Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *
Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document
Exhibit 3 Sent As Paper Document

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

19b-4(f)(6)
19b-4(f)(5)

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Modify the Manner in which it Calculates Volume, Liquidity and Quoting Thresholds Applicable to Billing on the Exchange in relation to a Systems Issue Experienced by SIAC on August 12, 2019

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *
Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Sean
Last Name * Bennett
Title * Principal Associate General Counsel
E-mail * sean.bennett@nasdaq.com
Telephone * (301) 978-8499
Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 08/28/2019
Global Chief Legal and Policy Officer

By Edward S. Knight
(Title *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

edward.knight@nasdaq.com
If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

### Partial Amendment

- **Add**
- **Remove**
- **View**
1. **Text of the Proposed Rule Change**

   (a) The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\) and Rule 19b-4 thereunder,\(^2\) is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to a systems issue experienced by SIAC on August 12, 2019, which impacted trade and quote dissemination across all markets.

   A notice of the proposed rule change for publication in the Federal Register is attached as **Exhibit 1**.

   (b) Not applicable.

   (c) Not applicable.

2. **Procedures of the Self-Regulatory Organization**

   The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the "Board") on September 26, 2018. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

   Questions and comments on the proposed rule change may be directed to:

   T. Sean Bennett  
   Principal Associate General Counsel  
   Nasdaq, Inc.  
   (301) 978-8499

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

a. Purpose

The Exchange proposes to modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to the August 12, 2019 systems issue, which impacted trade and quote dissemination across all markets. Specifically, on August 12, 2019, SIAC\(^4\) determined to fail over to back up servers after receiving indications that its primary systems had become unstable, causing connectivity disruptions. The fail over to secondary systems failed to cure the problem, resulting in market-wide issues with the Consolidated Quote System and the Consolidated Tape System, including gaps in the intra-day trades, quotes, and other messages that were attempted to be sent to it. Consequently, the accuracy of the transaction and quotation data for August 12, 2019 is unknown.

As a result, the Exchange is unable to accurately calculate member transaction fees and credits, including calculations for the Exchange’s incentive programs, since several of the Exchange’s transaction fees and credits are based on trading, quoting and liquidity thresholds that members must satisfy in order to qualify for the particular rates (e.g., percentage of Consolidated Volume, Average Daily Volume, and time at the NBBO). The Exchange therefore proposes to exclude August 12, 2019 from all tier

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4. SIAC is the operator of the Consolidated Quote System and Consolidated Tape System, which disseminate real-time trade and quote information in New York Stock Exchange LLC (Network A) and Bats, NYSE Arca, NYSE American and other regional exchange (Network B) listed securities.
calculations described in Equity 7, Sections 114\textsuperscript{5} and 118\textsuperscript{6} in order to reasonably ensure that a member that would otherwise qualify for a particular threshold during August 2019, and the corresponding transaction rate and/or incentive, would not be negatively impacted by the August 12, 2019 systems issue.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,\textsuperscript{7} in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,\textsuperscript{8} in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers, and it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In this regard, because the accuracy of the transaction and quotation data disseminated by SIAC for August 12, 2019 is unknown, the Exchange believes that it is reasonable to exclude August 12, 2019 from all tier calculations described in Equity 7, Sections 114 and 118, which would reasonably ensure that a member’s qualification for various pricing programs would be based on the data that the Exchange believes is accurate. The Exchange also believes that the proposed rule change is reasonable because the SIAC systems issue that caused

\textsuperscript{5} Equity 7, Section 114 provides the Exchange’s market quality incentive programs.

\textsuperscript{6} Equity 7, Section 118 provides the fees and credits for use of the Exchange’s order execution and routing services.

\textsuperscript{7} 15 U.S.C. 78f(b).

\textsuperscript{8} 15 U.S.C. 78f(b)(4) and (5).
inaccurate transaction and quotation data was not within Nasdaq’s control nor can Nasdaq correct or otherwise remediate the issue. Including August 12, 2019 transaction and quotation data for purposes of tier calculations described in Equity 7, Sections 114 and 118 could result in inaccurate determinations for member rates based on the extent to which their transactions and quotations were impacted by the August 12, 2019 event in comparison to the overall inaccuracies in the data provided by SIAC for that date.

Consequently, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because it would result in all market participants on the Exchange being treated equally by excluding August 12, 2019 from all tier calculations described in Equity 7, Sections 114 and 118. Last, excluding August 12, 2019 from all tier calculations described in Equity 7, Sections 114 and 118 is in the public interest because it will provide Exchange members with the closest approximation of the fees and credits that they would have been eligible for if accurate data for August 12, 2019 were available and included in the monthly calculation.

4. **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. The proposed rule change would treat all market participants on the Exchange equally by excluding August 12, 2019 from all tier calculations described in Equity 7, Sections 114 and 118. Moreover, the Exchange believes that the proposed change would enhance competition between competing marketplaces by enabling the Exchange to fairly assess its members fees and to apply credits in light of systems issues that occurred, which are beyond the control of the Exchange.
5. **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.

6. **Extension of Time Period for Commission Action**

   Not applicable.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

   The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)\(^9\) of the Act and Rule 19b-4(f)(6) thereunder\(^10\) in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

   The proposed change promotes the protection of investors and the public interest by allowing the Exchange to assess fees and to apply credits under Equity 7, Sections 114 and 118 in the most accurate manner possible, in light of the significant systems issue that caused corrupted transaction and quotation data for Tape A and B securities. Similarly, the Exchange believes that the proposal does not impose any significant burden on competition because it will allow the Exchange to assess fees and to apply credits under Equity 7, Sections 114 and 118 in a manner that most accurately reflects a member’s trading activity in comparison to that of the overall market for the month.

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Furthermore, Rule 19b-4(f)(6)(iii)\(^\text{11}\) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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 necessary or appropriate in the public interest, for the protection of investors, or 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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that it may exclude August 12, 2019 from the calculation for the month of August. The Exchange begins the calculation and billing of member fees and credits under Equity 7, Sections 114 and 118 at the close of each month. Consequently, an operative delay would disrupt the normal billing process, which may cause unnecessary expense and potential investor confusion.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

   Not applicable.

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9. **Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**
   
   Not applicable.

10. **Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**
    
   Not applicable.

11. **Exhibits**
    
Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Manner in which it Calculates Volume, Liquidity and Quoting Thresholds Applicable to Billing on the Exchange in relation to a Systems Issue Experienced by SIAC on August 12, 2019

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 August 28, 2019, 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 modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to a systems issue experienced by SIAC on August 12, 2019, which impacted trade and quote dissemination across all markets.

The text of the proposed rule change is available on the Exchange’s Website at http://nasdaq.cchwallstreet.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 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 Exchange proposes to modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to the August 12, 2019 systems issue, which impacted trade and quote dissemination across all markets. Specifically, on August 12, 2019, SIAC determined to fail over to back up servers after receiving indications that its primary systems had become unstable, causing connectivity disruptions. The fail over to secondary systems failed to cure the problem, resulting in market-wide issues with the Consolidated Quote System and the Consolidated Tape System, including gaps in the intra-day trades, quotes, and other messages that were attempted to be sent to it. Consequently, the accuracy of the transaction and quotation data for August 12, 2019 is unknown.

3 See https://www.ctaplan.com/alerts#110000144324.

4 SIAC is the operator of the Consolidated Quote System and Consolidated Tape System, which disseminate real-time trade and quote information in New York Stock Exchange LLC (Network A) and Bats, NYSE Arca, NYSE American and other regional exchange (Network B) listed securities.
As a result, the Exchange is unable to accurately calculate member transaction fees and credits, including calculations for the Exchange’s incentive programs, since several of the Exchange’s transaction fees and credits are based on trading, quoting and liquidity thresholds that members must satisfy in order to qualify for the particular rates (e.g., percentage of Consolidated Volume, Average Daily Volume, and time at the NBBO). The Exchange therefore proposes to exclude August 12, 2019 from all tier calculations described in Equity 7, Sections 114\(^5\) and 118\(^6\) in order to reasonably ensure that a member that would otherwise qualify for a particular threshold during August 2019, and the corresponding transaction rate and/or incentive, would not be negatively impacted by the August 12, 2019 systems issue.

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 (5) of the Act,\(^8\) in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers, and it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In this regard, because the accuracy

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\(^{5}\) Equity 7, Section 114 provides the Exchange’s market quality incentive programs.

\(^{6}\) Equity 7, Section 118 provides the fees and credits for use of the Exchange’s order execution and routing services.


\(^{8}\) 15 U.S.C. 78f(b)(4) and (5).
of the transaction and quotation data disseminated by SIAC for August 12, 2019 is
unknown, the Exchange believes that it is reasonable to exclude August 12, 2019 from all
tier calculations described in Equity 7, Sections 114 and 118, which would reasonably
ensure that a member’s qualification for various pricing programs would be based on the
data that the Exchange believes is accurate. The Exchange also believes that the
proposed rule change is reasonable because the SIAC systems issue that caused
inaccurate transaction and quotation data was not within Nasdaq’s control nor can
Nasdaq correct or otherwise remediate the issue. Including August 12, 2019 transaction
and quotation data for purposes of tier calculations described in Equity 7, Sections 114
and 118 could result in inaccurate determinations for member rates based on the extent to
which their transactions and quotations were impacted by the August 12, 2019 event in
comparison to the overall inaccuracies in the data provided by SIAC for that date.
Consequently, the Exchange believes that the proposed change is equitable and not
unfairly discriminatory because it would result in all market participants on the Exchange
being treated equally by excluding August 12, 2019 from all tier calculations described in
Equity 7, Sections 114 and 118. Last, excluding August 12, 2019 from all tier
calculations described in Equity 7, Sections 114 and 118 is in the public interest because
it will provide Exchange members with the closest approximation of the fees and credits
that they would have been eligible for if accurate data for August 12, 2019 were available
and included in the monthly calculation.

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. The proposed rule change would treat all market participants on the Exchange
equally by excluding August 12, 2019 from all tier calculations described in Equity 7, Sections 114 and 118. Moreover, the Exchange believes that the proposed change would enhance competition between competing marketplaces by enabling the Exchange to fairly assess its members fees and to apply credits in light of systems issues that occurred, which are beyond the control of the Exchange.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act\(^9\) and subparagraph (f)(6) of Rule 19b-4 thereunder.\(^{10}\)

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the


\(^{10}\) 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.
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](http://www.sec.gov/rules/sro.shtml)); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2019-069 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-2019-069. 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](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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2019-069 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.11

Eduardo A. Aleman
Assistant Secretary