

inter-market competition because the proposed change will provide an additional method for Participants to qualify for Tier 2 PIO fee and Tier 4 BVR rebate. Currently, Participants may only qualify for PIO fee discounts by executing certain Primary Improvement Order volume on BOX and may only qualify for BVR rebates by executing certain PIP and COPIP Order volume on BOX. These existing qualification methods will remain unchanged and Participants will now have an additional opportunity to qualify based on Public Customer Auction and Non-Auction transaction volume on BOX. The Exchange believes further its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact its business. 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 fees and rebates to remain competitive with other exchanges. Because competitors are free to modify their own fees and rebates in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. The Exchange notes that other exchanges offer incentives for one order type based on the volumes of another order type.²⁸

The proposed changes do not impose an undue burden on intramarket competition because the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. The Exchange believes that the proposed changes will encourage Participants to send additional Public Customer Auction and Non-Auction order flow to BOX for execution in order to lower their costs. The Exchange believes that the proposed incentive may result in increased Auction and Non-Auction Public Customer order flow to BOX which will provide market participants with increased trading opportunities and executions. Public Customer liquidity benefits all market participants by providing more trading opportunities, which facilitates tighter spreads. Tighter spreads may cause an additional corresponding increase in order flow from other market

participants, to the benefit of all market participants.

The Exchange also believes that renumbering old Section IV.B.3 as Section IV.B.4 does not impose any burden on competition because it is intended to add a new section and renumber the old section for consistency and readability.

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 Exchange Act²⁹ and Rule 19b-4(f)(2) thereunder,³⁰ because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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-BOX-2025-14 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-BOX-2025-14. 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-BOX-2025-14 and should be submitted on or before June 24, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025-09968 Filed 6-2-25; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103139; File No. SR-NASDAQ-2025-040]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Sections 114 and 118

May 28, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 20, 2025, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁰ 17 CFR 240.19b-4(f)(2).

²⁸ See *supra* note 21.

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 (i) amend the requirements for certain fees, reduce a fee from \$0.0030 to \$0.0025 and introduce a new credit under Equity 7, Section 118(a)(1) (Fees for Execution and Routing of Orders); (ii) amend the requirements for certain fees and introduce new fees and a credit under Equity 7, Section 118(b); (iii) amend Equity 7, Section 118(e) (Opening Cross) and introduce a new fee; and (iv) eliminate the Excess Order Fee at Equity 7, Section 118(m) and remove related language in Equity 7, Section 114(d)(1).

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

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: (i) amend the requirements for certain fees, reduce a fee from \$0.0030 to \$0.0025 and introduce a new credit under Equity 7, Section 118(a)(1) (Fees for Execution and Routing of Orders); (ii) amend the requirements for certain fees and introduce new fees and a credit under Equity 7, Section 118(b); (iii) amend Equity 7, Section 118(e) (Opening Cross) and introduce a new fee; and (iv) eliminate the Excess Order Fee at Equity 7, Section 118(m) and

remove related language in Equity 7, Section 114(d)(1).³

Proposed Amendments to Section 118(a) (Fees for Execution and Routing of Orders)

The Exchange proposes various amendments to Section 118(a)(1). First, the Exchange proposes to introduce a new \$0.0030 credit applicable to Tapes A, B, and C for displayed quotes (other than Supplemental Orders or Designated Retail Orders) that provide liquidity. Members will be eligible for the new credit if they meet the following criteria: (1) the member adds at least 1% (in securities priced at or greater than \$1.00) of the Consolidated Volume (in securities priced at or greater than \$1.00), of which at least 0.30% of such volume being Tape B securities; and (2) the member adds at least 0.25% (in securities priced at or greater than \$1.00) of Consolidated Volume (in securities priced at or greater than \$1.00) during the month of non-displayed liquidity (other than midpoint orders) and Midpoint Extended Life Orders ("M-ELO"). The proposed new credit will apply to Tapes A, B, and C. The purpose of the new credit structure is to incentivize members to increase their liquidity adding activity on the Exchange in securities priced at or greater than \$1.00. By providing an additional incentive for members to increase liquidity, the Exchange aims to enhance overall market quality benefitting all participants. The new proposed credit of \$0.0030 is in addition to other credits the Exchange already offers to member for providing displayed liquidity.

Second, the Exchange currently charges \$0.0030 per share executed for shares executed above 4 million shares during the month for RFTY Orders⁴ that remove liquidity from the Nasdaq Market Center or that execute in a venue with a protected quotation under Regulation NMS other than the Nasdaq Market Center. The 4 million share threshold has been in place since 2002.

³ All references throughout this filing to certain rule sections shall pertain to Nasdaq Equity 7.

The Exchange initially filed this fee proposal as SR-NASDAQ-2025-026 on March 3, 2025. On March 13, 2025, the Exchange withdrew that filing and submitted SR-NASDAQ-028. On May 2, 2025, the Exchange issued an amendment to the filing. On May 9, the Exchange withdrew that filing and submitted SR-NASDAQ-039. On May 19, the Exchange withdrew that filing and submitted this filing.

⁴ Nasdaq Equity 4, Section 4758(a)(1)(v)(b) defines "RFTY" to mean a routing option available for an order that qualifies as a Designated Retail Order under which orders check the System for available shares only if so instructed by the entering firm and are thereafter routed to destinations on the System routing table.

For purposes of calculating the 4 million share threshold described above and assessing the charge set forth therein, the Exchange excludes RFTY Orders that execute at taker-maker venues.

The Exchange proposes to amend the requirement to adjust the execution volume threshold from 4 million shares per month to 8 million shares per month and to reduce the fee from \$0.0030 to \$0.0025. The Exchange believes that the current baseline has become outdated and no longer provides a meaningful benchmark for evaluating current trading activity. The proposed lowered fee amount and increased volume threshold is designed to align with current market volume and to encourage increased participation from retail liquidity providers for RFTY Orders while maintaining a competitive and performance-based pricing structure that better reflects current market conditions and trading volumes.

Third, the Exchange currently charges no fee to a member for shares executed either: (i) up to 4 million shares during the month for RFTY Orders that remove liquidity from the Nasdaq Market Center or that execute in a venue with a protected quotation under Regulation NMS or (ii) above 4 million shares during the month for RFTY Orders that remove liquidity from the Nasdaq Market Center or that execute in a venue with a protected quotation under Regulation NMS other than the Nasdaq Market Center during regular market hours, provided that the member grows its volume of shares executed in RFTY during regular Market Hours during the month by at least 100 percent relative to March 2022. For purposes of calculating the 4 million share threshold described above and for assessing the charge set forth herein, RFTY Orders that execute at taker-maker venues are excluded.

The Exchange proposes to adjust the execution volume threshold from 4 million shares per month to 8 million shares per month and to introduce a new requirement that members must add a daily average of at least 3 million shares of Designated Retail Orders⁵ during the month to qualify for the \$0.0000 per executed share rate. In order to provide a more accurate and relevant measure of growth, the Exchange also proposes to remove the

⁵ Section 118(a) defines "Designated Retail Order" to mean an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this section, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

requirement that the member grows its volume of shares executed in RFTY during regular Market Hours during the month by at least 100 percent relative to March 2022. Additionally, the March 2020 baseline has become outdated and no longer provides a meaningful benchmark for evaluating current trading activity. The Exchange believes that the proposed changes will align fee eligibility with more current participation levels and encourage greater participation from retail liquidity providers while maintaining a competitive pricing structure.

Proposed Amendments to Section 118(b) (Credits and Fees for Securities Priced Less Than \$1)

The Exchange currently charges a fee for use of the order execution and routing services of the Nasdaq Market Center by members for all orders at all times for all securities priced less than \$1. Members entering orders that execute in the Nasdaq Market Center (other than M-ELO) and members entering orders that route and execute at an away market are charged 0.3% of the total transaction cost. The Exchange does not charge a member entering M-ELO that executes in the Nasdaq Market Center.

The Exchange proposes to amend the fee to designate the existing language as paragraph (1), and revise “at all times” to instead specify that the fees apply to orders executed during Regular Trading Hours and After-Hours Trading, excluding the Pre-Market Hours.⁶ Additionally, the Exchange proposes to add a new paragraph (2) to introduce a new credit and fees specifically for orders during the Pre-Market Session in securities priced less than \$1.00. Under the proposal, the following credit and fees will apply to members entering an order/quote that executes in the Nasdaq Market Center during the Pre-Market Session for securities priced less than \$1.00: (i) a credit of 0.05% of the total dollar volume per executed share if a member provides liquidity; (ii) a fee of 0.3% of the total transaction cost if a member enters an order that routes and executes at an away market; and (iii) a fee of 0.15% of the total dollar volume per executed share if a member provides orders that remove liquidity from the Nasdaq Market Center. The Exchange believes the proposed credit and fees will incentivize market participants to provide liquidity adding activity in

securities priced below \$1.00 within the Exchange during early trading hours.

Proposed Amendment to Section 118(e) (Opening Cross)

Currently, firms that execute Market-on-Open, Good-till-Cancelled, and Immediate-or-Cancel orders executed in the Exchange’s Opening Cross are charged \$0.0015 per share executed, and all other quotes and orders executed in the Exchange’s Opening Cross are charged \$0.0011 per share executed pursuant to Section 118(e)(1). Under Section 118(e)(2), firms that execute orders in the Exchange’s Opening Cross will be subject to the fees discussed in Section 118(e)(1) for such executions, up to a monthly maximum of \$35,000, provided, however that such firms add at least one million shares of liquidity, on average per day, per month. Currently, Section 118(e) applies to all securities and does not differentiate between securities priced above \$1.00 or priced at or below \$1.00.

The Exchange proposes to move Section 118(e)(2) to Section 118(e)(1) and amend the language to apply the \$0.0015 per share executed fee and the \$0.0011 per share executed fee to securities priced at or above \$1.00. Further, the Exchange is proposing to add new language to Section 118(e)(2) to charge a fee of 0.25% of the total dollar volume per executed share to firms that execute orders in the Nasdaq Opening Cross in securities priced less than \$1.00.⁷ The Exchange is not imposing a cap on this fee. However, the proposed fee will be based on total dollar volume versus the current fee, which is based on per share executed. The Exchange believes that a separate fee for sub-dollar securities for the Opening Cross aligns with the fee in the Exchange’s fee schedule and competing exchanges for orders executed during Market Hours and the Pre-Market Hours and Post-Market Hours, which provides different fees for securities priced above and below \$1.00.⁸ Competing equity exchanges offer a similar fee structure to that of the Exchange, including carving out fees for securities priced below \$1.00 and excluding a cap.⁹

Proposed Elimination of Section 118(m) (Excess Order Fee)

Under Section 118(m) (Excess Order Fee), the Exchange imposes an Excess Order Fee on members with an “Order

Entry Ratio” of more than 100. The Order Entry Ratio is calculated, and the Excess Order Fee is imposed on a monthly basis. All calculations under the rule are based on orders received during regular market hours and exclude orders received at other times, even if they are executed during regular market hours. The Exchange established the Excess Order Fee to deter members from inefficient order entry practices that place excessive burdens on the Exchange’s trading system and on other members, which negatively impact the usefulness of market data. The Exchange proposes to eliminate the Excess Order Fee in its fee schedule due to low application of the fee resulting in limited impact on market behavior.

Section 114(d)(1) (Qualified Market Maker Program) currently allows a member to be designated as a Qualified Market Maker if: (1) the member is not assessed any “Excess Order Fee” under Section 118 during the month; and (2) the member quotes at the NBBO at least 25% of the time during regular market hours in an average of at least 1,000 securities per day during the month. In conjunction with the removal of the Excess Order Fee in Section 118(m), the Exchange is proposing to remove language in Section 114(d)(1) that references the Excess Order Fee. The Exchange believes its proposed removal of Section 114(d)(1) is consistent with its proposed elimination of the Excess Order Fee.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ 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 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

⁶ Nasdaq Rule Equity 1, Section 1(a)(9) defines “Pre-Market Hours” to mean the period of time beginning at 4:00 a.m. ET and ending immediately prior to the commencement of Market Hours.

⁷ In the filings submitted previously, the proposed change in Section 118(e) for securities priced below \$1.00 was inaccurately described in the filing as a credit instead of a fee.

⁸ See e.g., Section 118(b).

⁹ See e.g., NYSE Arca Rule III(g) and NYSE American Rule III.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

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”. . . .”¹²

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.”¹³

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.

Proposed Amendments to Section 118(a)(1) (Fees for Execution and Routing of Orders)

The Exchange believes that it is reasonable, equitable to establish a new credit of \$0.0030 per share executed for members that add displayed liquidity under Section 118(a)(1) because it will incentivize members to increase the extent of their liquidity adding activity

resulting in improved overall market quality to the benefit of all market participants. 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.

Additionally, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to amend Section 118(a)(1) to remove the requirement that a member grows its volume of shares executed in RFTY during regular Market Hours during the month by at least 100 percent relative to March 2022 and to add new language that the member adds a daily average of at least 3 million shares of Designated Retail Order during the month. The current baseline percentage, which has remained unchanged for three years, has become outdated and no longer provides a meaningful benchmark for evaluating current trading activity. The Exchange believes that the new requirement will encourage increased participation from retail liquidity providers while maintaining a competitive and performance-based pricing structure that better reflects current market conditions and trading volumes. The proposed new requirement to add Designated Retail Order will enhance execution quality and benefit retail investors. The Exchange also believes it is reasonable and equitable to lower the fee amount in Section 118(a)(1) from \$0.0030 to \$0.0025 and to increase the volume threshold from 4 million shares to 8 million shares. The Exchange believes the proposed lowered fee amount encourages increased participation from retail liquidity providers for RFTY Orders and the increased volume threshold more closely aligns with current market volume and is a more relevant benchmark. The proposed fee amendments and new credit are not unfairly discriminatory because they will apply uniformly to all market participants that meet the specified criteria.

Proposed Amendments to Section 118(b) (Credits and Fees for Securities Priced Less Than \$1)

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to amend Section 118(b) to introduce a new credit and new fees for orders in securities priced below \$1.00 during the Pre-Market Session. The Exchange believes that providing different fees and credits for securities priced less than \$1.00 during Pre-Market Hours versus regular Market Hours is equitable and reasonable because the proposed fee of 0.3% of the

total transaction cost for members entering orders that route and execute at an away market is the same as the current fee applied to members that execute and route sub-dollar securities to an away market during all trading hours. Additionally, the proposed fee of 0.15% of the total dollar volume per executed share for members that remove liquidity in the Nasdaq Market Center during Pre-Market Hours is lower than the current fee. Also, the proposed credit of 0.05% of the total dollar volume per executed share will incentivize members to provide more sub-dollar liquidity during the Pre-Market Session. There is less liquidity on the Exchange in securities priced at less than \$1.00 and therefore, the proposed credit and fees are intended to draw more liquidity to the Exchange and to incentivize members to contribute liquidity during early trading hours when market depth is generally limited, which will benefit overall market quality and efficiency. Further, the Exchange believes that the proposed changes that provide fees and credits for securities priced less than \$1.00 are not unfairly discriminatory because the fees and credits apply uniformly to all market participants that meet the specified criteria and are similar or lower than current fees for such orders.

Proposed Amendment to Section 118(e) (Opening Cross)

One commenter¹⁴ expressed concerns that the proposed new fee on sub-dollar securities executed during the Opening Cross will result in substantially higher transaction costs for stocks priced below \$1.00 than for stocks priced below \$1.00, disproportionately affect and harm retail investors, and will impose an undue burden on competition. While the Exchange acknowledges the commenter’s concerns, the Exchange believes that its proposed amendments Section 118(e) are reasonable, equitable, and not unfairly discriminatory. In response to the commenter’s assertion that the proposed fee will result in substantially higher transaction costs, the Exchange notes that the current fees for securities priced above \$1.00 are based on per share executed and the proposed fee for securities priced below \$1.00 is based on the total dollar volume. Currently, there is not a significant amount of volume of sub-dollar securities traded during the

¹² *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)).

¹³ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁴ The Exchange received a comment letter from the Securities Industry and Financial Markets Association (“SIFMA”) regarding this proposal. See Letter from Joseph Corcoran to Vanessa Countryman, dated March 28, 2025, available at <https://www.sec.gov/comments/sr-nasdaq-2025-028/srnasdaq2025028-585415-1689482.pdf>.

Opening Cross on the Exchange. Therefore, the Exchange believes that using the total dollar volume as the measurement of fees for securities priced below \$1.00 demonstrates the Exchange's efforts to ensure that the proposed fee will not result in substantially higher transaction costs based on current volume for sub-dollar securities. Moreover, although the Exchange does not provide a fee cap for securities priced below \$1.00 and executed during the Opening Cross, the Exchange believes that the fee is balanced by the reduced fee and the proposed credit provided to sub-dollar securities executed during Pre-Market Hours for securities priced less than \$1.00. A majority (80%) of participants who trade securities priced less than \$1.00 in the Opening Cross also trade sub-dollar securities in the Pre-Market Session.¹⁵ The remaining 20% of participants that only trade sub-dollar securities in the Opening Cross and not in the Pre-Market Session provide a minimal amount (less than 1%) of notional volume of sub-dollar securities in the Opening Cross. Even if these participants continue not to trade sub-dollar securities in the Pre-Market Session, the Exchange believes that the proposed fee is equitable and not unfairly discriminatory because most of the participants if, they maintain similar trading trends, will benefit or see no significant change in fees as a result of the proposal. The proposed fee is also consistent with competing exchanges, including separating fees for securities priced below \$1.00 and excluding a cap on securities priced below \$1.00, and it is also consistent with the Exchange's fee schedule for orders executed during Market Hours, Pre-Market Hours and Post-Market Hours. Further, the fee applies uniformly to all participants that execute orders in the Opening Cross.¹⁶

The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives. The proposed changes apply uniformly to all market participants that meet the specified thresholds and provide members with equal access to the fee benefits, provided they meet the execution and retail order flow requirements.

Proposed Elimination of Section 118(m) (Excess Order Fee) and Section 114(d)(1)

The Exchange believes that it is reasonable to eliminate the Excess Order Fee because it has not been heavily utilized or successful in accomplishing its objective of deterring members from inefficient order entry practices that place excessive burdens on the systems of Nasdaq and other members and that may negatively impact the usefulness of market data. The proposed deletion of the fee is designed to streamline the Exchange's fee schedule. The Exchange has limited resources to allocate to incentive programs like this one and it must, from time to time, reallocate those resources to maximize their net impact on the Exchange, market quality, and participants. Going forward, the Exchange plans to reallocate the resources it devotes to the Excess Order Fee to other incentive programs that it hopes will be more impactful. Additionally, the Exchange believes it is reasonable to reference to the Excess Order Fee in Section 114(d)(1) to maintain consistency and clarity amongst the Exchanges rules for market participants.

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 and to ensure the fee schedule remains clear and consistent. The Exchange also intends for its proposals to reallocate its limited resources more efficiently and to align them with the Exchange's overall mix of objectives. 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

Inter-Market 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 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 in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the introduction of new fees and credits under Section 118(a)(1) and 118(b) is intended to incentivize liquidity adding activity on the Exchange and does not impose a burden on competition. By offering credits to market participants that meet certain criteria and by reducing the fee, 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 fees and credits do not disadvantage any specific group or market participants. Instead, it provides equitable incentives that are available to all members that meet the applicable criteria.

The Exchange's proposed amendments to Section 118(e) do not impose a burden on competition. As discussed above, the Exchange believes that using the total dollar volume as the measurement of fees for securities priced below \$1.00 demonstrates the Exchange's efforts to ensure that the proposed fee will not result in substantially higher transaction costs. Moreover, the Exchange believes that the fee is balanced by the reduced fee and the proposed credit provided to sub-dollar securities executed during Pre-Market Hours for securities priced less than \$1.00. The Exchange believes that most participants, if they maintain similar trading trends, will benefit from the proposed changes or see no significant change in fees as a result of the proposal. The fee is also consistent with fees charged by competing exchanges.¹⁷

Additionally, the proposed elimination of the Excess Order Fee does not impose a burden on competition. Rather, eliminating the underutilized fee allows the Exchange to reallocate resources elsewhere and foster a more competitive trading environment.

¹⁷ See NYSE Arca Rule III(g) and NYSE American Rule III.

¹⁵ Based on data January 2025 trading data.

¹⁶ See e.g., NYSE Arca Rule III(g) and NYSE American Rule III. See also Section 118(b).

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.¹⁸

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. Please include file number SR-NASDAQ-2025-040 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-2025-040. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2025-040, and should be submitted on or before June 24, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103142; File No. SR-NYSEARCA-2025-37]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

May 28, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 19, 2025, NYSE Arca, Inc. ("NYSE Arca" or the "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 NYSE Arca Equities Fees and Charges ("Fee Schedule") to adopt fees and credits for Primary Only Orders routed to NYSE Texas, Inc. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization 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 those 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 parts 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 Exchange proposes to amend the Fee Schedule to adopt fees and credits for Primary Only ("PO") Orders routed to NYSE Texas, Inc. ("NYSE Texas"). The Exchange proposes to implement the fee change effective May 19, 2025.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, 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."³

³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) ("Regulation NMS").

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.