


Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 24		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No. * SR 2025 - * 036 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 *). <div>A proposal to amend the Exchange's fee schedule to provide for two new credits for members that add more than a threshold amount of liquidity as well as act as designated liquidity providers for exchange traded products for a threshold number of securities during a month.</div>					
Contact Information Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action. First Name * Brett Last Name * Kitt Title * Vice President, Deputy General Counsel E-mail * Brett.Kitt@Nasdaq.com Telephone * (301) 978-8132 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 05/01/2025 (Title *) By John A. Zecca EVP and Chief Legal Officer (Name *) <div>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.</div> <div> Date: 2025.05.01 10:37:52 -04'00'</div>					

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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-2025-036 19b-4.docx		

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-2025-036 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 *

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

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

☐

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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

☐

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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SR-NASDAQ-2025-036 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

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

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend its fee schedule to provide for two new credits for members that add more than a threshold amount of liquidity as well as act as designated liquidity providers (“DLPs”) for exchange traded products (“ETPs”) for a threshold number of securities during a month, 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:

Brett Kitt
Vice President, Deputy General Counsel
Nasdaq, Inc.
301-978-8132

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to amend the Exchange's fee schedule, at Equity 7, Section 118(a), to provide for two new credits for members that add more than a threshold amount of liquidity as well as act as DLPs for ETPs for a threshold number of securities during a month.

Pursuant to Equity 7, Rule 114(f), the Exchange operates a DLP program to promote trading in ETPs. The DLP program provides fees and credits for execution of a Qualified Security by one of its DLPs. Rule 114(f)(1) defines Qualified Security as an ETP listed on Nasdaq Rules 5704, 5705, 5710, 5711, 5713, 5720, 5735, 5745, 5750, or 5760 and which has at least one DLP. As defined in Rule 114(f)(2), a DLP is a registered Exchange market maker for a Qualified Security that has committed to maintain specified minimum performance standards. The Rule provides that a DLP shall be selected by the Exchange based on factors including, but not limited to, experience with making markets in ETPs, adequacy of capital, willingness to promote the Exchange as a marketplace, issuer preference, operational capacity, support personnel, and history of adherence to Exchange rules and securities laws. Moreover, the Rule permits the Exchange to limit the number of DLPs in a security, or modify a previously established limit, upon prior written notice to members. Specific monthly performance criteria for DLPs are set forth in Rule 114(f)(4). As set forth in Rule 114(f)(5), the Exchange provides rebates to DLPs

that meet the specified criteria. Different rebate tiers apply to DLPs that qualify as “Primary DLPs” and “Secondary DLPs.”³

The Exchange now proposes to introduce two new tiers of standard transaction rebates in Equity 7, Section 118(a), that would apply to members that act as DLPs. The new rebates would supplement DLP program rebates set forth in Equity 7, Section 114(f). Both new rebate tiers would apply credits to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity (per share executed) as follows: (i) adds greater than a certain percentage of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs; and (ii) has at least a certain minimum number of monthly average assigned ETPs in its capacity as a Primary DLP. Specifically, the proposed rebate tiers are as follows:

	Tape A	Tape B	Tape C
Member that: (i) adds greater than 0.10% of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs; and (ii) has a minimum of 45 monthly average assigned ETPs in its capacity as a Primary DLP	\$0.0020	\$0.0025	\$0.0022
Member that: (i) adds greater than 0.15% of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs; and (ii) has a minimum of 50 monthly average assigned ETPs in its capacity as a Primary DLP	\$0.0020	\$0.0027	\$0.0023

The purpose of the two proposed rebate tiers is to provide further incentives to members to serve as DLPs for a substantial number of ETPs as well as to add liquidity to the Exchange. The proposals specifically target DLPs that add liquidity in ETPs in Tapes

³ As set forth in Equity 7, Rule 114(f)(4), Primary DLPs need to meet 4 of 5 Standard Market Quality Metrics in an assigned ETP, as measured by the Exchange, to qualify for a Standard Rebate, and all 5 Enhanced Market Quality Metrics in an assigned ETP, as measured by the Exchange, to qualify for an Enhanced Rebate. Secondary DLPs need only meet two Enhanced Market Quality Metrics, excluding an Auction Quality Requirements metric, to qualify for rebates.

B and C by providing higher rebates for securities in those Tapes than it does for those in Tape A. The proposals target ETPs in these Tapes B and C because the Exchange specifically desires to improve its competitiveness in trading ETPs in these two Tapes. The Exchange has limited resources to offer as incentives and it is reasonable and fair for it to allocate those limited resources to programs where they will serve the most valuable purpose. Moreover, the Exchange provides a higher tier of rebates to the extent that it acts as a DLP for a larger number of ETPs and adds more liquidity to the Exchange relative to a DLP in the lower tier.⁴

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 proposals are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market.

The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows:

⁴ The Exchange notes that its competitors, including Cboe's BZX exchange, also employ similar pricing programs to incent their members to serve as lead market makers for large numbers of ETPs. See Cboe BZX U.S. Equities Fee Schedule, at [https://www.cboe.com/us/equities/membership/fee_schedule/bzx/#:~:text=Tier%204,\(%240.0028\)](https://www.cboe.com/us/equities/membership/fee_schedule/bzx/#:~:text=Tier%204,(%240.0028)).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

“[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. The Exchange is also

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”).

subject to intense competition for retail order flow with off-exchange competitors, including wholesale market makers.

The Exchange's proposal to add these two new tiers of rebates is reasonable and an equitable allocation of fees and dues because the proposed tiers would incent activity that would improve the quality of the Exchange's ETP market. In particular, the proposals would incent members to act as DLPs for substantial numbers of ETPs listed on the Exchange as well as to add a substantial amount of liquidity to the Exchange. Incenting members act as DLPs for ETPs enhances market quality for those ETPs by helping to ensure that market makers are taking responsibility for quoting ETPs and for meeting market quality standards when doing so. Adding liquidity to the Exchange also enhances market quality by deepening the pool of liquidity available to market participants that transact on the Exchange.

The proposals are not unfairly discriminatory, even though they target incentives to DLPs and, in particular, for trading in ETPs in Tapes B and C. As noted above, the Exchange has scarce resources to apply to incentives, and it is fair for the Exchange to allocate those scarce resources to programs where there is a perceived need for increased or improved competitiveness or market activity. In this case, the Exchange has identified a need to be more competitive relative to other markets for trading ETPs in Tapes B and C. Moreover, the rebates will incent activity that will improve the overall quality of the Exchange's markets, to the benefit of all market participants. Thus, the proposal is fair.

Those participants that are dissatisfied with the proposals are free to shift their order flow to competing venues that provide more generous incentives or less stringent qualifying criteria.

The Exchange notes that the two rebate tiers that the Exchange proposes herein are voluntary. Moreover, nothing about the Exchange's volume-based tiered pricing model, as set forth in Equity 7, is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries – from co-branded credit cards to grocery stores to cellular telephone data plans – that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it enhances price discovery and improves the overall quality of the equity markets.

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 proposals will place any category of Exchange participant at a competitive disadvantage.

As noted above, the Exchange's intends for its proposed new rebate tiers to reallocate its limited resources more efficiently and for optimized effect, which in this instance is to incent DLP activity for ETPs in Tapes B and C. 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 proposals are 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 45% of industry volume.

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.⁹

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,¹⁰ 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.

⁹ As discussed above, the Exchange's competitors, including Cboe's BZX exchange, also employ similar pricing programs to incent their members to serve as lead market makers in substantial numbers of ETPs. See Cboe BZX U.S. Equities Fee Schedule, at [https://www.cboe.com/us/equities/membership/fee_schedule/bzx/#:~:text=Tier%204,\(%240.0028\)](https://www.cboe.com/us/equities/membership/fee_schedule/bzx/#:~:text=Tier%204,(%240.0028)).

¹⁰ 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-2025-036)

May __, 2025

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Exchange's Fee Schedule to Provide for Two New Credits For Members That Add More Than a Threshold Amount of Liquidity As Well as Act as Designated Liquidity Providers for Exchange Traded Products for a Threshold Number of Securities During a Month

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 May 1, 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 amend its fee schedule to provide for two new credits for members that add more than a threshold amount of liquidity as well as act as designated liquidity providers ("DLPs") for exchange traded products ("ETPs") for a threshold number of securities during a month, 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/rulefilings>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fee schedule, at Equity 7, Section 118(a), to provide for two new credits for members that add more than a threshold amount of liquidity as well as act as DLPs for ETPs for a threshold number of securities during a month.

Pursuant to Equity 7, Rule 114(f), the Exchange operates a DLP program to promote trading in ETPs. The DLP program provides fees and credits for execution of a Qualified Security by one of its DLPs. Rule 114(f)(1) defines Qualified Security as an ETP listed on Nasdaq Rules 5704, 5705, 5710, 5711, 5713, 5720, 5735, 5745, 5750, or 5760 and which has at least one DLP. As defined in Rule 114(f)(2), a DLP is a registered Exchange market maker for a Qualified Security that has committed to maintain specified minimum performance standards. The Rule provides that a DLP shall be selected by the Exchange based on factors including, but not limited to, experience with making markets in ETPs, adequacy of capital, willingness to promote the Exchange as a marketplace, issuer preference, operational capacity, support personnel, and history of adherence to Exchange rules and securities laws. Moreover, the Rule permits the Exchange to limit

the number of DLPs in a security, or modify a previously established limit, upon prior written notice to members. Specific monthly performance criteria for DLPs are set forth in Rule 114(f)(4). As set forth in Rule 114(f)(5), the Exchange provides rebates to DLPs that meet the specified criteria. Different rebate tiers apply to DLPs that qualify as “Primary DLPs” and “Secondary DLPs.”³

The Exchange now proposes to introduce two new tiers of standard transaction rebates in Equity 7, Section 118(a), that would apply to members that act as DLPs. The new rebates would supplement DLP program rebates set forth in Equity 7, Section 114(f). Both new rebate tiers would apply credits to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity (per share executed) as follows: (i) adds greater than a certain percentage of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs; and (ii) has at least a certain minimum number of monthly average assigned ETPs in its capacity as a Primary DLP. Specifically, the proposed rebate tiers are as follows:

	Tape A	Tape B	Tape C
Member that: (i) adds greater than 0.10% of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs; and (ii) has a minimum of 45 monthly average assigned ETPs in its capacity as a Primary DLP	\$0.0020	\$0.0025	\$0.0022
Member that: (i) adds greater than 0.15% of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs; and (ii) has a minimum of 50 monthly average assigned ETPs in its capacity as a Primary DLP	\$0.0020	\$0.0027	\$0.0023

³ As set forth in Equity 7, Rule 114(f)(4), Primary DLPs need to meet 4 of 5 Standard Market Quality Metrics in an assigned ETP, as measured by the Exchange, to qualify for a Standard Rebate, and all 5 Enhanced Market Quality Metrics in an assigned ETP, as measured by the Exchange, to qualify for an Enhanced Rebate. Secondary DLPs need only meet two Enhanced Market Quality Metrics, excluding an Auction Quality Requirements metric, to qualify for rebates.

The purpose of the two proposed rebate tiers is to provide further incentives to members to serve as DLPs for a substantial number of ETPs as well as to add liquidity to the Exchange. The proposals specifically target DLPs that add liquidity in ETPs in Tapes B and C by providing higher rebates for securities in those Tapes than it does for those in Tape A. The proposals target ETPs in these Tapes B and C because the Exchange specifically desires to improve its competitiveness in trading ETPs in these two Tapes. The Exchange has limited resources to offer as incentives and it is reasonable and fair for it to allocate those limited resources to programs where they will serve the most valuable purpose. Moreover, the Exchange provides a higher tier of rebates to the extent that a acts as a DLP for a larger number of ETPs and adds more liquidity to the Exchange relative to a DLP in the lower tier.⁴

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

⁴ The Exchange notes that its competitors, including Cboe's BZX exchange, also employ similar pricing programs to incent their members to serve as lead market makers for large numbers of ETPs. See Cboe BZX U.S. Equities Fee Schedule, at [https://www.cboe.com/us/equities/membership/fee_schedule/bzx/#:~:text=Tier%204,\(%240.0028\)](https://www.cboe.com/us/equities/membership/fee_schedule/bzx/#:~:text=Tier%204,(%240.0028)).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

securities transaction services that constrain its pricing determinations in that market.

The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows:

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

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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. The Exchange is also subject to intense competition for retail order flow with off-exchange competitors, including wholesale market makers.

The Exchange's proposal to add these two new tiers of rebates is reasonable and an equitable allocation of fees and dues because the proposed tiers would incent activity that would improve the quality of the Exchange's ETP market. In particular, the proposals would incent members to act as DLPs for substantial numbers of ETPs listed on the Exchange as well as to add a substantial amount of liquidity to the Exchange. Incenting members act as DLPs for ETPs enhances market quality for those ETPs by helping to ensure that market makers are taking responsibility for quoting ETPs and for meeting market quality standards when doing so. Adding liquidity to the Exchange also enhances market quality by deepening the pool of liquidity available to market participants that transact on the Exchange.

The proposals are not unfairly discriminatory, even though they target incentives to DLPs and, in particular, for trading in ETPs in Tapes B and C. As noted above, the Exchange has scarce resources to apply to incentives, and it is fair for the Exchange to allocate those scarce resources to programs where there is a perceived need for increased or improved competitiveness or market activity. In this case, the Exchange has identified a need to be more competitive relative to other markets for trading ETPs in Tapes B and C. Moreover, the rebates will incent activity that will improve the overall quality of the Exchange's markets, to the benefit of all market participants. Thus, the proposal is fair.

Those participants that are dissatisfied with the proposals are free to shift their order flow to competing venues that provide more generous incentives or less stringent qualifying criteria.

The Exchange notes that the two rebate tiers that the Exchange proposes herein are voluntary. Moreover, nothing about the Exchange's volume-based tiered pricing model, as set forth in Equity 7, is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries – from co-branded credit cards to grocery stores to cellular telephone data plans – that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it enhances price discovery and improves the overall quality of the equity markets.

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 proposals will place any category of Exchange participant at a competitive disadvantage.

As noted above, the Exchange's intends for its proposed new rebate tiers to reallocate its limited resources more efficiently and for an optimized effect, which in this instance is to incent DLP activity for ETPs in Tapes B and C. 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 proposals are 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 45% of industry volume.

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.⁹

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.¹⁰

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 As discussed above, the Exchange's competitors, including Cboe's BZX exchange, also employ similar pricing programs to incent their members to serve as lead market makers in substantial numbers of ETPs. See Cboe BZX U.S. Equities Fee Schedule, at [https://www.cboe.com/us/equities/membership/fee_schedule/bzx/#:~:text=Tier%204,\(%240.0028\)](https://www.cboe.com/us/equities/membership/fee_schedule/bzx/#:~:text=Tier%204,(%240.0028)).

¹⁰ 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-2025-036 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-2025-036. 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-2025-036 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.¹¹

Sherry R. Haywood,

Assistant Secretary.

¹¹ 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

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Equity 7: Pricing Schedule

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Section 118. Nasdaq Market Center Order Execution and Routing

(a) ...

(1) Fees for Execution and Routing of Orders

...			
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 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:	\$0.0030	\$0.0030	\$0.0030
<u>Member that: (i) adds greater than 0.10% of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs; and (ii) has a minimum of 45 monthly average assigned ETPs in its capacity as a Primary DLP</u>	<u>\$0.0020</u>	<u>\$0.0025</u>	<u>\$0.0022</u>
<u>Member that: (i) adds greater than 0.15% of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs; and (ii) has a minimum of 50 monthly average assigned ETPs in its capacity as a Primary DLP</u>	<u>\$0.0020</u>	<u>\$0.0027</u>	<u>\$0.0023</u>

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