

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 28

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

File No. * SR 2024 - * 057

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"/>	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)		
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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 schedule of credits at Equity 7 Section 118(a).

Contact Information

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

First Name * Dane Last Name * Dixon

Title * Associate General Counsel

E-mail * Dane.Dixon@Nasdaq.com

Telephone * (470) 432-4607 Fax


Signature

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

Date 10/01/2024 (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: 2024.10.01 15:37:21 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-NASDAQ-2024-057 19b-4.docx

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

Exhibit 1 - Notice of Proposed Rule Change *

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SR-NASDAQ-2024-057 Exhibit 1.docx

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

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

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

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

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

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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SR-NASDAQ-2024-057 Exhibit 5.docx

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s schedule of credits at Equity 7, Section 118(a), 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 (“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:

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to amend the Exchange's schedule of credits, at Equity 7, Section 118(a). Specifically, with respect to its schedule of credits for non-displayed midpoint orders (other than Supplemental Orders) that provide liquidity, the Exchange proposes to (i) add a new credit in Tapes A, B, and C, (ii) cap the maximum credit per share executed that a member can receive when certain requirements are met within Section 118(a)(1), and (iii) reorder the schedule of credits.

The Exchange proposes to provide a new supplemental credit of \$0.0001 with a maximum cap of \$0.0029 for midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) if the member executes a daily average of at least 5 million shares of non-displayed liquidity through M-ELO. This change will apply to Tapes A, B, and C. The purpose of the new credit is to incentivize liquidity adding activity and provide an incentive to members that provide non-displayed liquidity to the Exchange to do so through M-ELO. The Exchange believes that if such incentive is effective, then any ensuing increase in liquidity to the Exchange will improve market quality, to the benefit of all participants.

The Exchange currently provides a supplemental credit for midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO), in addition to the other credits provided for non-displayed orders that provide liquidity, if the member executes a requisite ADV of shares through M-ELO, as follows: (a) member that (i) executes at least 0.35% of

Consolidated Volume through providing midpoint orders and through M-ELO during the month, and (ii) executes at least 0.20% of Consolidated Volume through providing midpoint orders during the month. A member receiving this supplemental credit may receive combined credits (regular and supplemental) of up to a maximum of \$0.0028 per share executed.

The existing supplemental credit will continue alongside the new one. The proposed credit has a cap of \$0.0029, allowing members to use the new \$0.0001 without affecting other credits. This applies to Tapes A, B, and C. The goal is to encourage liquidity-adding activity and incentivize members providing non-displayed liquidity via M-ELO.

The Exchange notes that it proposes to cap combined regular and supplemental credits at \$0.0029 to manage the costs to the Exchange of providing these incentives. The Exchange has only limited resources available to it for incentive programs, and it must ensure that it allocates such resources appropriately to optimize their intended impacts.

Lastly, for clarifying purposes, the Exchange proposes to reorder the schedule of credits for non-displayed orders (other than Supplemental Orders) that provide liquidity by adding the aforementioned supplemental credit to the rebate schedule as number 4 and moving "All other non-displayed orders" to number 5.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁴ 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 Proposals are 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 monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”⁵

The Commission and the courts have repeatedly expressed their preference for

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(4) and (5).

⁵ 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)).

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.”⁶

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

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

The Exchange believes that it is reasonable to establish a new supplemental credit of \$0.0001 with a maximum of up to \$0.0029 for midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) if the member executes an ADV of at least 5 million shares of non-displayed liquidity through M-ELO for Tapes A, B, and C. This proposal is

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

reasonable because it will incentivize liquidity adding activity and provide an incentive to members that provide non-displayed liquidity to the Exchange to do so through midpoint orders. The Exchange believes that if such incentive is effective, then any ensuing increase in liquidity to the Exchange will improve market quality, to the benefit of all participants.

The Exchange believes that it is reasonable to cap the amount of combined regular and supplemental credits it proposes to offer members that execute an ADV of at least 5 million shares of non-displayed liquidity through M-ELO to \$0.0029 per share executed. This cap will allow the Exchange to manage its costs of providing these incentives. The Exchange has only limited resources available to it for incentive programs, and it must ensure that it allocates such resources appropriately to optimize their intended impacts.

The Exchange also believes that it is reasonable to reorder the schedule of credits for non-displayed orders (other than Supplemental Orders) that provide liquidity to increase clarity in the Rules, consistent with the public interest and protection of investors.

The Proposals are Equitable Allocations of Credits

The Exchange believes that it is equitable to establish a new supplemental transaction credit and otherwise increase the amount of net credit (regular plus supplemental) a member may receive for providing non-displayed liquidity through midpoint orders. To the extent that the Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, the Exchange will experience improvements in its market quality, which stands to benefit all market participants. The Exchange also

believes that the proposed clarifying changes (i.e., reordering the schedule of credits) and the proposal to cap rebates at \$0.0029 for members receiving certain supplemental credits are equitable because the changes and the cap will be applied uniformly to all members.

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

The Proposals are not Unfairly Discriminatory

The Exchange believes that its proposals are 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 enhances price discovery and improves the overall quality of the equity markets.

The Exchange believes that its proposals to adopt a new supplemental credit for providing non-displayed liquidity through midpoint orders, impose a cap on the amount of combined regular and supplemental credits it proposes to offer members receiving certain supplemental credits, and make clarifying changes, as described above, are not unfairly discriminatory because the changes are not intended to advantage any particular member and will be applied uniformly to all members. Moreover, the proposals stand to

improve the overall market quality of the Exchange, to the benefit of all market participants, by incentivizing members to increase the extent of their liquidity adding activity in midpoint orders on the Exchange.

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

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

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

Intramarket Competition

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

As noted above, the Exchange's proposals to add a new supplemental transaction credit, impose a cap on the maximum rebate offered to members receiving certain supplemental credits, and make clarifying changes are intended to have market-improving effects, to the benefit of all members. Any member may elect to achieve the level of liquidity in midpoint orders required to qualify for the new credit. The other proposed changes also apply equally and will be applied uniformly to all members.

The Exchange notes that its members are free to trade on other venues to the extent they believe that the Exchange's fee schedule is not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

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

The proposed new supplemental credit is reflective of this competition because, as a threshold issue, 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, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to credit and fee changes. This is an addition to free flow of order flow to and among off-exchange venues which comprises more than 40% of industry volume in recent months.

The Exchange's proposal to add a new supplemental transaction credit is pro-competitive in that the Exchange intends for the credit to increase liquidity addition

activity in midpoint orders on the Exchange, thereby rendering the Exchange more attractive and vibrant to participants.

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,⁷ 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

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2024-057)

October 1, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to amend the Exchange's schedule of credits 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 October 1, 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 schedule of credits at Equity 7, Section 118(a), as described further below.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's schedule of credits, at Equity 7, Section 118(a). Specifically, with respect to its schedule of credits for non-displayed midpoint orders (other than Supplemental Orders) that provide liquidity, the Exchange proposes to (i) add a new credit in Tapes A, B, and C, (ii) cap the maximum credit per share executed that a member can receive when certain requirements are met within Section 118(a)(1), and (iii) reorder the schedule of credits.

The Exchange proposes to provide a new supplemental credit of \$0.0001 with a maximum cap of \$0.0029 for midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) if the member executes a daily average of at least 5 million shares of non-displayed liquidity through M-ELO. This change will apply to Tapes A, B, and C. The purpose of the new credit is to incentivize liquidity adding activity and provide an incentive to members that provide non-displayed liquidity to the Exchange to do so through M-ELO. The Exchange believes that if such incentive is effective, then any

ensuing increase in liquidity to the Exchange will improve market quality, to the benefit of all participants.

The Exchange currently provides a supplemental credit for midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO), in addition to the other credits provided for non-displayed orders that provide liquidity, if the member executes a requisite ADV of shares through M-ELO, as follows: (a) member that (i) executes at least 0.35% of Consolidated Volume through providing midpoint orders and through M-ELO during the month, and (ii) executes at least 0.20% of Consolidated Volume through providing midpoint orders during the month. A member receiving this supplemental credit may receive combined credits (regular and supplemental) of up to a maximum of \$0.0028 per share executed.

The existing supplemental credit will continue alongside the new one. The proposed credit has a cap of \$0.0029, allowing members to use the new \$0.0001 without affecting other credits. This applies to Tapes A, B, and C. The goal is to encourage liquidity-adding activity and incentivize members providing non-displayed liquidity via M-ELO.

The Exchange notes that it proposes to cap combined regular and supplemental credits at \$0.0029 to manage the costs to the Exchange of providing these incentives. The Exchange has only limited resources available to it for incentive programs, and it must ensure that it allocates such resources appropriately to optimize their intended impacts.

Lastly, for clarifying purposes, the Exchange proposes to reorder the schedule of credits for non-displayed orders (other than Supplemental Orders) that provide liquidity by adding the aforementioned supplemental credit to the rebate schedule as number 4 and moving “All other non-displayed orders” to number 5.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁴ 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 Proposals are 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

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(4) and (5).

monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'”⁵

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.”⁶

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.

⁵ 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)).

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

The Exchange believes that it is reasonable to establish a new supplemental credit of \$0.0001 with a maximum of up to \$0.0029 for midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) if the member executes an ADV of at least 5 million shares of non-displayed liquidity through M-ELO for Tapes A, B, and C. This proposal is reasonable because it will incentivize liquidity adding activity and provide an incentive to members that provide non-displayed liquidity to the Exchange to do so through midpoint orders. The Exchange believes that if such incentive is effective, then any ensuring increase in liquidity to the Exchange will improve market quality, to the benefit of all participants.

The Exchange believes that it is reasonable to cap the amount of combined regular and supplemental credits it proposes to offer members that execute an ADV of at least 5 million shares of non-displayed liquidity through M-ELO to \$0.0029 per share executed. This cap will allow the Exchange to manage its costs of providing these incentives. The Exchange has only limited resources available to it for incentive programs, and it must ensure that it allocates such resources appropriately to optimize their intended impacts.

The Exchange also believes that it is reasonable to reorder the schedule of credits for non-displayed orders (other than Supplemental Orders) that provide liquidity to increase clarity in the Rules, consistent with the public interest and protection of investors.

The Proposals are Equitable Allocations of Credits

The Exchange believes that it is equitable to establish a new supplemental transaction credit and otherwise increase the amount of net credit (regular plus supplemental) a member may receive for providing non-displayed liquidity through midpoint orders. To the extent that the Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, the Exchange will experience improvements in its market quality, which stands to benefit all market participants. The Exchange also believes that the proposed clarifying changes (i.e., reordering the schedule of credits) and the proposal to cap rebates at \$0.0029 for members receiving certain supplemental credits are equitable because the changes and the cap will be applied uniformly to all members.

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

The Proposals are not Unfairly Discriminatory

The Exchange believes that its proposals are 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 enhances price discovery and improves the overall quality of the equity markets.

The Exchange believes that its proposals to adopt a new supplemental credit for providing non-displayed liquidity through midpoint orders, impose a cap on the amount of combined regular and supplemental credits it proposes to offer members receiving certain supplemental credits, and make clarifying changes, as described above, are not unfairly discriminatory because the changes are not intended to advantage any particular member and will be applied uniformly to all members. Moreover, the proposals stand to improve the overall market quality of the Exchange, to the benefit of all market participants, by incentivizing members to increase the extent of their liquidity adding activity in midpoint orders on the Exchange.

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

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

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

Intramarket Competition

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

As noted above, the Exchange's proposals to add a new supplemental transaction credit, impose a cap on the maximum rebate offered to members receiving certain supplemental credits, and make clarifying changes are intended to have market-

improving effects, to the benefit of all members. Any member may elect to achieve the level of liquidity in midpoint orders required to qualify for the new credit. The other proposed changes also apply equally and will be applied uniformly to all members.

The Exchange notes that its members are free to trade on other venues to the extent they believe that the Exchange's fee schedule is not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

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

The proposed new supplemental credit is reflective of this competition because, as a threshold issue, 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, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to credit and fee changes. This is an addition to free flow of order flow to and among off-exchange venues which comprises more than 40% of industry volume in recent months.

The Exchange's proposal to add a new supplemental transaction credit is pro-competitive in that the Exchange intends for the credit to increase liquidity addition activity in midpoint orders on the Exchange, thereby rendering the Exchange more attractive and vibrant to participants.

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.⁷

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

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-057 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-2024-057. 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-2024-057 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.⁸

Sherry R. Haywood,

Assistant Secretary.

⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

THE NASDAQ STOCK MARKET LLC RULES

* * * * *

Equity Rules

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Equity 7 Pricing Schedule

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Section 118. Nasdaq Market Center Order Execution and Routing

(a) ...

(1) Fees for Execution and Routing of Orders

...

Credit for non-displayed orders (other than Supplemental Orders) that provide liquidity (per share executed):			
	Tape A	Tape B	Tape C

...

<p>1. A member will receive a supplemental credit for midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO), in addition to the credits set forth below for non-displayed orders that provide liquidity, if the member executes a requisite ADV of shares through M-ELO, as follows (A member receiving this supplemental midpoint credit may receive combined credits (regular and supplemental) of up to a maximum of \$0.0028 per share executed):</p>			
<p>(a) for midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) if the member executes an ADV of at least 2.5 million up to, but not including 4 million shares through M-ELO;</p>	(a) \$0.0001	(a) \$0.0001	(a) \$0.0001
	or (b) \$0.0002	or (b) \$0.0002	or (b) \$0.0002

<p>or</p> <p>(b) for midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) if the member executes an ADV of 4 million or more shares through M-ELO:</p>			
<p>2. A supplemental credit for midpoint orders (excluding buy (sell) orders with midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) (A member receiving this supplemental midpoint credit may receive only one but not all of the supplemental credits described herein as well as combined credits (regular and supplemental) of up to a maximum of \$0.0027 per share executed, with the exception of members that qualify for the supplemental credit of \$0.0001 listed in sections <u>3</u> and <u>4</u> immediately following this section 2):</p>			
<p>if the member, during the month (i) provides at least 15 million shares of midpoint liquidity per day during the month; and (ii) increases providing liquidity through midpoint orders by 30% or more relative to the member's May 2021 ADV provided through midpoint orders:</p>	<p>\$0.0002</p>	<p>\$0.0002</p>	<p>\$0.0002</p>
<p>3. A supplemental credit for midpoint orders (excluding buy (sell) orders with midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) (A member receiving this supplemental midpoint credit may receive combined credits (regular and supplemental) of up to a maximum of \$0.0028 per share executed):</p>			
<p>member that (i) executes at least 0.35% of Consolidated Volume through providing midpoint orders and through M-ELO during the month, and (ii) executes at least 0.20% of Consolidated Volume through providing midpoint orders during the month.</p>	<p>\$0.0001</p>	<p>\$0.0001</p>	<p>\$0.0001</p>
<p><u>4. A supplemental credit for midpoint orders (excluding buy (sell) orders with midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) (A member receiving this supplemental midpoint credit</u></p>			

<u>may receive combined credits (regular and supplemental) of up to a maximum of \$0.0029 per share executed):</u>			
<u>member that executes an ADV of at least 5 million or more shares through M-ELO.</u>	<u>\$0.0001</u>	<u>\$0.0001</u>	<u>\$0.0001</u>
[4]5. All other non-displayed orders			

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