

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95091; File No. SR-NASDAQ-2022-036)

June 13, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Transaction Fees at Equity 7, Section 118(a)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on June 1, 2022, 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 Equity 7, Section 118, to: (i) eliminate the Nasdaq Growth Program, at Equity 7, Section 114(j); (ii) adjust or eliminate several of the Exchange's transaction credits, at Equity 7, 118(a); (iii) add a new credit to Equity 7, Section 118(a); and (iv) re-organize, re-format, and re-state the Exchange's schedule of transaction fees and credits at Equity 7, Section 118(a), as described further below.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

The proposed Rule change will (i) eliminate the Nasdaq Growth Program, at Equity 7, Section 114(j); (ii) adjust or eliminate several of the Exchange's transaction credits, at Equity 7, 118(a); (iii) add a new credit to Equity 7, Section 118(a); and (iv) re-organize, re-format, and re-state the Exchange's schedule of transaction fees and credits at Equity 7, Section 118(a).

Elimination of the Nasdaq Growth Program

The Exchange presently offers the "Nasdaq Growth Program," as set forth in Equity 7, Section 114(j),³ which exists to incentivize members to increase the extent to which they add liquidity to the Exchange over time. Under the Nasdaq Growth Program, the Exchange provides a credit of \$0.0025 per share executed (in securities priced at \$1 or more) to members that provide a certain amount of liquidity to the Exchange and also grow the extent to which they add such liquidity over time. Specifically, a member is eligible for the credit if it both: (A) adds greater than 750,000 shares a day on average during the month through one or more of its

³ See Securities Exchange Act Release No. 78977 (September 29, 2016), 81 FR 69140 (October 5, 2016) (SR-NASDAQ-2016-132).

Nasdaq Market Center MPIDs; and (B) increases its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume⁴ by 20% versus the member's Growth Baseline or (ii) have met the growth criteria in Equity 7, Section 114(j)(1)(A) and (j)(1)(B)(i) in three separate months and maintained or increased its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume compared to the Growth Baseline established when the member met the criteria for the third month.⁵ The Exchange provides this Nasdaq Growth Program credit in lieu of other credits that it otherwise makes available to a member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity under Equity 7, Section 118 if the former credit is greater than the latter credit.

The Exchange proposes to eliminate the Nasdaq Growth Program because it has not been successful in accomplishing its objectives. That is, it has not induced members to grow materially the extent to which they add liquidity to the Exchange over time. The Exchange has

⁴ Pursuant to Equity 7, Section 118(a), the term “Consolidated Volume” shall mean 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 shall be excluded from both total Consolidated Volume and the member's trading activity. For the purposes of calculating the extent of a member's trading activity during the month on Nasdaq and determining the charges and credits applicable to such member's activity, all M-ELO Orders that a member executes on Nasdaq during the month will count as liquidity-adding activity on Nasdaq.

⁵ As defined in Equity 7, Section 114, the “Growth Baseline” is the member's shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume during the last month a member qualified for the Nasdaq Growth Program under Equity 7, Section 114(j)(1)(B)(i). If a member has not qualified for a credit under this program, its May 2018 share of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume is used to establish a baseline.

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 Nasdaq Growth Program to other incentive programs that it hopes will be more impactful.

Adjustments to Transaction Credits for Displayed Quotes/Orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange

Next, the Exchange proposes to adjust several existing credits to its members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange. For all of these credits described below, the purpose of the changes is to recalibrate the credits to account for changes in member behavior over time that have rendered the credits less challenging for members to attain. That is, the Exchange proposes to reduce the amount of the credits because members now readily meet the volume requirements to qualify for them, such that the credits reward these members for remaining static in their activity on the Exchange. By reducing the amount of these credits, the Exchange wishes to incent such members to strive to qualify for higher available credits by further increasing the extent to which they add liquidity to the Exchange.

Currently, the Exchange provides a \$0.0025 per share executed credit for securities in all three Tapes to a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.10% of Consolidated Volume. The Exchange proposes to reduce the amount of this credit to \$0.0020 per share executed for securities in all three Tapes.

Currently, the Exchange also provides a \$0.0020 per share executed credit for securities in Tape C to a member with shares of liquidity provided in all securities representing less than 0.10% of Consolidated Volume, through one or more of its Nasdaq Market Center MPIDs;

provided that (i) the member also provides a daily average of at least 250,000 shares of liquidity provided in securities listed on an exchange other than Nasdaq, or (ii) the member routes a daily average volume of at least 10,000 shares during the month via the QDRK routing strategy. The Exchange proposes to reduce the amount of this credit for securities in Tape C to \$0.0018 per share executed.

Currently, the Exchange provides a \$0.0025 per share executed credit for securities in all three Tapes to a member that provides a daily average of at least 4 million shares of liquidity, of which more than 1.5 million shares per day must consist of non-displayed liquidity, excluding midpoint orders, or Midpoint Extended Life Orders (“M-ELOs”). The Exchange proposes to reduce the amount of this credit to \$0.0020 per share executed for securities in all three Tapes.

Finally, the Exchange currently provides a credit of \$0.0020 per share executed for securities in Tapes A and B and \$0.0015 per share executed for securities in Tape C for all other displayed quotes/orders that provide liquidity to the Exchange. The Exchange proposes to reduce the amount of this credit to \$0.0018 per share executed for securities in Tapes A and B, and to \$0.0013 per share executed for securities in Tape C.

Elimination of Two Credits for Non-Displayed Orders (Other than Supplemental Orders) that Provide Liquidity to the Exchange

The Exchange proposes to eliminate two credits for non-displayed orders (other than Supplemental orders) that provide liquidity to the Exchange.

Presently, the Exchange provides a credit of \$0.0019 per share executed for securities in Tapes A and B [sic], and \$0.0013 per share executed for securities in Tape C, to a member with midpoint orders (excluding buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) if the member (i) executes a combined volume of 1 million or more shares in midpoint orders provided and M-ELO executed

during the month through one or more of its Nasdaq Market Center MPIDs and (ii) has a 10% or greater increase in midpoint orders provided and M-ELO executed through one or more of its Nasdaq Market Center MPIDs during the month over the month of April 2019. The Exchange proposes to eliminate this credit.

The Exchange also provides a credit of \$0.00125 per share executed for securities in Tapes A and B, and \$0.0010 per share executed for securities in Tape C, to a member with other non-displayed orders if the member, during the month (i) provides 0.30% or more of Consolidated Volume through non-displayed orders (including midpoint orders) and through M-ELO Orders; and (ii) increases providing liquidity through non-displayed orders (including midpoint orders) and through M-ELO Orders by 0.10% or more as a percentage of Consolidated Volume relative to the member's August 2020 Consolidated Volume provided through non-displayed orders (including midpoint orders) and through M-ELO. The Exchange also proposes to eliminate this credit.

The Exchange proposes to eliminate these two credits because the baseline months for the growth elements of these tiers – April 2019 and August 2020 – are no longer relevant benchmarks, as substantial increases in trading volumes have occurred since times. As such, these credits no longer provide growth incentives that are aligned with the Exchange's needs. Again, 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.

Adjustment to Existing Credits and Addition of New Credit for Non-Displayed Orders (Other than Supplemental Orders) that Provide Liquidity to the Exchange

The Exchange proposes to adjust and add to a series of credits that the Exchange presently offers to members that either grow the extent of their volumes of M-ELO or midpoint

orders relative to a baseline month or execute a substantial number of such orders on the Exchange during the month.

Presently, the Exchange provides a credit of \$0.0001 per share executed to a member, through one or more of its Nasdaq Market Center MPIDs, either: (i) increases the extent of its ADV of M-ELO Orders and/or midpoint orders (that execute against M-ELO Orders) in all securities by an ADV of 1 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least 3 million shares ADV through midpoint orders provided and M-ELO Orders during the month and increases the extent of its ADV of midpoint orders provided and M-ELO Orders in all securities by 100% or more during the month relative to the month of June 2021. Alternatively, the Exchange provides a credit of \$0.00015 per share executed to a member which, through one or more of its Nasdaq Market Center MPIDs, either: (i) increases the extent of its ADV of M-ELO Orders and/or midpoint orders (that execute against M-ELO Orders) in all securities by an ADV of 2 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least a 4 million shares ADV through midpoint orders provided and M-ELO Orders during the month and increases the extent of its ADV of midpoint orders provided and M-ELO Orders in all securities by 150% or more during the month relative to the month of June 2021. The Exchange proposes to lower first of these credits from \$0.0001 to \$0.00005 per share executed and lower the second of these credits from \$0.00015 to \$0.00010 per share executed.

Next, the Exchange proposes to add a new credit of \$0.0015 per share executed for a member that, through one or more of its Nasdaq Market Center MPIDs, executes a combined volume of at least a 5 million shares ADV through midpoint orders provided and M-ELO Orders

during the month. This new proposed credit will not be combinable with the other two existing credits.

Together, the adjustments to the two existing credits, and the addition of the third, will re-align existing incentives for members to grow or add M-ELO or midpoint liquidity while introducing a new incentive for members to add even larger volumes of M-ELO and midpoint orders during the month to attain the highest existing level of credits. To the extent that the Exchange succeeds through these proposals in increasing the addition of midpoint or M-ELO liquidity or executions on the Exchange, all participants will benefit from the increase in market quality.

Additionally, and as part of the reorganization described below, the Exchange proposes to relocate the two existing credits and the new credit in the section of the schedule entitled “Supplemental credit to member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity (per share executed.” The Exchange believes that the three credits are, in fact, supplemental credits and belong logically in that section of the schedule.

Finally, for ease of reference, the Exchange proposes to refer to these three credits as “M-ELO Supplemental Credits,” and label them M-ELO Supplemental Credit A (\$0.00005), B (\$0.0001), and C (\$0.00015), respectively.

Elimination of Supplemental Credit for Certain Midpoint Orders

Presently, the Exchange provides a supplemental credit for midpoint orders (excluding buy (sell) orders with midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO). A member currently receives a credit of either: (a) \$0.0001 per share executed for orders in securities in all three Tapes if the member, during the month (i)

provides at least 15 million shares of midpoint liquidity per day during the month and (ii) increases providing liquidity through midpoint orders by 10% or more relative to the member's May 2021 ADV provided through midpoint orders; or (b) \$0.0002 per share executed for orders in securities in all three Tapes if the member, during the month (i) provides at least 15 million shares of midpoint liquidity per day during the month; and (ii) increases providing liquidity through midpoint orders by 30% or more relative to the member's May 2021 ADV provided through midpoint orders. The Exchange proposes to eliminate the \$0.001 per share executed credit but retain the \$0.0002 per share executed credit.

The Exchange proposes to eliminate the credit because many members now readily meet the volume requirements to qualify for it, such that the credit in many cases rewards these members for remaining static in their activity on the Exchange. By eliminating the lower of these two credits, the Exchange wishes to incent such members to strive to qualify for the higher credit by further increasing the extent to which they add liquidity to the Exchange.

Reorganization and Re-Formatting of Exchange's Schedule of Transaction Credits and Charges

In addition to the above changes to the substance of the Exchange's schedule of credits and fees, at Equity 7, Section 118(a), the Exchange also proposes non-substantive amendments to the schedule that will re-organize and re-format it to render it shorter, better and more logically organized, and easier to read and comprehend.

Most notably, the Exchange proposes to consolidate the schedule of charges and fees and restate it as a single chart. Presently, the Rule lists the contents of the schedule three times successively – once for securities in Tape A, once for securities in Tape B, and once for securities in Tape C. This format is cumbersome for participants to read and onerous for the Exchange to maintain. The proposed amendments will shorten and simplify the schedule by

listing all of the Exchange’s transaction credits and charges one time. It will do so by reformatting the schedule into a chart with rows listing each tier of credit/charge and columns listing the applicable amounts of those credits/charges for transactions in securities in each of the three Tapes. In the proposed amended and restated schedule, when a credit or charge does not apply to securities in a particular Tape, the chart will so indicate with the term “N/A.”⁶

The Exchange also proposes to re-format and emphasize in bold type the headings for the credits and fees that comprise the schedule so that members can distinguish these sections more easily. The proposal will simplify the schedule by removing redundant explanatory text, such as the phrase “per share executed” for each credit/charge (the headings of the chart already indicate that all credits and charges apply on a per share executed basis), “charge to ...” (as the headings of the schedule already state where they are charges and credits), and “in additional to the credits provided for ...” (which is not needed for credits already under the heading “Supplemental credit to member ...”).

The proposed amendments will consolidate existing definitions of certain terms used within Section 118(a) into a single bulleted definitions paragraph at the outset of the Rule, including the terms “ADV” (or “Average Daily Volume”), “Consolidated Volume,” and “Designated Retail Order.” The proposal will not make any substantive changes to the meanings of these terms.

The proposal will also re-format aspects of the schedule where presently, multiple credits and charges are listed in the same cells, and are thus difficult to read. For example, the proposed rule will separate the single cells listing a “charge or credit to [a] member entering TFTY,

⁶ The proposed rule change is similar to the formatting and organization changes made to the Exchange’s sister exchange, Nasdaq BX, Inc., in 2019. See Securities Exchange Act Release No. 85912 (May 22, 2019); 84 FR 24834 (May 29, 2019) (SR-BX-2019-013).

MOPB, MOPP, SAVE, SOLV, CART, QDRK, QCST or directed order that executes in a venue other than the Nasdaq Market Center” into multiple rows corresponding to each of them individually.

Additionally, the proposal will amend the existing line item entitled “Credit to other members” by retitling it “Credit for all other displayed quotes/ order that provide liquidity (per share executed).” This proposal will clarify that this credit applies to members for all other displayed quotes/ orders not otherwise covered by all of the preceding credits for displayed quotes or orders that provide liquidity to the Exchange (rather than a subset thereof).

The Exchange will relocate several charges and credits that are either misplaced or logically belong in other sections of the schedule. For example, in the section entitled “Charge to enter orders that execute in the Nasdaq Market Center,” the Exchange proposes to move the \$0.0030 per share executed credit for “all other orders that execute in the Nasdaq Market Center” to the end of the section, as it is a baseline charge absent the availability of discounted charges. Additionally, the Exchange proposes to move from the displayed credits section of the schedule to the section listing supplemental credits for displayed orders/quotes that provide liquidity (other than Supplemental orders or Designated Retail Orders) the following three credits, as these credits logically are supplemental, rather than regular credits: (a) a \$0.0005 per share executed credit for securities in Tape B for a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent at least 1.75% of Consolidated Volume, including shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent at least 0.60% of Consolidated Volume; (b) a \$0.0001 per share executed credit for securities in Tape B for a member with shares of liquidity provided in securities that are listed on exchanges other than Nasdaq or NYSE

during the month representing at least 0.10% of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs; and (c) a \$0.0005 per share executed credit for securities in Tape A for a member with shares of liquidity provided in Tape A securities through one or more of its Nasdaq Market Center MPIDs that represent at least 0.75% of Consolidated Volume, and shares of liquidity provided in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent at least 0.60% of Consolidated Volume. Similarly, the Exchange proposes to relocate to the regular displayed credits section of the schedule two credits that are misplaced now in the supplemental credits section: (a) a \$0.0026 per share executed credit for securities in all Tapes to a member that, through one or more of its Nasdaq Market Center MPIDs: (i) provides shares of liquidity in all securities that represent equal to or greater than 0.15% of Consolidated Volume; (ii) increases the extent to which it provides liquidity in all securities as a percentage of Consolidated Volume by 20% or more during the month relative to the month of May 2021; and (iii) has a ratio of at least 50% NBBO liquidity provided (as defined in Equity 7, Section 114(g)) to liquidity provided by displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) during the month; and (b) a \$0.0027 per share executed credit for securities in all Tapes to a member that, through one or more of its Nasdaq Market Center MPIDs: (i) provides shares of liquidity in all securities that represent equal to or greater than 0.20% of Consolidated Volume; (ii) increases the extent to which it provides liquidity in all securities as a percentage of Consolidated Volume by 35% or more during the month relative to the month of May 2021; and (iii) has a ratio of at least 60% NBBO liquidity provided (as defined in Equity 7, Section 114(g)) to liquidity provided by displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) during the month. Finally, the Exchange proposes to relocate to the section entitled “Supplemental credit to member for displayed

quotes/orders (other than Supplemental Orders) that provide liquidity (per share executed) the following credit, which was also misplaced in error: a \$0.0005 per share executed credit for securities in Tape B to a member with shares of liquidity provided in securities that are listed on exchanges other than Nasdaq or NYSE during the month representing at least 0.10% of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs.

Other non-substantive changes include correcting current inconsistencies in terminology, capitalizing defined terms, de-capitalizing undefined terms, and de-capitalizing the first word in the row. Misspellings of certain terms, including “RTFY,” “TFYY,” and “MELO,” will be corrected to “RFTY,” “TFTY,” and “M-ELO,” respectively. The proposal also reconciles terminological inconsistencies among the three existing statements of the schedule, e.g., “nondisplayed” and “non-displayed”, and “of” and “of which.” The proposal also duly capitalizes the defined terms “Order,” “Customer,” and “Market Hours.”

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 Section 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 proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

The Proposals are Reasonable, an Equitable Allocation of Fees, and are not Unfairly Discriminatory

The Exchange's proposals 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

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

⁹ 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)).

¹⁰ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

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. The Exchange is also subject to intense competition for retail order flow with off-exchange competitors, including wholesale market makers.

The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to eliminate the Nasdaq Growth Program because the Program has not been successful in inducing members to grow materially the extent to which they add liquidity to the Exchange over time. 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 Nasdaq Growth Program to other incentive programs that it hopes will be more impactful.

It is also reasonable, equitable, and not unfairly discriminatory for the Exchange to adjust several existing credits for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange. These adjustments will recalibrate the credits to account for changes in member behavior over time that have rendered the credits less challenging for members to attain. That is, the Exchange proposes to reduce the amount of the credits because many members now readily meet the volume requirements to qualify for them, such that the credits in many cases reward these members for remaining static in their activity on the Exchange. By reducing the amount of these credits, the Exchange wishes

to incent such members to strive to qualify for higher available credits by further increasing the extent to which they add liquidity to the Exchange.

It is reasonable, equitable, and not unfairly discriminatory for the Exchange to eliminate two credits for non-displayed orders (other than Supplemental orders) that provide liquidity to the Exchange. The baseline months for the growth elements of these tiers – April 2019 and August 2020 – are no longer relevant benchmarks, as substantial increases in trading volumes have occurred since these dates. As such, these credits no longer provide growth incentives that are aligned with the Exchange’s needs. Again, 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.

It is reasonable, equitable, and not unfairly discriminatory for the Exchange to lower two existing credits for members that add or grow the extent to which they add midpoint or M-ELO liquidity to the Exchange, as well as add a new such credit. Together, the adjustments to the two existing credits, and the addition of the third, will re-align existing incentives for members to grow or add M-ELO or midpoint liquidity while introducing a new incentive for members to add even larger volumes of M-ELO and midpoint orders during the month to attain the highest existing level of credits. To the extent that the Exchange succeeds through these proposals in increasing the addition of midpoint or M-ELO liquidity or executions on the Exchange, all participants will benefit from the increase in market quality.

Furthermore, it is reasonable, equitable, and not unfairly discriminatory for the Exchange to eliminate one of its supplemental credits for midpoint orders (excluding buy (sell) orders with midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO). Many members now readily meet the volume requirements to qualify for this credit,

such that it rewards these members for remaining static in their activity on the Exchange. By eliminating the lower of these two credits, the Exchange wishes to incent such members to strive to qualify for the higher credit by further increasing the extent to which they add liquidity to the Exchange.

The Exchange notes that the credits affected by this proposal are voluntary. Moreover, nothing about the Exchange's volume-based tiered pricing model, as set forth in Equity 7, is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries – from co-branded credit cards to grocery stores to cellular telephone data plans – that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it enhances price discovery and improves the overall quality of the equity markets.

Those participants that are dissatisfied with the elimination of the Nasdaq Growth Program or the amendments to the Exchange's schedule of credits are free to shift their order flow to competing venues that provide more generous incentives or less stringent qualifying criteria.

Finally, the Exchange believes that it is reasonable to re-organize, re-format, and re-state its schedule of credits and charges, Equity 7, Section 118(a). As noted above, the existing schedule is needlessly long, complex, and repetitive, and it contains unintended inconsistencies in terminology and capitalization, as well as several typographical errors. The Exchange believes that its proposals to address these issues will render the schedule shorter, simpler, more consistent, better and more logically organized, and more readable, to the benefit of investors,

participants, and the public. It will also ease the burden to the Exchange of administering the schedule when it proposes to make substantive changes thereto, as it will no longer need to make three amendments to the schedule to accomplish a single change. The Exchange does not intend for the reorganization, reformatting, or restatement of the schedule to themselves effect any substantive changes to existing credits or charges.

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

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

Intramarket Competition

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

As noted above, the Exchange's intends for its proposed substantive changes to its credits to reallocate its limited resources more efficiently and for optimized effect, to recalibrate them to reflect changing market behavior, 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 these proposals 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.

Intermarket Competition

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its credits and fees to remain competitive with other exchanges and with alternative trading systems

that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited. The proposals are reflective of this competition.

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 comprises upwards of 50% of industry volume.

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.

Finally, the Exchange does not believe that its proposal to re-organize, re-format, and re-state its schedule of credits and fees, at Equity 7, Section 118(a), will have any impact on competition, as it will merely render the schedule shorter, simpler, more consistent, better and more logically organized, and more readable, to the benefit of investors, participants, and the public. It will also ease the burden to the Exchange of administering the schedule when it proposes to make substantive changes thereto, as it will no longer need to make three amendments to the schedule to accomplish a single change. The Exchange does not intend for

the reorganization, reformatting, or restatement of the schedule to themselves effect any substantive changes to existing credits or charges.

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:

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-2022-036 on the subject line.

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2022-036. 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 Web site (<http://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. 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-2022-036 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.¹²

J. Matthew DeLesDernier
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).