



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104331; File No. SR-NASDAQ-2025-094]

### **Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange’s Transaction Fees at Nasdaq Rule Equity 7, Section 118, To Add a New Tier of Credit for Non-Displayed Orders (Other Than Supplemental Orders) That Provide Liquidity**

December 5, 2025.

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 November 26, 2025, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“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 Nasdaq Rule Equity 7, Section 118, to add a new tier of credit for non-displayed orders (other than Supplemental Orders) that provide liquidity.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on December 1, 2025.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rulefilings>, and at the principal office of the Exchange.

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

<sup>2</sup> 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 the 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)(1), which applies to the use of the order execution and routing services of the Nasdaq Market Center for all securities priced at \$1 or more. The Exchange currently provides a credit to members for non-displayed orders (other than Supplemental Orders) that provide liquidity. The Exchange is proposing to add a new credit tier of \$0.0015 per share executed in Tape A or Tape B, and \$0.0010 per share executed in Tape C. This credit tier will be available to a member that (i) provides 0.10% or more of Consolidated Volume<sup>3</sup> through non-displayed orders (other than midpoint orders) and (ii) increases providing non-displayed liquidity (other than midpoint orders) by 30% or more relative to the member’s September 2025 TCV [sic] provided through non-displayed orders (other than midpoint orders). Unless otherwise extended, this tier will expire no later than the end of March 2026. The Exchange hopes that by proposing the new credit tier it will incentivize members to increase their non-display liquidity (other than midpoint orders) providing activity on the Exchange, which will improve overall market quality.

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<sup>3</sup> Equity 7, Section 118(a) defines Consolidated Volume as the total consolidated volume (“TCV”) 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.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>5</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's proposed change to its schedule of credits is 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’ ....”<sup>6</sup>

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

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

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

<sup>6</sup> NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (Dec. 2, 2008), 73 FR 74770, 74782-83 (Dec. 9, 2008) (SR-NYSEArca-2006-21)).

been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>7</sup>

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 credit tier of \$0.0015 per share executed in Tape A or Tape B, and \$0.0010 per share executed in Tape C, for a member that (i) provides 0.10% or more of TCV [sic] through non-displayed orders (other than midpoint orders) and (ii) increases providing non-displayed liquidity (other than midpoint orders) by 30% or more relative to the member’s September 2025 average TCV [sic] provided through non displayed orders (other than midpoint orders). Unless otherwise extended, this credit will expire no later than the end of March 2026. The new credit will encourage members to increase their non-display liquidity (other than midpoint orders) providing activity on the Exchange, which will improve overall market quality, to the benefit of all market participants. Establishing a 6-month sunset for the comparative baseline ensures that the baseline being used for the tier does not become outdated.

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<sup>7</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

It is also reasonable, equitable, and not unfairly discriminatory for the Exchange to establish this new credit tier because it will encourage members to increase their level of non-displayed liquidity providing activity (other than midpoint orders) on the Exchange. To the extent that the Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, then the Exchange will experience improvements in its market quality, which stands to benefit all market participants. The Exchange notes that the new proposed credit tier is voluntary. The Exchange further believes that the credit is not unfairly discriminatory because it will be applied uniformly to all members that meet the specified criteria.

The Exchange notes that if there are market participants who are dissatisfied with the proposal, they are free to shift their order flow to competing venues that may offer them 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 proposal will place any category of Exchange participant at a competitive disadvantage. The Exchange intends for its proposals to incentivize liquidity adding activity. The Exchange notes that its members are free to trade on other venues to the extent they believe that the proposal 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 intermarket 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 or credit opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually

adjust its fees and 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 and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which adding a new credit tier in this market may impose any burden on competition is extremely limited.

In this instance, the introduction of a new credit tier in Equity 7, Section 118(a)(1) is intended to incentivize liquidity adding activity on the Exchange and does not impose a burden on competition. By offering a new credit to market participants that meet certain criteria, the Exchange is enhancing its appeal as a trading venue and encouraging increased participation in its order execution and routing processes, while maintaining a competitive pricing structure. As discussed above, the proposed credit does not disadvantage any specific group of market participants. Instead, it provides equitable incentives that are available to all members that meet the applicable criteria.

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

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

No written comments were either solicited or received.

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

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

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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.

#### 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-2025-094 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NASDAQ-2025-094. 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 filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR-NASDAQ-2025-094 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>9</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>9</sup> 17 CFR 200.30-3(a)(12).