SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89343; File No. SR-NASDAQ-2020-041)

July 20, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend 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 July 9, 2020, 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, as set forth in Equity 7, Section 118(a) of the Exchange's Rulebook.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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 schedule of credits it provides to members, pursuant to Equity 7, Section 118(a), in several respects.

First, the Exchange proposes to raise its requirements to qualify for an existing credit of $0.00305 per share executed that it provides to a member: (i) with shares of liquidity provided in all securities during the month representing at least 0.60% of Consolidated Volume[3] during the month, through one or more of its Nasdaq Market Center MPIDs; (ii) which adds Nasdaq Options Market ("NOM") Market Maker[4] liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.10% or more of total industry average daily volume ("ADV") in the customer clearing range for equity and ETF option contracts per day in a month on NOM; and (iii) which

3 Pursuant to Equity 7, Section 118(a), the term "Consolidated Volume" means the total consolidated volume 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. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes is excluded from both total Consolidated Volume and the member's trading activity.

4 The term "NOM Market Maker" means a broker-dealer registered with NOM for the purpose of making markets in options contracts traded on NOM.

adds Customer, [5] Professional, [6] Firm,[7] Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.50% or more of total industry ADV in the customer clearing range for Equity and ETF option contracts per day in a month on NOM. Specifically, the Exchange proposes to raise the qualifying 0.60% Consolidated Volume threshold to 0.95% and the qualifying 0.10% ADV threshold to 0.20%. The Exchange intends to raise the first of these qualification thresholds to incentivize members to increase the extent of their liquidity adding activity on the Exchange to qualify for and to continue to qualify for this credit. The Exchange intends to raise the second of these thresholds to incentivize members that also act as NOM Market Makers to increase the extent of their liquidity providing activity on NOM. With these proposed changes, the Exchange intends to improve the quality of both its equities market and also NOM.

Second, the Exchange proposes to provide a new credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) of $0.00295 per share executed to a member, through one or more of its Nasdaq Market Center MPIDs: (i) with shares of liquidity provided in all securities during the month representing at least 0.50% of Consolidated Volume during the month; (ii) which adds at least 0.35% of Consolidated Volume during the month in securities in Tape C; and (iii) which adds at least 0.15% of Consolidated Volume during the

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5 The term "Customer" means a broker-dealer or a person that is not a broker or dealer in securities. See Options 1, Section 1(a)(15).

6 A "Professional" is defined in Options 1, Section 1(a)(47) of the NOM rules as "any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s)."

7 The term "Firm" applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

month in Designated Retail Orders[8] for securities in any Tape. The purpose of this credit is to provide members with a new incentive to add significant amounts of liquidity to the Exchange and, in particular, to add significant volumes of liquidity in securities in Tape C and in retail orders in securities in all Tapes. An increase in liquidity adding activity on the Exchange would help to improve the quality of the market for all participants, including but not limited to retail investors.

Lastly, the Exchange proposes to adopt a supplemental $0.00005 per share executed credit for displayed quotes/orders (other than Supplemental Orders) that add liquidity for a member, through one or more of its Nasdaq Market Center MPIDs: (i) with shares of liquidity provided in all securities during the month representing at least 0.50% of Consolidated Volume during the month; (ii) which adds at least 0.35% of Consolidated Volume during the month in securities in Tape C; (iii) which adds at least 0.15% of Consolidated Volume during the month in Designated Retail Orders for securities in any Tape; and (iv) which achieves at least a 60% add to total volume (adding and removing) ratio during a month. The Exchange refers to this proposed credit as "supplemental" because members may earn it in addition to other credits.

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8 A "Designated Retail Order" is 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 as such, 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. An order from a "natural person" can include orders on behalf of accounts that are held in a corporate legal form -- such as an Individual Retirement Account, Corporation, or a Limited Liability Company -- that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. Members must submit a signed written attestation, in a form prescribed by Nasdaq, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as Designated Retail Orders comply with these requirements. Orders may be designated on an order-by-order basis, or by designating all orders on a particular order entry port as Designated Retail Orders.

The Exchange intends for the supplemental credit to provide a further incentive for members to increase the proportion of their activity on the Exchange that is attributable to adding liquidity.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] 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 proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal is 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

9 15 U.S.C. 78f(b).

10 15 U.S.C. 78f(b)(4) and (5).

possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[11]

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."[12]

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.

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11 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)).

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

In particular, the Exchange proposes to raise two of its thresholds to qualify for its $0.00305 per share executed credit as a reasonable means of helping to further increase liquidity on both the Exchange and NOM, which if successful, will also improve the quality of both markets. Furthermore, the Exchange notes that the activity of members that currently qualify for this credit has grown, both on the Exchange and on NOM, such that an increase in credit qualifying criteria is now needed to incentivize these market makers to further increase their liquidity providing activity.

The Exchange also believes that it is reasonable to establish a new $0.00295 per share executed credit as a means of incentivizing members to provide meaningful amounts of liquidity to the Exchange, including in securities in Tape C as well as in retail orders in securities in any Tape. To the extent that the Exchange succeeds in increasing liquidity adding activity on the Exchange, including in securities in Tape C and in attracting additional retail order flow, then the Exchange would experience improvements in its market quality, which would benefit all market participants.

For similar reasons, the Exchange believes that it is reasonable to establish a $0.00005 per share executed supplemental credit to members that achieve at least a 60% ratio of liquidity adding activity to total activity on the Exchange during a month, in addition to meeting the threshold of the new $0.00295 credit. This supplemental credit will serve as a heightened incentive for members to act as net adders of liquidity on the Exchange. Again, if this incentive works as intended, the Exchange believes that the quality of the market will improve accordingly.

The Exchange notes that those participants that are dissatisfied with the proposed new and amended credits are free to shift their order flow to competing venues.

The Proposal is an Equitable Allocation of Credits

The Exchange believes its proposal will allocate its credits fairly among its market participants.

In particular, it is equitable for the Exchange to raise two of its thresholds to qualify for its $0.00305 per share executed credit because the activity of members that currently qualify for this credit has grown, both on the Exchange and on NOM, such that an increase in credit qualifying criteria is now needed to incentivize these market makers to further increase their liquidity providing activity. An increase in liquidity adding activity on the Exchange and NOM would improve the quality of both markets, to the benefit of all participants.

The Exchange also believes that it is equitable to establish a new $0.00295 per share executed credit. Again, this proposed credit stands to improve the market quality of the Exchange, to the benefit of all participants, by incentivizing members to provide meaningful amounts of liquidity to the Exchange, including in securities in Tape C as well as in retail orders in securities in any Tape. The Exchange also believes that it is equitable to target the credit, in part, to increased activity in Designated Retail Orders, because attracting retail order flow stands to benefit not only retail investors, but also others with whom additional retail liquidity can interact. Likewise, it is equitable to target the credit, in part, to liquidity adding activity in securities in Tape C, because the Exchange believes that the market for such securities would benefit from additional liquidity. The Exchange notes that it has limited funds to apply in the form of incentives, and thus must deploy those limited funds to incentives that it believes will be the most effective at improving market quality in areas that the Exchange determines are in need of improvement.

For similar reasons, the Exchange believes that it is equitable to establish a $0.00005 per share executed supplemental credit to members that achieve at least a 60% ratio of liquidity adding activity to total activity on the Exchange during a month, in addition to meeting the requirements of the new $0.00295 credit. It is equitable to target the supplemental credit at members who act as net providers of liquidity to the Exchange because such members are most apt to help the Exchange to achieve its objective of increasing its pool of liquidity.

The Proposed Amended Credits are not Unfairly Discriminatory

The Exchange believes that the proposal is 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 incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

Although the Exchange's proposal to raise the qualifying criteria for its $0.00305 per share executed credit will require members to add more liquidity to the Exchange and on NOM than is currently required to qualify for this credit, any resulting increase in liquidity on the Exchange will improve market-wide quality and price discovery, to the benefit of all participants. Moreover, to the extent that the proposal causes NOM Market Makers to increase the extent of their liquidity adding activity on NOM, NOM market quality will improve, and all NOM participants will benefit.

The Exchange also believes that its proposed $0.00295 per share executed credit is not unfairly discriminatory. Again, this proposed credit stands to improve the overall market quality of the Exchange, to the benefit of all participants, by incentivizing members to provide meaningful amounts of liquidity to the Exchange, including in securities in Tape C as well as in retail orders in securities in any Tape. It is not unfairly discriminatory to target the credit, in part, to increased activity in Designated Retail Orders, because attracting retail order flow stands to benefit not only retail investors, but also others with whom additional retail liquidity can interact. Likewise, it is not unfairly discriminatory to target the credit, in part, to liquidity adding activity in securities in Tape C, because the Exchange believes that the market for such securities would benefit from additional liquidity. The Exchange notes that it has limited funds to apply in the form of incentives, and thus must deploy those limited funds to incentives that it believes will be the most effective at improving market quality in areas that the Exchange determines are in need of improvement.

For similar reasons, the Exchange believes that its proposed $0.00005 per share executed supplemental credit is not unfairly discriminatory. Although the Exchange proposes to target the supplemental credit at net adders of liquidity to the Exchange, it notes that all participants will benefit to the extent that this credit leads to an improvement in overall market quality.

Finally, the Exchange notes that any participant that does not find the amended credits to be sufficiently attractive is free to shift its order flow to a competing venue.

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. To the contrary, the proposed changes will provides opportunities for members to receive new and amended credits based on their market-improving behavior. Any member may elect to provide the levels of market activity required in order to receive the new or amended credits.

Moreover, members are free to trade on other venues to the extent they believe that the credits provided are too low or the qualification criteria are 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. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

The Exchange believes that its proposed modification to its schedule of credits will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 34 alternative trading systems. 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 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 credit changes in this market may impose any burden on competition is extremely limited.

The proposed amended credits are reflective of this competition because, 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, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 42% of industry volume for the month of May 2020.

The Exchange's proposals are pro-competitive in that the Exchange intends for them to increase liquidity on the Exchange and thereby render the Exchange a more attractive and vibrant venue to market 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.[13]

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 (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2020-041 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-2020-041. This file number should be included on the subject line if e-mail 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 (http://www.sec.gov/rules/sro.shtml). Copies

13 15 U.S.C. 78s(b)(3)(A)(ii).

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. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2020-041, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier
Assistant Secretary

14 17 CFR 200.30-3(a)(12).