

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 20

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

File No. \* SR 2024 - \* 002

Amendment No. (req. for Amendments \*)

Filing by The Nasdaq Stock Market LLC

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

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

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

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

Section 806(e)(2) \*

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

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

**Description**

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

A proposal to amend the Exchanges Membership Fee at Equity 7, Section 10.

**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 \* Jonathan Last Name \* Cayne

Title \* Principal Associate General Counsel

E-mail \* Jonathan.cayne@nasdaq.com

Telephone \* (301) 978-8493 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 01/02/2024 (Title \*)

By John Zecca EVP and Chief Legal Officer  
(Name \*)

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

 Date: 2024.01.02 11:11:14 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

Add Remove View

SR-NASDAQ-2024-002 19b-4.doc

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

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

Add Remove View

SR-NASDAQ-2024-002 Exhibit 1.doc

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

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

Add Remove View

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

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

Add Remove View

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

Exhibit Sent As Paper Document

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

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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**

Add Remove View

SR-NASDAQ-2024-002 Exhibit 5.doc

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

**Partial Amendment**

Add Remove View

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

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s Membership Fee at Equity 7, Section 10, 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:

Jonathan F. Cayne  
Principal Associate General Counsel  
Nasdaq, Inc.  
(301) 978-8493

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to amend the Exchange’s Membership Fee at Equity 7, Section 10. Specifically, the Exchange proposes to increase its annual membership fee (“Annual Membership Fee”) from \$3,000 per year to \$4,000 per year. This fee is assessed on all Nasdaq members on an annual basis.

Nasdaq has not increased its Annual Membership Fee since 2007.<sup>3</sup> The Exchange believes the proposed modest fee increase is warranted to ensure that its Annual Membership Fee better reflects the current value of being a member of the Exchange rather than the value when the Annual Membership Fee was last increased to \$3,000 per year more than 15 years ago. The Exchange believes that its ability to deliver value to its customers through technology, liquidity and functionality merits the proposed change to its Annual Membership Fee. The membership team also provides ongoing support to Exchange members with respect to membership changes, registration, and other questions that commonly arise from Exchange members regarding such matters.

Even with the proposed fee increase, the cost of Nasdaq membership is lower than the cost of membership in other SROs such as the Long-Term Stock Exchange, Inc. (“LTSE”).<sup>4</sup>

Ultimately, Exchange membership is voluntary and if Nasdaq is incorrect in its determination that the proposed Annual Membership Fee change reflects the value of

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<sup>3</sup> See Exchange Act Release No. 56617 (Oct. 4, 2007), 72 FR 58142 (Oct. 12, 2007) (SR-NASDAQ-2007-083).

<sup>4</sup> See, e.g., Long-Term Stock Exchange, Inc. Rule 15.200(a) (Annual Membership Fee) at [https://assets-global.website-files.com/6462417e8db99f8baa06952c/64cd4f221126981fa31652b3\\_LTSE%20Rule%20Book%20through%20June%209%202023%20\(SR-LTSE-2023-01%20Amendment%20No.%202\).pdf](https://assets-global.website-files.com/6462417e8db99f8baa06952c/64cd4f221126981fa31652b3_LTSE%20Rule%20Book%20through%20June%209%202023%20(SR-LTSE-2023-01%20Amendment%20No.%202).pdf).

Exchange membership, then any Exchange member that is dissatisfied with the proposal can choose not to be a member of the Exchange and send its order flow to another exchange.

b. Statutory Basis

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

The Exchange believes its proposal to increase its Annual Membership Fee from \$3,000 per year to \$4,000 per year is reasonable, equitable and not unfairly discriminatory. Nasdaq believes that this modest increase is an equitable method of ensuring that its Annual Membership Fee better reflects the value of the services it provides its membership. Nasdaq also believes the proposed modest increase of Nasdaq membership is reasonable since it has not been increased since 2007 and, even following the proposed increase to its Annual Membership Fee, the cost of Nasdaq membership still is less than those of other SROs.<sup>7</sup> Additionally, the Exchange believes that the proposed change is both an equitable allocation and is not designed to permit unfair discrimination between Exchange members because the fee is applied equally to all Exchange members.

The decision to become a member of an exchange is complex, and not solely based on the non-transactional costs assessed by an exchange. Becoming a member of an

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

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>7</sup> Supra note 4.

exchange does not “lock” a potential member into a market or diminish the overall competition for exchange services. The decision to become a member of an exchange is no less subject to competition than trading fees.

In 2022, MEMX LLC (“MEMX”) commenced assessing a monthly membership fee.<sup>8</sup> MEMX reasoned in that rule change that there is value in becoming a member of the exchange.<sup>9</sup> MEMX stated that it believed that its proposed membership fee “is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange.”<sup>10</sup> In this respect, MEMX is correct; a membership fee is reasonable, equitably allocated and not unfairly discriminatory. Market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, Nasdaq is but one choice. Additionally, any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange.

The Exchange’s proposal to increase its Annual Membership Fee from \$3,000 per year to \$4,000 per year is reasonable, equitable and not unfairly discriminatory. As a self-regulatory organization, Nasdaq’s membership department reviews existing members and new applicants to ensure that each complies with its rules and regulations, as well as other requirements for membership. New applicants must also meet the Exchange’s qualification criteria prior to approval. The membership review includes, but is not limited to, the registration and qualification of associated persons, financial health, the

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<sup>8</sup> See Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19). In 2023, MEMX filed to establish fees for members of its options exchange. See Securities Exchange Act Release No. 98648 (September 29, 2023), 88 FR 68762 (October 4, 2023) (SR-MEMX-2023-26).

<sup>9</sup> Id.

<sup>10</sup> Id.

validity of the required clearing relationship, and the history of disciplinary matters. All members are required to comply with the Exchange's By-Laws and Rules and are subject to regulation by Nasdaq.

As noted above, if the Exchange is incorrect in its determination that the proposed Annual Membership Fee change reflects the value of Exchange membership, then any Exchange member that is dissatisfied with the proposal may voluntarily decide whether membership to the Exchange is worthwhile and has the option of sending order flow to another exchange.

#### 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. Nasdaq believes that the proposed modest fee increase to its Annual Membership Fee proves unattractive to market participants, it is likely that Nasdaq will experience a decline in membership as a result.

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. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem annual membership fees levels at a particular venue to be excessive or opportunities available at other venues to be more favorable. Because competitors are free to modify their own annual membership fees in response, the Exchange believes that the degree to which annual membership fees changes in this market may impose any burden on competition is extremely limited.

The Exchange notes that other markets have adopted membership fees. MEMX recently reasoned that it should be permitted to adopt membership fees because MEMX's

proposed membership fees would be lower than the cost of membership on other exchanges, and therefore,

...may stimulate intramarket competition by attracting additional firms to become Members on the Exchange or at least should not deter interested participants from joining the Exchange. In addition, membership fees are subject to competition from other exchanges. Accordingly, if the changes proposed herein are unattractive to market participants, it is likely the Exchange will see a decline in membership as a result. The proposed fee change will not impact intermarket competition because it will apply to all Members equally. The Exchange operates in a highly competitive market in which market participants can determine whether or not to join the Exchange based on the value received compared to the cost of joining and maintaining membership on the Exchange.”<sup>11</sup>

As noted above, Nasdaq’s Annual Membership Fee would remain substantially lower than the analogous fees of LTSE,<sup>12</sup> and membership fees are subject to competition from other exchanges. Accordingly, if the Annual Membership Fee change proposed herein is unattractive to market participants, it is likely that Nasdaq will experience a decline in membership as a result.

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.<sup>13</sup> Nasdaq does not believe that the proposed rule change places an unnecessary burden on competition because it is a modest fee increase for a fee that has remained unchanged since 2007 and that will now better reflect the value of the services it provides its membership.

Accordingly, any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange.

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<sup>11</sup> See Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19).

<sup>12</sup> Supra note 4.

<sup>13</sup> 15 U.S.C. 78f(b)(8).



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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>14</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2024-002)

January \_\_, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Membership Fee at Equity 7, Section 10

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 2, 2024, 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 Membership Fee at Equity 7, Section 10.

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

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 Membership Fee at Equity 7, Section 10. Specifically, the Exchange proposes to increase its annual membership fee ("Annual Membership Fee") from \$3,000 per year to \$4,000 per year.

This fee is assessed on all Nasdaq members on an annual basis.

Nasdaq has not increased its Annual Membership Fee since 2007.<sup>3</sup> The Exchange believes the proposed modest fee increase is warranted to ensure that its Annual Membership Fee better reflects the current value of being a member of the Exchange rather than the value when the Annual Membership Fee was last increased to \$3,000 per year more than 15 years ago. The Exchange believes that its ability to deliver value to its customers through technology, liquidity and functionality merits the proposed change to its Annual Membership Fee. The membership team also provides ongoing support to Exchange members with respect to membership changes, registration, and other questions that commonly arise from Exchange members regarding such matters.

Even with the proposed fee increase, the cost of Nasdaq membership is lower than the cost of membership in other SROs such as the Long-Term Stock Exchange, Inc.

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<sup>3</sup> See Exchange Act Release No. 56617 (Oct. 4, 2007), 72 FR 58142 (Oct. 12, 2007) (SR-NASDAQ-2007-083).

(“LTSE”).<sup>4</sup>

Ultimately, Exchange membership is voluntary and if Nasdaq is incorrect in its determination that the proposed Annual Membership Fee change reflects the value of Exchange membership, then any Exchange member that is dissatisfied with the proposal can choose not to be a member of the Exchange and send its order flow to another exchange.

## 2. Statutory Basis

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

The Exchange believes its proposal to increase its Annual Membership Fee from \$3,000 per year to \$4,000 per year is reasonable, equitable and not unfairly discriminatory. Nasdaq believes that this modest increase is an equitable method of ensuring that its Annual Membership Fee better reflects the value of the services it provides its membership. Nasdaq also believes the proposed modest increase of Nasdaq membership is reasonable since it has not been increased since 2007 and, even following the proposed increase to its Annual Membership Fee, the cost of Nasdaq membership still

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<sup>4</sup> See, e.g., Long-Term Stock Exchange, Inc. Rule 15.200(a) (Annual Membership Fee) at [https://assets-global.website-files.com/6462417e8db99f8baa06952c/64cd4f221126981fa31652b3\\_LTSE%20Rule%20Book%20through%20June%209%202023%20\(SR-LTSE-2023-01%20Amendment%20No.%202\).pdf](https://assets-global.website-files.com/6462417e8db99f8baa06952c/64cd4f221126981fa31652b3_LTSE%20Rule%20Book%20through%20June%209%202023%20(SR-LTSE-2023-01%20Amendment%20No.%202).pdf).

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

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

is less than those of other SROs.<sup>7</sup> Additionally, the Exchange believes that the proposed change is both an equitable allocation and is not designed to permit unfair discrimination between Exchange members because the fee is applied equally to all Exchange members.

The decision to become a member of an exchange is complex, and not solely based on the non-transactional costs assessed by an exchange. Becoming a member of an exchange does not “lock” a potential member into a market or diminish the overall competition for exchange services. The decision to become a member of an exchange is no less subject to competition than trading fees.

In 2022, MEMX LLC (“MEMX”) commenced assessing a monthly membership fee.<sup>8</sup> MEMX reasoned in that rule change that there is value in becoming a member of the exchange.<sup>9</sup> MEMX stated that it believed that its proposed membership fee “is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange.”<sup>10</sup> In this respect, MEMX is correct; a membership fee is reasonable, equitably allocated and not unfairly discriminatory. Market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, Nasdaq is but one choice. Additionally, any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange.

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<sup>7</sup> Supra note 4.

<sup>8</sup> See Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19). In 2023, MEMX filed to establish fees for members of its options exchange. See Securities Exchange Act Release No. 98648 (September 29, 2023), 88 FR 68762 (October 4, 2023) (SR-MEMX-2023-26).

<sup>9</sup> Id.

<sup>10</sup> Id.

The Exchange's proposal to increase its Annual Membership Fee from \$3,000 per year to \$4,000 per year is reasonable, equitable and not unfairly discriminatory. As a self-regulatory organization, Nasdaq's membership department reviews existing members and new applicants to ensure that each complies with its rules and regulations, as well as other requirements for membership. New applicants must also meet the Exchange's qualification criteria prior to approval. The membership review includes, but is not limited to, the registration and qualification of associated persons, financial health, the validity of the required clearing relationship, and the history of disciplinary matters. All members are required to comply with the Exchange's By-Laws and Rules and are subject to regulation by Nasdaq.

As noted above, if the Exchange is incorrect in its determination that the proposed Annual Membership Fee change reflects the value of Exchange membership, then any Exchange member that is dissatisfied with the proposal may voluntarily decide whether membership to the Exchange is worthwhile and has the option of sending order flow to another exchange.

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. Nasdaq believes that the proposed modest fee increase to its Annual Membership Fee proves unattractive to market participants, it is likely that Nasdaq will experience a decline in membership as a result.

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. The Exchange notes that it operates in a highly competitive market in which market

participants can readily favor competing venues if they deem annual membership fees levels at a particular venue to be excessive or opportunities available at other venues to be more favorable. Because competitors are free to modify their own annual membership fees in response, the Exchange believes that the degree to which annual membership fees changes in this market may impose any burden on competition is extremely limited.

The Exchange notes that other markets have adopted membership fees. MEMX recently reasoned that it should be permitted to adopt membership fees because MEMX's proposed membership fees would be lower than the cost of membership on other exchanges, and therefore,

...may stimulate intramarket competition by attracting additional firms to become Members on the Exchange or at least should not deter interested participants from joining the Exchange. In addition, membership fees are subject to competition from other exchanges. Accordingly, if the changes proposed herein are unattractive to market participants, it is likely the Exchange will see a decline in membership as a result. The proposed fee change will not impact intermarket competition because it will apply to all Members equally. The Exchange operates in a highly competitive market in which market participants can determine whether or not to join the Exchange based on the value received compared to the cost of joining and maintaining membership on the Exchange."<sup>11</sup>

As noted above, Nasdaq's Annual Membership Fee would remain substantially lower than the analogous fees of LTSE,<sup>12</sup> and membership fees are subject to competition from other exchanges. Accordingly, if the Annual Membership Fee change proposed herein is unattractive to market participants, it is likely that Nasdaq will experience a decline in membership as a result.

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<sup>11</sup> See Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19).

<sup>12</sup> Supra note 4.



The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.<sup>13</sup> Nasdaq does not believe that the proposed rule change places an unnecessary burden on competition because it is a modest fee increase for a fee that has remained unchanged since 2007 and that will now better reflect the value of the services it provides its membership.

Accordingly, any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>14</sup>

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

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<sup>13</sup> 15 U.S.C. 78f(b)(8).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NASDAQ-2024-002 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-2024-002. 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-2024-002 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.<sup>15</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>15</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**THE NASDAQ STOCK MARKET LLC RULES**

\* \* \* \* \*

**Equity Rules**

\* \* \* \* \*

**Equity 7: Pricing Schedule**

\* \* \* \* \*

**Section 10. Membership Fees**

(a) Each Nasdaq member will be assessed a membership fee of \$[3,000]4,000 per year and a trading rights fee of \$1,250 per month. The membership fee will be imposed on all persons that are Nasdaq members as of a date determined by Nasdaq in December of each year, and the trading rights fee will be assessed on all persons that are Nasdaq members as of a date determined by Nasdaq in each month. The fees are not refundable in the event that a person ceases to be a Nasdaq member following the date on which the fees are assessed.

(b) – (c) No change.

\* \* \* \* \*