

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

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Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95226; File No. SR-NASDAQ-2022-039]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Credits, at Equity 7, Section 118

July 11, 2022.

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 July 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 schedule of credits, at Equity 7, Section 118(a)(1), 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.

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

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

the most significant aspects of such statements.

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

##### 1. Purpose

The purpose of the proposed rule change is to eliminate a credit that the Exchange provides to members for displayed liquidity under Equity 7, Section 118(a)(1).

Currently, the Exchange provides a \$0.0018 per share executed credit for securities in Tape C<sup>3</sup> to a member with shares of liquidity provided in all securities representing less than 0.10% of Consolidated Volume,<sup>4</sup> 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<sup>5</sup> routing strategy. The Exchange proposes to eliminate this credit.

The Exchange offers this credit as a means of improving market quality by providing its members with an incentive to increase liquidity on the Exchange. However, the Exchange has observed over time that this credit has not been successful in accomplishing its objective. That is, it has not induced members to add liquidity to the Exchange and members are not targeting this credit for growth or general use of

<sup>3</sup> There are three Tapes, which are based on the listing venue of the security: Tape C securities are Nasdaq-listed; Tape A securities are New York Stock Exchange-listed; and Tape B securities are listed on exchanges other than Nasdaq and NYSE.

<sup>4</sup> 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. 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 count as liquidity-adding activity on Nasdaq.

<sup>5</sup> QDRK is a routing option under which orders check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table that are not posting Protected Quotations within the meaning of Regulation NMS. If shares remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

the QDRK strategy. The Exchange has limited resources available to it to offer its members market-improving incentives, and it allocates those limited resources to those segments of the market where it perceives the need to be greatest and/or where it determines that the incentive is likely to achieve its intended objective. Accordingly, the Exchange proposes to eliminate the credit noted above.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange’s proposed change to its schedule of credits is 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.’ . . .”<sup>8</sup>

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

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

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>8</sup> *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)).

<sup>13</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.

“has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>9</sup>

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.

The Exchange believes that its proposal is reasonable, equitable, and not unfairly discriminatory to eliminate the \$0.0018 per share executed credit for securities in Tape C. The credit has not been effective in achieving its intended objective of incentivizing members to provide liquidity to the Exchange. The Exchange has limited resources available to it to offer its members market-improving incentives, and it allocates those limited resources to those segments of the market where it perceives the need to be greatest and/or where it determines that the incentive is likely to achieve its intended objective.

The proposal is also equitable and not unfairly discriminatory because the proposed change to the credits will apply uniformly to all similarly situated members. All market participants stand to benefit to the extent that the proposal is successful in freeing limited resources and improving market quality. Any member that is dissatisfied with the credits is free to shift their order flow to competing venues that provide more favorable rates or less stringent qualifying criteria.

#### *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 proposal will place any category of Exchange participants at a competitive disadvantage. Members are free to trade on other venues to the extent they believe that the credits provided are not attractive or the qualifying criteria for such credits is too stringent. 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*

The Exchange believes that the proposed change to its schedule of credits to eliminate the \$0.0018 per share executed credit for securities in Tape C as noted above 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 live exchanges and from off-exchange venues, which include alternative trading systems that trade national market system stock. 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 fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed change to the Exchange’s credits is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume only has 17–18% 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 more than 40% of industry volume in recent months.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will either fail to increase its market share or even 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.

#### *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) of the Act<sup>10</sup> and paragraph (f) of Rule 19b-4<sup>11</sup> thereunder.

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2022-039 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.

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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR–NASDAQ–2022–039. 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–NASDAQ–2022–039 and should be submitted on or before August 5, 2022.

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. 34–95245; File No. SR–NSCC–2022–005]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Revise the Excess Capital Premium Charge

July 11, 2022.

On May 30, 2022, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange

Commission (“Commission”) proposed rule change SR–NSCC–2022–005 (the “Proposed Rule Change”) 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> The Proposed Rule Change was published for comment in the **Federal Register** on June 8, 2022,<sup>3</sup> and the Commission has received comments regarding the changes proposed in the Proposed Rule Change.<sup>4</sup>

Section 19(b)(2) of the Act <sup>5</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for the Proposed Rule Change is July 23, 2022.

The Commission is extending the 45-day period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that it has sufficient time to consider and take action on the Proposed Rule Change.

Accordingly, pursuant to Section 19(b)(2) of the Act <sup>6</sup> and for the reasons stated above, the Commission designates September 6, 2022, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–NSCC–2022–005.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

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

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 95026 (June 2, 2022), 87 FR 34913 (June 8, 2022) (File No. SR–NSCC–2022–005).

<sup>4</sup> Comments are available at <https://www.sec.gov/comments/sr-nsc-2022-005/srnsc2022005.htm>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> *Id.*

<sup>7</sup> 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–497; OMB Control No. 3235–0555]

### Submission for OMB Review; Comment Request Extension: Rule 6h–1

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for approval of extension of the previously approved collection of information provided for in Rule 6h–1 (17 CFR 240.6h–1) under the Securities Exchange Act of 1934 (“Act”) (15 U.S.C. 78a *et seq.*).

Section 6(h) of the Act (15 U.S.C. 78f(h)) requires national securities exchanges and national securities associations that trade security futures products to establish listing standards that, among other things, require that: (i) trading in such products not be readily susceptible to price manipulation; and (ii) the market on which the security futures product trades has in place procedures to coordinate trading halts with the listing market for the security or securities underlying the security futures product. Rule 6h–1 implements these statutory requirements and requires that (1) the final settlement price for each cash-settled security futures product fairly reflect the opening price of the underlying security or securities, and (2) the exchanges and associations trading security futures products halt trading in any security futures product for as long as trading in the underlying security for trading of a security futures product based on a single security, or trading in 50% or more of the underlying securities for trading of a security futures product based on a narrow-based security index, is halted on the listing market.

It is estimated that approximately 1 respondent will incur an average burden of 10 hours per year to comply with this rule, for a total burden of 10 hours. At an average internal cost per hour of approximately \$428, the resultant total internal cost of compliance for the respondents is \$4,280 per year (1 respondent × 10 hours/respondent × \$428/hour).

Compliance with Rule 6h–1 is mandatory. Any listing standards

<sup>12</sup> 17 CFR 200.30–3(a)(12).