100 or more issues in a given month will not be subject to the Excess Order Fee.

The following example illustrates the calculation of the Order Entry Ratio:

- A member enters 35,000,000 displayed, liquidity-providing orders:
 - The member is registered as a market maker with respect to 20,000,000 of the orders. These orders are excluded from the calculation.
 - 10,000,000 orders are entered at the NBBO. The Weighting Factor for these orders is 0x.
 - 5,000,000 orders are entered at a price that is 1.50% away from the NBBO. The Weighting Factor for these orders is 2x.
- Of the 15,000,000 orders included in the calculation, 90,000 are executed.

- The Weighted Order Total is $(10,000,000 \times 0) + (5,000,000 \times 2) = 10,000,000$. The Order Entry Ratio is $10,000,000 / 90,000 = 111$

If an MPID has an Order Entry Ratio of more than 100, the amount of the Order Entry Fee will be calculated by determining the MPID's "Excess Weighted Orders." Excess Weighted Orders are calculated by subtracting (i) the Weighted Order Total that would result in the MPID having an Order Entry Ratio of 100 from (ii) the MPID's actual Weighted Order Total. In the example above, the Weighted Order Total that would result in an Order Entry Ratio of 100 is 9,000,000, since $9,000,000 / 90,000 = 100$. Accordingly, the Excess Weighted Orders would be $10,000,000 - 9,000,000 = 1,000,000$.

The Excess Order Fee charged to the member will then be determined by multiplying the "Applicable Rate" by the number of Excess Weighted Orders. The Applicable Rate is determined based on the MPID's Order Entry Ratio:

<u>Order Entry Ratio</u>	<u>Applicable Rate</u>
101 – 1,000	\$0.005
More than 1,000	\$0.01

In the example above, the Applicable Rate would be \$0.005, based on the MPID's Order Entry Ratio of 111. Accordingly, the monthly Excess Order Fee would be $1,000,000 \times \$0.005 = \$5,000$.

The Exchange proposes to eliminate the Excess Order Fee Program due to low application and limited impact on market behavior. Additionally, the Exchange is removing language in Equity 7, Section 114(d)(1) (Qualified Market Maker) Program that referenced the Excess Order Fee Program. Currently, Equity 7, Section 114(d) provides that a member may be designated as a Qualified Market Maker 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 Qualified Market Maker designation, the member must meet the requirement for an average of 1,000 securities per day over the course of the month. The Exchange's proposed removal of Equity 7, Section 114(d)(1) is necessary to remove outdated language that no longer serves a practical function in the Exchange's rules.

2. Statutory Basis

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

The Exchange's proposed changes to 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

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

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

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁸

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for 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

⁷ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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

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.

Introduction of New Fee Credit Under Section 118(a)(1)

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to establish a new credit for members that add displayed liquidity under Equity 7, Section 118(a)(1). The additional new credit is reasonable because it will incentivize liquidity adding activity and provide an incentive to members that provide additional displayed liquidity to the Exchange. The Exchange believes that if such incentive is effective, then any ensuing increase in liquidity to the Exchange will improve market quality, to the benefit of all participants. To the extent that the Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, the Exchange will experience improvements in its market quality, which stands to benefit all market participants. The Exchange further believes that the proposed new credit of \$0.0030 for members providing additional liquidity is equitable because it will be applied uniformly to all members that meet the specified criteria.

The Exchange's proposed new credit is not intended to advantage any particular member and will be applied uniformly to all members that meet the qualifying criteria. Moreover, the proposal stands to improve the overall market quality of the Exchange, to the benefit of all market participants, by incentivizing members to increase the extent of

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

Additionally, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to make the proposed changes to RFTY Orders at, Equity 7, Section 118(a)(1). The increase in volume threshold from 4 million shares to 8 million shares aligns with the Exchange's objectives of encouraging greater trading activity and reducing the per-share-charge for executions above 8 million shares per month incentivizes high-volume participants and fosters liquidity growth. Introducing a requirement for members to add a daily average of 3 million shares of Designated Retail Orders each month encourages retail liquidity providers' participation while maintaining competitive pricing. The proposed changes apply uniformly to all market participants that meet the specified thresholds and provide members with equal access to the fee benefits, provided they meet the execution and retail order flow requirement. The proposed changes further balance incentives between liquidity providers and retail order flow contributors, ensuring a fair allocation of pricing benefits.

Credits and Fees for Orders Executed in Securities Priced Below \$1.00 During the Pre-Market Session

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to introduce new credits and fees for orders in securities priced below \$1.00 during the Pre-Market Session. The introduction of the proposed new credit provides market participants with an incentive to contribute liquidity at the start of the trading day, which will benefit overall market efficiency. The introduction of the 0.15% charge on orders that route and execute at an away market during the Pre-Market Session

for securities priced below \$1.00 ensures that members that remove liquidity from the Exchange contribute appropriately to the cost of market operation while maintaining fair access to external venues. The proposed structure seeks to maintain commitment to a competitive and transparent trading environment while ensuring that participants executing orders in securities priced below \$1.00 receive economic incentives for providing liquidity during early trading hours.

Opening Cross Amendment

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to amend the Opening Cross Program to establish that fees under Equity 7, Section 118(e) are only applicable to securities priced at or above \$1, and to introduce a new order fee of 0.25% of total dollar volume for Opening Cross Orders that are executed in securities priced below \$1. The amendment clarifying the Opening Cross monthly maximum fee applies only to securities priced at or above \$1, ensures alignment with other Nasdaq fee structures. The introduction of the new order fee is reasonable because it ensures that all order execution types are appropriately accounted for. Furthermore, the changes are not unfairly discriminatory because all firms executing the specified order types in the Opening cross have fair access to credits and fees if they meet the relevant requirements. The proposed changes enhance the Exchange's competitive standing, promote fair fee allocation, and incentivize liquidity in the Opening Cross process.

Excess Order Fee

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to eliminate the Excess Order Fee Program due to low application and limited impact on market behavior. The proposed elimination of the Excess Order Fee

Program does not impose any new costs or requirements and removes a fee that no longer serves a meaningful purpose. The Exchange has limited resources to allocate to incentive programs like this one 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 it devotes to the Excess Order Fee Program to other incentive programs that it hopes will be more impactful. Additionally, the removal of related language in Equity 7, Section 114(d)(1) eliminates references to the Excess Order Fee Program that is being eliminated. This is necessary to improve and keep clarity amongst the Exchanges rules for market participants.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the introduction of new fee credits under Equity 7, Section 118(a)(1) and 118(b) is intended to incentivize liquidity provision and order execution on

the Exchange and does not impose a burden on competition. By offering credits to market participants that meet certain criteria, the Exchange is enhancing its appeal as a trading venue and encouraging increased participation in its order execution and routing processes. These changes do not disadvantage any specific group of participants. Instead, it provides equitable incentives that are available to all members that meet the applicable criteria.

The proposed amendments introducing credits and fees for Orders Executed in securities priced Below \$1.00 During the Pre-Market Session do not impose a burden on competition. Instead, the proposal promotes a more efficient and competitive trading environment through the introduction of its credit for orders executed in the Nasdaq Market Center and its charge for orders routed and executed at an away market. These changes do not unfairly favor or disadvantage any particular group because all members have the opportunity to benefit from the credit by choosing to execute on the Nasdaq Market Center or alternatively pay the routing fee if they opt to access liquidity at an away market.

The Exchange's proposed amendments to its Opening Cross fees do not impose a burden on competition. The proposed amendments seek to enhance clarity, fairness and market efficiency while maintaining a competitive pricing structure. The changes simply clarify that the monthly maximum execution fees for Opening Cross only apply to securities priced at or above \$1.00. The new order fee of 0.25% of total dollar volume for Opening Cross Orders that are executed in securities priced below \$1 also does not impose a burden on competition because it does not disproportionately favor or disadvantage any particular type of market participant. Rather, it promotes equitable

treatment by applying fees consistently across all members participating in the Opening Cross. Additionally, the proposed elimination of the Excess Order Fee Program does not impose a burden on competition. The elimination of the underutilized program allows the Exchange to reallocate resources elsewhere and foster a more competitive trading environment.

In sum, if the change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.⁹

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.

⁹ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2025-028 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-2025-028. This file number should be included on the subject line if email 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 website (<https://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 a.m. and 3

p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2025-028 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Sherry R. Haywood,

Assistant Secretary.

¹⁰ 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

* * * * *

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.

* * * * *

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. 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. For purposes of calculating a member’s qualifications for credits that pertain to providing liquidity set forth in this Section 118(a), 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 increasing the distinct qualifying volume percentage thresholds, as set forth in this Section 118(a), by 10%. The Exchange will then assess which of these two calculations would qualify the member for the most advantageous credits for the month and then it will apply those to the member.

....

(1) Fees for Execution and Routing of Orders

....

Charge to enter orders that execute in the Nasdaq Market Center (per share executed):			
	Tape A	Tape B	Tape C

....

except as set forth immediately below, charge to member for shares executed above [4]8 million shares during the month for RFTY Orders that remove liquidity from the Nasdaq Market Center or that execute in a venue with a protected quotation under Regulation NMS other than the Nasdaq Market Center. For purposes of calculating the [4]8 million share threshold	\$0.0025[30]	\$0.0025[30]	\$0.0025[30]
---	--------------	--------------	--------------

described above and assessing the charge set forth herein, RFTY Orders that execute at taker-maker venues are excluded:			
charge to member for shares executed either (i) up to [4]8 million shares during the month for RFTY Orders that remove liquidity from the Nasdaq Market Center or that execute in a venue with a protected quotation under Regulation NMS; or (ii) above [4][8] million shares during the month for RFTY Orders that remove liquidity from the Nasdaq Market Center or that execute in a venue with a protected quotation under Regulation NMS other than the Nasdaq Market Center during regular Market Hours, [provided that the member grows its volume of shares executed in RFTY during regular Market Hours during the month by at least 100 percent relative to March 2022] <u>provided that the member adds a daily average of at least 3 million shares of designated retail orders during the month.</u> For purposes of calculating the [4]8 million share threshold described above and assessing the charge set forth herein, RFTY Orders that execute at taker-maker venues are excluded:	\$0.0000	\$0.0000	\$0.0000

....

Credit to member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity (per share executed):			
	Tape A	Tape B	Tape C

....

member (i) adds at least 0.50% of Consolidated Volume, of which at least 0.10% are Tape B securities, and (ii) adds at least 0.10% of Consolidated Volume during the month in non-displayed liquidity (including midpoint orders) and M-ELO:	\$0.0029	\$0.0029	\$0.0029
<u>member (i) adds at least 1% (in securities priced at or greater than \$1) of Consolidated Volume (in securities priced at or greater than \$1), of which at least 0.30% are Tape B securities, and (ii) adds at least 0.25% (in securities priced at or greater than \$1) of Consolidated Volume (in securities priced at or greater than \$1) during the month in non-displayed liquidity (other than midpoint orders) and M-ELO:</u>	<u>\$0.0030</u>	<u>\$0.0030</u>	<u>\$0.0030</u>

* * * * *

(b) Credits and Fees for securities priced less than \$1:

(1) The following charges shall apply to the use of the order execution and routing services of the Nasdaq Market Center by members for all orders executed during Regular Trading Hours and After-Hours Trading, excluding the Pre-Market Session,[at all times] for all securities priced at less than \$1.

Charge to member entering order that executes in the Nasdaq Market Center (other than a Midpoint Extended Life Order):	0.3% of the total transaction cost
Charge to member entering Midpoint Extended Life Order that executes in the Nasdaq Market Center:	0.0% of the total transaction cost
Charge to member entering order that routes and executes at an away market:	0.3% of the total transaction cost

(2) The following credits and fees apply to the use of order execution and routing services of the Nasdaq Market Center by members for all orders executed during the Pre-Market Session for all securities that are priced less than \$1.

<u>Credit to member for quotes/orders that provide liquidity:</u>	<u>0.05% of the total dollar volume per executed share</u>
<u>Charge to member entering order that routes and executes at an away market:</u>	<u>0.3% of the total transaction cost</u>
<u>Charge to member entering order that executes in the Nasdaq Market Center:</u>	<u>0.15% of the total dollar volume per executed share</u>

* * * * *

(e) Opening Cross

(1) No change.

(2) Firms that execute orders in the Nasdaq Opening Cross (in securities priced at or above \$1.00) will be subject to fees for such executions up to a monthly maximum of \$35,000, provided, however, that such firms add at least one million shares of liquidity, on average per day, per month.

<u>Market-on-Open, Limit-on-Open, Good-till-Cancelled, and Immediate-or-Cancel orders executed in the Nasdaq Opening Cross (in securities priced at less than \$1)</u>	<u>0.25% of total dollar volume per executed share</u>
--	--

* * * * *

[(m) Excess Order Fee

(1) To deter members from inefficient order entry practices that place excessive burdens on the systems of Nasdaq and other members and that may negatively impact the usefulness of market data, Nasdaq imposes an Excess Order Fee on members with an "Order Entry Ratio" of more than 100. The Order Entry Ratio is calculated, and the Excess Order Fee imposed, on a monthly basis. All calculations under the rule will be based on orders received by Nasdaq during regular market hours (generally, 9:30 a.m. to 4:00 p.m.) and will exclude orders received at other times, even if they execute during regular market hours.

(2) For each member, the Order Entry Ratio is the ratio of (i) the member's Weighted Order Total to (ii) the greater of one (1) or the number of displayed, non-marketable orders sent to Nasdaq by the member that execute in full or in part. The Weighted Order Total is the number of displayed, non-marketable orders sent to Nasdaq by the member, as adjusted by a "Weighting Factor." The applicable

Weighting Factor is applied to each order based on its price in comparison to the national best bid or best offer ("NBBO") at the time of order entry:

Order's Price versus NBBO at Entry	Weighting Factor
Less than 0.20% away	0x
0.20% to 0.99% away	1x
1.00% to 1.99% away	2x
2.00% or more away	3x

Thus, in calculating the Weighted Order Total, an order that was more than 2.0% away from the NBBO would be equivalent to three orders that were 0.50% away. Due to the applicable Weighting Factor of 0x, orders entered less than 0.20% away from the NBBO would not be included in the Weighted Order Total, but would be included in the "executed" orders component of the Order Entry Ratio if they execute in full or part. Orders sent by market makers in securities in which they are registered, through the market participant identifier ("MPID") applicable to the registration, are excluded from both components of the ratio. The following example illustrates the calculation of the Order Entry Ratio:

- A member enters 35,000,000 displayed, liquidity-providing orders:
 - The member is registered as a market maker with respect to 20,000,000 of the orders. These orders are excluded from the calculation.
 - 10,000,000 orders are entered at the NBBO. The Weighting Factor for these orders is 0x.
 - 5,000,000 orders are entered at a price that is 1.50% away from the NBBO. The Weighting Factor for these orders is 2x.
- Of the 15,000,000 orders included in the calculation, 90,000 are executed.
- The Weighted Order Total is $(10,000,000 \times 0) + (5,000,000 \times 2) = 10,000,000$. The Order Entry Ratio is $10,000,000 / 90,000 = 111$

(3) If a member has an Order Entry Ratio of more than 100, the Order Entry Fee will be calculated by determining the member's Excess Weighted Orders. Excess Weighted Orders are calculated by subtracting (i) the Weighted Order Total that would result in the member having an Order Entry Ratio of 100 from (ii) the member's actual Weighted Order Total.

In the example above, the Weighted Order Total that would result in an Order Entry Ratio of 100 is 9,000,000, since $9,000,000 / 90,000 = 100$. Accordingly, the Excess Weighted Orders would be $10,000,000 - 9,000,000 = 1,000,000$.

The Excess Order Fee charged to the member will then be determined by multiplying the Applicable Rate by the number of Excess Weighted Orders. The Applicable Rate is determined based on the member's Order Entry Ratio.

Order Entry Ratio	Applicable Rate
101 - 1,000	\$0.005
More than 1,000	\$0.01

In the example above, the Applicable Rate would be \$0.005, based on the member's Order Entry Ratio of 111. Accordingly, the monthly Excess Order Fee would be $1,000,000 \times \$0.005 = \$5,000$.

(4) Notwithstanding the foregoing, a member will not be subject to the Excess Order Fee if: (i) it has a daily average Weighted Order Total of less than 100,000 during the month; or (ii) as a registered Nasdaq market maker, the member is registered in a daily average of 100 or more issues in a given month.]

* * * * *