

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="35"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2019"/> - * <input type="text" value="101"/> Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by The Nasdaq Stock Market LLC
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

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

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

A proposal to amend the Exchange transaction fees at Equity 7, Section 118(a) to raise the qualifying thresholds for several of the Exchange credits for displayed orders/quotes that provide liquidity to the Exchange and to eliminate one such credit.

Contact Information

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

First Name * Last Name *

Title *

E-mail *

Telephone * Fax

Signature

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

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

(Title *)

Date Executive Vice President and Chief Legal Officer

By

(Name *)

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

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

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

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

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

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

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

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s transaction fees at Equity 7, Section 118(a) to raise the qualifying thresholds for several of the Exchange’s credits for displayed orders/quotes that provide liquidity to the Exchange and to eliminate one such credit, as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 2, 2020.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on September 25, 2019. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

Brett Kitt
Senior Associate General Counsel

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Nasdaq, Inc.
(301) 978-8132.

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

a. Purpose

The Exchange proposes to amend the schedule of credits it provides to members, pursuant to Equity 7, Section 118(a), in several respects.

First, the Exchange proposes to amend its schedule of credits by raising the volume thresholds to qualify for four of the credits it provides to its members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange, as follows:

- For Orders in securities in each of Tapes A, B, and C, the Exchange presently provides a \$0.0029 per share executed credit to a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.60% of Consolidated Volume³ during the month. The Exchange proposes to raise the qualifying volume threshold for this credit from 0.60% to 0.70% of Consolidated Volume.
- For Orders in securities in each of Tapes A, B, and C, the Exchange presently provides a \$0.0029 per share executed credit to a member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.70% of

³ As used in Equity 7, Section 118(a), the term "Consolidated Volume" means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot.

Consolidated Volume during the month and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.50% of Consolidated Volume during the month. The Exchange proposes to raise the first of these qualifying volume thresholds for this credit from 0.70% to 0.80% of Consolidated Volume and the second threshold from 0.50% to 0.60% of Consolidated Volume.

- For Orders in securities in each of Tapes A, B, and C, the Exchange presently provides a \$0.0028 per share executed credit to a member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.60% of Consolidated Volume during the month, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.225% of Consolidated Volume during the month. The Exchange proposes to raise the first of these qualifying volume thresholds for this credit from 0.60% to 0.75% of Consolidated Volume and the second threshold from 0.225% to 0.35% of Consolidated Volume.
- For Orders in securities in each of Tapes A, B, and C, the Exchange presently provides a \$0.0027 per share executed credit to a member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.50% of Consolidated Volume during the month, and (ii) with shares of liquidity

provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.175% of Consolidated Volume during the month. The Exchange proposes to raise the first of these qualifying volume thresholds for this credit from 0.50% to 0.60% of Consolidated Volume and the second threshold from 0.175% to 0.25% of Consolidated Volume.

For each of the foregoing credits, the Exchange intends to raise qualifying volumes to incentivize members to increase the extent of their liquidity adding activity to qualify for and to continue to qualify for these credits.

Second, the Exchange proposes to eliminate its \$0.0026 per share executed credit that it presently provides to a member (i) with shares of liquidity provided in securities that are listed on exchanges other than Nasdaq or NYSE through one or more of its Nasdaq Market Center MPIDs that represents at least 800,000 shares a day on average during the month and (ii) doubles the daily average share volume provided in securities that are listed on exchanges other than Nasdaq or NYSE through one or more of its Nasdaq Market Center MPIDs during the month versus the member's daily average share volume provided in securities that are listed on exchanges other than Nasdaq or NYSE in January 2017. The Exchange has observed that historically, few members have received this credit, with little associated volume, and it has not served to meaningfully increase activity on the Exchange or improve the quality of the market. The Exchange therefore proposes to eliminate it.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁵ 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 proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal is Reasonable

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

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'”⁶

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.”⁷

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

⁶ 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)).

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

In particular, the Exchange proposes to raise the volume thresholds to qualify for two of its \$0.0029 per share executed credits and its \$0.0028 and \$0.0027 per share executed credits because as Nasdaq has grown over time, the activity of members that currently qualify for these credits has also grown, such that an increase in credit qualifying criteria is now needed to ensure that this credit remains relevant to current levels of liquidity providing activity on the Exchange. To the extent that this proposal results in an increase in liquidity adding activity on the Exchange, this will improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants.

Nasdaq also believes that it is reasonable to eliminate its \$0.0026 per share executed credit because few members historically have received the credit (and only one member currently receives it), related volume is low, and it has not served to meaningfully increase volume or market quality.

The Exchange notes that those participants that are dissatisfied with the proposed amended credits are free to shift their order flow to competing venues.

The Proposal is an Equitable Allocation of Charges

The Exchange believes its proposal will allocate its charges fairly among its market participants. It is equitable for the Exchange to raise the qualification requirement for the two \$0.0029 per share executed credits and the \$0.0028 and \$0.0027 per share executed credits because as Nasdaq has grown, the activity of members that currently qualify for these credits has also grown, such that an increase in credit qualifying criteria is now needed to ensure this credit remains relevant to current levels of liquidity providing activity on the Exchange. The Exchange anticipates that all members that

currently qualify for these credits will continue to do so under the proposals. The Exchange notes that any increase in liquidity providing activity on the Exchange that ensues from its proposals will improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants.

Likewise, the Exchange believes that it is equitable to eliminate the \$0.0026 per share executed credit because few members have received this credit historically (only one receives it presently) and it has not prompted a meaningful increase in volume or market quality. The one member that would be affected by the elimination of the credit may seek to qualify for other credits that the Exchange offers.

The Proposed Amended Credits are not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries – from co-branded credit cards to grocery stores to cellular telephone data plans – that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

Although the Exchange's proposal to raise the qualifying criteria for its two \$0.0029 per share executed credits and its \$0.0028 and \$0.0027 per share executed credits will require members to add more liquidity than is currently required to qualify for

these credits, any resulting increase in liquidity to the market will improve market-wide quality and price discovery, to the benefit all market participants.

Additionally, the Exchange believes that elimination of its \$0.0026 per share executed credit is not unfairly discriminatory. Historically, only a few members have received the credit, and only one member presently qualifies for it and would be affected by its elimination. Elimination of the credit for this member would not be unfair, however, because the credit has not fulfilled its intended purpose of prompting meaningful increases in volume or market quality. Moreover, elimination of the credit from the rule book will allow the Exchange to consider new, more effective incentives.

Finally, the Exchange notes that any participant that does not find the amended credits to be sufficiently attractive is free to shift its order flow to a competing venue.

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.

The Exchange's proposals to raise the qualification requirements for two \$0.0029 per share executed credits and the \$0.0028 and \$0.0027 per share executed credits will not disadvantage any category of member because all members that currently qualify for these credits will continue to do so under the proposed changes. Furthermore, all members of the Exchange will benefit from any increase in market activity that the proposals effectuates.

The Exchange's proposal to eliminate the \$0.0026 per share executed credit will not place any undue burden on competition. Although elimination of the credit would impact the one member that currently receives it, that member may seek to mitigate the effects of the loss of the credit by qualifying for other similar credits that the Exchange offers. Any residual burden that the proposal imposes on this member is outweighed by the fact that the credit has not served its intended purpose of incentivizing a broader population of members to increase their market-improving participation.

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

Intermarket Competition

The Exchange believes that its proposed modification to its schedule of credits will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 32 alternative trading systems. 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 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 credit changes in this market may impose any burden on competition is extremely limited.

The proposed amended credits are reflective of this competition because, even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 38% of industry volume for the month of November 2019.

The Exchange's proposals to raise the qualification requirement for its two \$0.0029 per share executed credits and its \$0.0028 and \$0.0027 per share executed credits per share executed credit are pro-competitive in that the Exchange intends for them to increase liquidity on the Exchange and thereby render the Exchange a more attractive and vibrant venue to market participants.

As discussed above, the Exchange's proposal to eliminate its \$0.0026 per share executed credit will not meaningfully impact intermarket competition. Only one member currently receives the credit.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange

does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,⁸ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

Not applicable.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2019-101)

December __, 2019

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Transaction Fees at Equity 7, Section 118(a)

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 December 23, 2019, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Exchange's transaction fees at Equity 7, Section 118(a) to amend the Exchange's transaction fees at Equity 7, Section 118(a) to raise the qualifying thresholds for several of the Exchange's credits for displayed orders/quotes that provide liquidity to the Exchange and to eliminate one such credit, as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 2, 2020.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

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

1. Purpose

The Exchange proposes to amend the schedule of credits it provides to members, pursuant to Equity 7, Section 118(a), in several respects.

First, the Exchange proposes to amend its schedule of credits by raising the volume thresholds to qualify for four of the credits it provides to its members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange, as follows:

- For Orders in securities in each of Tapes A, B, and C, the Exchange presently provides a \$0.0029 per share executed credit to a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.60% of

Consolidated Volume³ during the month. The Exchange proposes to raise the qualifying volume threshold for this credit from 0.60% to 0.70% of Consolidated Volume.

- For Orders in securities in each of Tapes A, B, and C, the Exchange presently provides a \$0.0029 per share executed credit to a member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.70% of Consolidated Volume during the month and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.50% of Consolidated Volume during the month. The Exchange proposes to raise the first of these qualifying volume thresholds for this credit from 0.70% to 0.80% of Consolidated Volume and the second threshold from 0.50% to 0.60% of Consolidated Volume.
- For Orders in securities in each of Tapes A, B, and C, the Exchange presently provides a \$0.0028 per share executed credit to a member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.60% of Consolidated Volume during the month, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center

³ As used in Equity 7, Section 118(a), the term "Consolidated Volume" means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot.

MPIDs that represent more than 0.225% of Consolidated Volume during the month. The Exchange proposes to raise the first of these qualifying volume thresholds for this credit from 0.60% to 0.75% of Consolidated Volume and the second threshold from 0.225% to 0.35% of Consolidated Volume.

- For Orders in securities in each of Tapes A, B, and C, the Exchange presently provides a \$0.0027 per share executed credit to a member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.50% of Consolidated Volume during the month, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.175% of Consolidated Volume during the month. The Exchange proposes to raise the first of these qualifying volume thresholds for this credit from 0.50% to 0.60% of Consolidated Volume and the second threshold from 0.175% to 0.25% of Consolidated Volume.

For each of the foregoing credits, the Exchange intends to raise qualifying volumes to incentivize members to increase the extent of their liquidity adding activity to qualify for and to continue to qualify for these credits.

Second, the Exchange proposes to eliminate its \$0.0026 per share executed credit that it presently provides to a member (i) with shares of liquidity provided in securities that are listed on exchanges other than Nasdaq or NYSE through one or more of its Nasdaq Market Center MPIDs that represents at least 800,000 shares a day on average

during the month and (ii) doubles the daily average share volume provided in securities that are listed on exchanges other than Nasdaq or NYSE through one or more of its Nasdaq Market Center MPIDs during the month versus the member's daily average share volume provided in securities that are listed on exchanges other than Nasdaq or NYSE in January 2017. The Exchange has observed that historically, few members have received this credit, with little associated volume, and it has not served to meaningfully increase activity on the Exchange or improve the quality of the market. The Exchange therefore proposes to eliminate it.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁵ 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 proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal is Reasonable

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

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

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’”⁶

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.”⁷

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

⁶ 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)).

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

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.

In particular, the Exchange proposes to raise the volume thresholds to qualify for two of its \$0.0029 per share executed credits and its \$0.0028 and \$0.0027 per share executed credits because as Nasdaq has grown over time, the activity of members that currently qualify for these credits has also grown, such that an increase in credit qualifying criteria is now needed to ensure that this credit remains relevant to current levels of liquidity providing activity on the Exchange. To the extent that this proposal results in an increase in liquidity adding activity on the Exchange, this will improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants.

Nasdaq also believes that it is reasonable to eliminate its \$0.0026 per share executed credit because few members historically have received the credit (and only one member currently receives it), related volume is low, and it has not served to meaningfully increase volume or market quality.

The Exchange notes that those participants that are dissatisfied with the proposed amended credits are free to shift their order flow to competing venues.

The Proposal is an Equitable Allocation of Charges

The Exchange believes its proposal will allocate its charges fairly among its market participants. It is equitable for the Exchange to raise the qualification requirement

for the two \$0.0029 per share executed credits and the \$0.0028 and \$0.0027 per share executed credits because as Nasdaq has grown, the activity of members that currently qualify for these credits has also grown, such that an increase in credit qualifying criteria is now needed to ensure this credit remains relevant to current levels of liquidity providing activity on the Exchange. The Exchange anticipates that all members that currently qualify for these credits will continue to do so under the proposals. The Exchange notes that any increase in liquidity providing activity on the Exchange that ensues from its proposals will improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants.

Likewise, the Exchange believes that it is equitable to eliminate the \$0.0026 per share executed credit because few members have received this credit historically (only one receives it presently) and it has not prompted a meaningful increase in volume or market quality. The one member that would be affected by the elimination of the credit may seek to qualify for other credits that the Exchange offers.

The Proposed Amended Credits are not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries – from co-branded credit cards to grocery stores to cellular telephone data plans – that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the

Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

Although the Exchange's proposal to raise the qualifying criteria for its two \$0.0029 per share executed credits and its \$0.0028 and \$0.0027 per share executed credits will require members to add more liquidity than is currently required to qualify for these credits, any resulting increase in liquidity to the market will improve market-wide quality and price discovery, to the benefit all market participants.

Additionally, the Exchange believes that elimination of its \$0.0026 per share executed credit is not unfairly discriminatory. Historically, only a few members have received the credit, and only one member presently qualifies for it and would be affected by its elimination. Elimination of the credit for this member would not be unfair, however, because the credit has not fulfilled its intended purpose of prompting meaningful increases in volume or market quality. Moreover, elimination of the credit from the rule book will allow the Exchange to consider new, more effective incentives.

Finally, the Exchange notes that any participant that does not find the amended credits to be sufficiently attractive is free to shift its order flow to a competing venue.

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.

The Exchange's proposals to raise the qualification requirements for two \$0.0029 per share executed credits and the \$0.0028 and \$0.0027 per share executed credits will not disadvantage any category of member because all members that currently qualify for these credits will continue to do so under the proposed changes. Furthermore, all members of the Exchange will benefit from any increase in market activity that the proposals effectuates.

The Exchange's proposal to eliminate the \$0.0026 per share executed credit will not place any undue burden on competition. Although elimination of the credit would impact the one member that currently receives it, that member may seek to mitigate the effects of the loss of the credit by qualifying for other similar credits that the Exchange offers. Any residual burden that the proposal imposes on this member is outweighed by the fact that the credit has not served its intended purpose of incentivizing a broader population of members to increase their market-improving participation.

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

Intermarket Competition

The Exchange believes that its proposed modification to its schedule of credits will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live

exchanges and from off-exchange venues, which include 32 alternative trading systems. 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 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 credit changes in this market may impose any burden on competition is extremely limited.

The proposed amended credits are reflective of this competition because, even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 38% of industry volume for the month of November 2019.

The Exchange's proposals to raise the qualification requirement for its two \$0.0029 per share executed credits and its \$0.0028 and \$0.0027 per share executed credits per share executed credit are pro-competitive in that the Exchange intends for

them to increase liquidity on the Exchange and thereby render the Exchange a more attractive and vibrant venue to market participants.

As discussed above, the Exchange's proposal to eliminate its \$0.0026 per share executed credit will not meaningfully impact intermarket competition. Only one member currently receives the credit.

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

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.⁸

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

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2019-101 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-2019-101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing

also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2019-101 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Jill M. Peterson
Assistant Secretary

⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The Nasdaq Stock Market Rules

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Equity Rules

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Equity 7 Pricing Schedule

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Section 118. Nasdaq Market Center Order Execution and Routing

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

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

...

Credit to member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity:

...

[member (i) with shares of liquidity provided in securities that are listed on exchanges other than Nasdaq or NYSE through one or more of its Nasdaq Market Center MPIDs that represents at least 800,000 shares a day on average during the month and (ii) doubles the daily average share] [\$0.0026 per share executed]

volume provided in securities that are listed on exchanges other than Nasdaq or NYSE through one or more of its Nasdaq Market Center MPIDs during the month versus the member's daily average share volume provided in securities that are listed on exchanges other than Nasdaq or NYSE in January 2017:]

...

member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[6]70% of Consolidated Volume during the month: \$0.0029 per share executed

member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[7]80% of Consolidated Volume during the month, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[5]60% of Consolidated Volume during the month: \$0.0029 per share executed

member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[60]75% of Consolidated Volume during the month, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[225]35% of Consolidated Volume during the month: \$0.0028 per share executed

...

member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than \$0.0027 per share executed

0.[5]60% of Consolidated Volume during the month, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[175]25% of Consolidated Volume during the month:

...

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

...

Credit to member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity:

...

<p>[member (i) with shares of liquidity provided in securities that are listed on exchanges other than Nasdaq or NYSE through one or more of its Nasdaq Market Center MPIDs that represents at least 800,000 shares a day on average during the month and (ii) doubles the daily average share volume provided in securities that are listed on exchanges other than Nasdaq or NYSE through one or more of its Nasdaq Market Center MPIDs during the month versus the member's daily average share volume provided in securities that are listed on exchanges other than Nasdaq or NYSE in January 2017:]</p>	<p>[\$0.0026 per share executed]</p>
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...

<p>member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[6]70% of Consolidated Volume during the month:</p>	<p>\$0.0029 per share executed</p>
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<p>member (i) with shares of liquidity accessed in all securities through one</p>	<p>\$0.0029 per share executed</p>
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or more of its Nasdaq Market Center MPIDs that represent more than 0.[7]80% of Consolidated Volume during the month, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[5]60% of Consolidated Volume during the month:

member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[60]75% of Consolidated Volume during the month, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[225]35% of Consolidated Volume during the month:

\$0.0028 per share executed

...

member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[5]60% of Consolidated Volume during the month, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[175]25% of Consolidated Volume during the month:

\$0.0027 per share executed

...

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

...

Credit to member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity:

...

[member (i) with shares of liquidity provided in securities that are listed on exchanges other than Nasdaq or NYSE through one or more of its Nasdaq Market Center MPIDs that represents at least 800,000 shares a day on average during the month and (ii) doubles the daily average share volume provided in securities that are listed on exchanges other than Nasdaq or NYSE through one or more of its Nasdaq Market Center MPIDs during the month versus the member's daily average share volume provided in securities that are listed on exchanges other than Nasdaq or NYSE in January 2017:] [\$0.0026 per share executed]

...

member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[6]70% of Consolidated Volume during the month: \$0.0029 per share executed

member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[7]80% of Consolidated Volume during the month, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[5]60% of Consolidated Volume during the month: \$0.0029 per share executed

member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[60]75% of \$0.0028 per share executed

Consolidated Volume during the month, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[225]35% of Consolidated Volume during the month:

...

member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[5]60% of Consolidated Volume during the month, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.[175]25% of Consolidated Volume during the month:

\$0.0027 per share executed

...

* * * * *