

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104785; File No. SR-NASDAQ-2026-007]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Exchange's Schedule of Fees and Incentives to Bring It into Compliance with New Reg NMS Rule 610(d)

February 9, 2026.

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 January 30, 2026, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Exchange's transaction fees at Nasdaq Rule Equity 7, Sections 114 and 118, to bring the Exchange's schedule of fees and incentives into compliance with Reg NMS Rule 610(d), which becomes effective on February 2, 2026.

These amendments are effective upon filing. However, they will become operative on February 2, 2026.

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.

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 transaction fees at Nasdaq Rule Equity 7, Sections 114 and 118, to bring the Exchange schedule of equities transaction fees and incentives into compliance with Reg NMS Rule 610(d), which becomes effective on February 2, 2026.

On September 18, 2024, the Commission adopted several amendments to Reg NMS in order to increase the transparency of exchange fees and incentives.³ New Reg NMS Rule 610(d) provides that “[a] national securities exchange shall not impose, nor permit to be imposed, any fee or fees, or provide, or permit to be provided, any rebate or other remuneration, for the execution of an order in an NMS stock that cannot be determined at the time of execution.”⁴ The original compliance date for new Reg NMS Rule 610(d) was the first business day of November 2025, which was Monday, November 3, 2025.⁵ However, on October 31, 2025, the Commission

³ See Securities Exchange Act Release No. 101070 (Sept. 18, 2024), 89 FR 81620 (Oct. 8, 2024) (File No. S7-30-22) (Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders.) (“Rule 610(d) Adopting Release”).

⁴ 17 CFR 242.610(d).

⁵ See Rule 610(d) Adopting Release, 89 FR at 81680.

granted temporary exemptive relief to delay the implementation date until the first business day of February 2026, which is Monday, February 2, 2026.⁶

Currently, the Exchange establishes certain transaction fees and incentives for equities executions that are based on tiers calculated using volume figures from trading or quoting activity in the current month. This means that the fees and incentives at the Exchange associated with a given equities execution often cannot be determined at the time of execution, but only retroactively at the end of the month in which the execution occurred. In order to ensure that its transaction fees and incentives for equities executions are compliant with new Reg NMS Rule 610(d), the Exchange is adding the following text to Nasdaq Rule Equity 7, Section 114:

Rule of Interpretation: In compliance with Reg NMS Rule 610(d), effective February 2, 2026, for purposes of determining quoting or transaction volumes for fees and incentives qualifications under Section 114(d), (e), (f), (g), and (h), all volume figures will be derived from quoting or trading activity in the prior month. Consequently, new members will receive the base rates in their first month of trading.

For the same purpose, the Exchange is also adding the following text to Nasdaq Rule Equity 7, Section 118:

Rule of Interpretation: In compliance with Reg NMS Rule 610(d), effective February 2, 2026, for purposes of determining quoting or transaction volumes for fees and incentives qualifications under Section 118(a), (d), (j), and (k), all volume figures will be derived from quoting or trading activity in the prior month. Consequently, new members will receive the base rates in their first month of trading.

⁶ See Securities Exchange Act No. 104172 (Oct. 31, 2025), 90 FR 51418 (Nov. 17, 2025) (Order Granting Temporary Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 and Rules 610(f) and 612(d) of Regulation NMS, From Compliance With Rule 600(b)(89)(i)(F), Rule 610(c), Rule 610(d) and Rule 612 of Regulation NMS, as Amended).

Additionally, Nasdaq Rule Equity 7, Section 118(e)(1), which contains a monthly cap for orders executed during the Opening Cross, has to be modified to bring it into compliance with new Reg NMS Rule 610(d). Current Nasdaq Rule Equity 7, Section 118(e)(1) states as follows:

(1) Firms that execute orders in the Nasdaq Opening Cross in securities priced at or above \$1 will be subject to the following fees 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.

<i>Market-on-Open, Limit-on-Open, Good-till-Cancelled, and Immediate-or-Cancel orders executed in the Nasdaq Opening Cross</i>	<i>\$0.0015 per share executed</i>
<i>All other quotes and orders executed in the Nasdaq Opening Cross</i>	<i>\$0.0011 per share executed</i>

Because a firm that executes orders in the Nasdaq Opening Cross does not know at the time of execution which specific order in a given Nasdaq Opening Cross will push it to meet or exceed the current \$35,000 monthly cap, the Exchange is modifying this incentive program to bring it into compliance with new Reg NMS Rule 610(d). Specifically, the Exchange proposes to replace this hard cap with a soft cap. In other words, the Exchange would charge a firm these fees up to, and including, the day in which the firm has incurred at least \$35,000 in these fees. Then, starting the following day, and for the rest of that month, the firm would not incur additional fees for these transactions. Amended Nasdaq Rule Equity 7, Section 118(e)(1) reads as follows:

(1) Firms that execute orders in the Nasdaq Opening Cross in securities priced at or above \$1 will be subject to the following fees for such executions up to, and including, on

the trading day on which they meet or surpass a monthly threshold of \$35,000 in such fees. On every trading day on a given month after the day on which they meet or surpass this \$35,000 monthly threshold, they will not be charged any execution fee for orders that they execute in the Nasdaq Opening Cross in securities priced at or above \$1. This monthly threshold is contingent on such firms having added at least one million shares of liquidity, on average, per day, in the prior month.

<i>Market-on-Open, Limit-on-Open, Good-till-Cancelled, and Immediate-or-Cancel orders executed in the Nasdaq Opening Cross</i>	<i>\$0.0015 per share executed</i>
<i>All other quotes and orders executed in the Nasdaq Opening Cross</i>	<i>\$0.0011 per share executed</i>

So, for example, suppose that a firm surpasses this \$35,000 threshold on the 15th day of a given month because at the end of the Nasdaq Opening Cross on that day it has incurred a running total of \$35,500 of these fees in that month. In that case, the firm will owe \$35,500 in these fees. However, starting on the Nasdaq Opening Cross on the 16th day of that month, and for every subsequent Nasdaq Opening Cross through the end of that month, the firm will not owe any fee for this type of transaction that it executes on those days.

Furthermore, the current fee cap is contingent upon the firm adding at least one million shares of liquidity, on average, per day, in the current month. To bring this qualification into compliance with new Reg NMS Rule 610(d), the revised qualification will apply to the firm's trading activity on the prior month. Therefore, the proposed revised incentive specifies that "[t]his monthly threshold is contingent on such firms having added at least one million shares of liquidity, on average, per day, in the prior month."

These changes will ensure that all Exchange participants will be able to ascertain at the time of execution all the transactions fees and incentives associated with an execution of an order in an NMS stock at the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ 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 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’....”⁹

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

⁹ 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)).

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.”¹⁰

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 incentives 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 the modifications made in this filing to the schedule of transaction fees and incentives are reasonable because they attempt to preserve the current quoting and trading incentives, while bringing them into compliance with the requirements of new Reg NMS Rule 610(d). Currently, members are assessed certain execution fees, and paid certain execution incentives, based on tiers calculated using volume figures from trading and

¹⁰ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

quoting activity in the current month. In order to bring these existing fees and incentives into compliance with new Reg NMS Rule 610(d), the Exchange is modifying the criteria for these fees and incentives so that they are based on tiers calculated using volume figures from trading and quoting activity in the prior month. This way all fees and incentives associated with the execution of an order in an NMS stock at the Exchange can be determined at the time of execution of said order. All existing fees and incentives remain otherwise unchanged.

Additionally, the modification of the Nasdaq Opening Cross incentive in Nasdaq Rule Equity 7, Section 118(e), is reasonable because it is designed to preserve the incentive for participants to execute orders in the Nasdaq Opening Cross and encourage participants to add significant liquidity on the Exchange, while making the incentive compatible with new Reg NMS Rule 610(d). While the current \$35,000 transaction fee cap is incompatible with new Reg NMS Rule 610(d), its modification into a transaction fee threshold (or soft cap), as described above, offers a similar incentive to Exchange participants.

The Exchange believes that the modified schedule of transaction fees and incentives is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fees and incentives to all similarly situated members.

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. 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 incentive opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its 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 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 proposed changes to the fees assessed and incentives available to member firms for execution of securities in securities of all three Tapes do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues.

The proposed fees and incentives are identical to the Exchange's existing fees and incentives, except that in order to comply with new Reg NMS Rule 610(d), all transaction fees and incentives that are based on tiers of transaction or quoting volumes will now be calculated using volume figures derived from trading and quoting activity in the prior month. Additionally, the existing Nasdaq Opening Cross transaction fee cap for securities priced at or above \$1 is being modified into a transaction fee threshold (or soft cap), so that the applicable schedule of per share transaction fees are in full force through the day of the month in which the participant meets or exceeds the threshold, at which point the participant will owe the full amount of fees accrued through that trading day, but will not incur further fees for these types of transactions through the end of the month.

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. In terms of intra-market competition, the modified transaction fees and incentives will apply equally to all members of

the Exchange. Therefore, the proposed changes do not impose any burden on competition. However, even if these fees and incentives imposed a burden on competition, such a burden would be necessary or appropriate in furtherance of the purposes of the Act because these changes are being made to bring the Exchange's schedule of transactions of fees and incentives into compliance with new Reg NMS Rule 610(d).

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.¹¹

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:

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2026-007 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-2026-007. 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-2026-007 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.¹²

Sherry R. Haywood,

Assistant Secretary.

¹² 17 CFR 200.30-3(a)(12).