

### 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) of the Act<sup>33</sup> and Rule 19b-4(f)(6) thereunder.<sup>34</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>35</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the Commission has previously approved proposed rule changes to permit listing and trading on the Exchange of Active Proxy Portfolio Shares similar to the Funds.<sup>36</sup> The Exchange also states that the Commission has previously issued a notice of filing and immediate effectiveness for a proposed rule change relating to the proposed listing on a national securities exchange of other issues of Active Proxy Portfolio Shares similar to the Funds.<sup>37</sup> For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>38</sup>

<sup>33</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>34</sup> 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.

<sup>35</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>36</sup> See *supra* note 8.

<sup>37</sup> See Securities Exchange Act Release No. 90686 (December 16, 2020), 85 FR 83657 (December 22, 2020) (SR-CboeBZX-2020-090) (Notice of Filing and Immediate Effectiveness of a Proposed Rule to List and Trade Shares of the Invesco Real Assets ESG ETF and the Invesco US Large Cap Core ESG ETF, Each a Series of the Invesco Actively Managed Exchange-Traded Fund Trust, under Rule 14.11(m) (Tracking Fund Shares)).

<sup>38</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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.

### 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2021-39 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 R-NYSEArca-2021-39. 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 (<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-NYSEArca-2021-39 and should be submitted on or before June 9, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>39</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91885; File No. SR-NASDAQ-2021-038]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Implementation Date of Its Nasdaq Opening Cross Enhancements to the End of Q2 2021

May 13, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 3, 2021, 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 and II 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 extend the implementation date of its Nasdaq Opening Cross enhancements to the end of Q2 2021.

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

<sup>39</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

Nasdaq is filing this proposal to extend the implementation date of its Nasdaq Opening Cross enhancements to the end of Q2 2021.

Nasdaq proposed to enhance its Opening Cross by (i) disseminating abbreviated order imbalance information prior to the dissemination of the Order Imbalance Indicator, (ii) amending certain cutoff times for on-open orders entered for participation in the Nasdaq Opening Cross and (iii) extending the time period for accepting certain Limit On Open Orders. These changes were filed by Nasdaq on February 10, 2021 [sic], and published in the **Federal Register** on February 17, 2021.<sup>3</sup> The Commission approved these changes on April 2, 2021.<sup>4</sup>

Nasdaq initially proposed that these changes become operative on April 26, 2021. Due to additional weekend testing in advance of the date of launch, Nasdaq has decided to delay the implementation of this new functionality until the end of Q2 2021. The Exchange will announce the new implementation date in an Equity Trader Alert at least ten days in advance of implementing the changes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that 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.

The purpose of this proposal is to inform the SEC and market participants of the new implementation date for the Nasdaq Opening Cross enhancements. These enhancements were proposed in

a rule filing that was submitted to the SEC, and this proposal does not make any substantive changes to that filing. Nasdaq is delaying the implementation date to allow for additional weekend testing prior to implementation.

*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. As explained above, the purpose of this proposal is to inform the SEC and market participants of the new implementation date for the enhancements to the Opening Cross, and the Exchange does not expect the date change to place any burden on competition.

*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) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>9</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>10</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. Waiver of the operative delay would allow the Exchange to immediately extend the implementation date for the changes to the Nasdaq Opening Cross to allow for additional

weekend testing prior to implementation. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>11</sup>

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 change 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2021-038 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-2021-038. 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 (<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

<sup>11</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>3</sup> See Securities Exchange Act Release No. 91096 (February 10, 2021), 86 FR 9972 (February 17, 2021) (NASDAQ-2021-004) ("Proposal").

<sup>4</sup> See Securities Exchange Act Release No. 91461 (April 2, 2021), 86 FR 18330 (April 8, 2021) ("Approval Order").

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

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-2021-038, and should be submitted on or before June 9, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91894; File No. SR-ICC-2021-007]

### Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC's Treasury Operations Policies and Procedures

May 13, 2021.

#### I. Introduction

On March 29, 2021, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to revise the ICC Treasury Operations Policies and Procedures (the "Treasury Policy"). The proposed rule change was published for comment in the **Federal Register** on April 13, 2021.<sup>3</sup> The Commission did not receive comments on the proposed rule change. For the

reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description of the Proposed Rule Change

ICC is proposing amendments to its Treasury Policy to make certain clarifications and updates with respect to governance arrangements and collateral asset haircuts, as well as minor clean-up changes. The proposed amendments are summarized below.<sup>4</sup>

ICC proposes to amend the "Revision History" section of the Treasury Policy. The proposed changes would remove an incorrect statement that the document's revision history is limited to the last three years. The proposed changes would also memorialize ICC's review and approval process of the Treasury Policy document, which consists of review by the ICC Risk Committee and review and approval by the ICC Board of Managers (the "Board") at least annually. Additionally, ICC would update the revision history table to include the most recent changes to the document.

ICC also proposes updates and clarification changes to the "Collateral Assets Risk Management Framework" appendix to the Treasury Policy ("Appendix 6"). Under the Treasury Policy, ICC accounts for the risk associated with fluctuations in the value of collateral assets by discounting, or applying "haircuts" to, such assets based on the risk measures and risk factors set forth in Appendix 6. The ICC Risk Department (the "Risk Department") calculates such haircuts for various collateral assets as described in Appendix 6 on an ongoing basis. ICC proposes to change Appendix 6 to update the measure of daily changes for collateral assets such as sovereign debt. Specifically, the proposed changes would amend and remove certain language that differentiates between yield rates greater than and less than or equal to one basis point in respect of sovereign debt collateral haircuts. ICC represents that such amendments do not represent a change to the methodology and would provide a more generalized and consistent collateral risk management framework for sovereign debt.<sup>5</sup> ICC proposes additional clarifications, including with respect to time series used for determining sovereign debt collateral haircuts and a formula regarding a risk-factor specific haircut. ICC also proposes a grammatical update to change a

reference to "haircuts" from plural to singular.

ICC further proposes additional detail on the process of reviewing and updating collateral asset haircuts. Appendix 6 currently states that such haircuts are reviewed monthly. ICC proposes to clarify that the Risk Department will establish haircuts for the respective collateral asset types within measured intervals, and review them at least monthly to determine the need for updates. ICC also proposes to specify that the Risk Department may use discretion to update collateral asset haircuts during periods of extreme market stress, and specifically during periods when collateral assets appreciate in response to central banks' policy implementations, as a temporary means to reduce procyclical impacts.

#### III. Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>6</sup> and Rules 17Ad-22(e)(2)(i) and (v), (e)(3)(i), and (e)(5) thereunder.<sup>7</sup>

##### A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible.<sup>8</sup>

As described above, the proposed rule change would update and clarify the revision history of the Treasury Policy document and memorialize the governance arrangements for its review and approval. The Commission believes that these proposed changes should help ICC maintain a complete and transparent history of changes to the Treasury Policy and ensure that the Treasury Policy is reviewed and approved at least annually to support ICC's ongoing treasury functions, including collateral asset risk

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> 17 CFR 240.17Ad-22(e)(2)(i) and (v), (e)(3)(i), and (e)(5).

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC's Treasury Operations Policies and Procedures, Exchange Act Release No. 91489 (April 7, 2021), 86 FR 19311 (April 13, 2021) (SR-ICC-2021-007) ("Notice").

<sup>4</sup> The following description of the proposed rule change is substantially excerpted from the Notice.

<sup>5</sup> See Notice, 86 FR at 19311.