

other things, requires every self-regulatory organization to comply with its own rules. OCC filed its Capital Management Policy as a “proposed rule change” within the meaning of Section 19(b) of the Act,<sup>30</sup> and Rule 19b-4 under the Act.<sup>31</sup> The Capital Management Policy specifies that the maximum Operational Loss Fee shall be the Adjusted RWD Amount.<sup>32</sup> Because the Adjusted RWD Amount will change annually based, in part, on OCC’s corporate budget, fee filings will be necessary to ensure that the maximum Operational Loss Fee in OCC’s schedule of fees remains consistent with the amount identified in the Capital Management Policy. Therefore, OCC believes that the proposed change to OCC’s fee schedule is consistent with Section 19(g)(1) of the Act.

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

*(B) Clearing Agency’s Statement on Burden on Competition*

Section 17A(b)(3)(I) of the Act<sup>33</sup> requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would have any impact or impose a burden on competition. Although the proposed Operational Loss Fee affects Clearing Members, their customers, and the markets that OCC serves, OCC believes that the proposed rule change would not disadvantage or favor any particular user of OCC’s services in relationship to another user because the proposed Operational Loss Fee would apply equally to all Clearing Members. In addition, OCC does not believe that the proposed Operational Loss Fee imposes a significant burden on smaller firms because the maximum Operational Loss Fee imposes a contingent obligation on Clearing Members that is approximately the same amount as a Clearing Member’s contingent obligation for Clearing Fund assessments for a Clearing Member operating at the minimum Clearing Fund deposit.<sup>34</sup> Moreover, the proposed rule change would lower the maximum contingent obligation, which would be a benefit to all Clearing Members. Accordingly, OCC does not believe that the proposed rule

change would have any impact or impose a burden on competition.

*(C) Clearing Agency’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Pursuant to Section 19(b)(3)(A)(ii)<sup>35</sup> of the Act, and Rule 19b-4(f)(2) thereunder,<sup>36</sup> the proposed rule change is filed for immediate effectiveness as it constitutes a change in fees charged to OCC Clearing Members. 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. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.<sup>37</sup>

**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-OCC-2020-002 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-OCC-2020-002. 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 such filing also will be available for inspection and copying at the principal office of OCC.

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-OCC-2020-002 and should be submitted on or before April 24, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

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

[FR Doc. 2020-06954 Filed 4-2-20; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-88516; File No. SR-NASDAQ-2020-007]

**Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Assume Operational Responsibility for Certain Enforcement Functions Currently Performed by FINRA Under the Exchanges Authority and Supervision**

March 30, 2020.

**I. Introduction**

On February 3, 2020, The Nasdaq Stock Market LLC (“Exchange” or “Nasdaq”) filed with the Securities and

<sup>30</sup> 15 U.S.C. 78s(b).

<sup>31</sup> 17 CFR 240.19b-4.

<sup>32</sup> Order Approving OCC’s Capital Management Policy, 85 FR at 5503.

<sup>33</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>34</sup> See note 18, *supra*.

<sup>35</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>36</sup> 17 CFR 240.19b-4(f)(2).

<sup>37</sup> Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

<sup>38</sup> 17 CFR 200.30-3(a)(12).

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 assume operational responsibility for certain enforcement functions currently performed by the Financial Industry Regulatory Authority (“FINRA”) under the Exchange’s authority and supervision. The proposed rule change was published for comment in the **Federal Register** on February 20, 2020.<sup>3</sup> On March 24, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change.<sup>4</sup> The Commission did not receive any comment letters on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Proposal

According to the Exchange, since it became a national securities exchange, the Exchange has contracted with FINRA through various regulatory services agreements to perform certain regulatory functions on its behalf.<sup>5</sup> At the same time, the Exchange retained operational responsibility for a number of regulatory functions, including real-time surveillance, qualification of companies listed on the Exchange, and most surveillance related to its affiliated options markets.<sup>6</sup> In April 2019, the Exchange reallocated operational responsibility from FINRA to Nasdaq Regulation for certain investigative and enforcement activity, including the investigation and enforcement responsibilities for conduct occurring on The Nasdaq Options Market,<sup>7</sup> and investigation and enforcement responsibilities for conduct occurring

on Nasdaq’s equity market only, *i.e.*, not also on non-Nasdaq-affiliated equities markets.<sup>8</sup> According to the Exchange, notwithstanding the changes made in April 2019, FINRA continues to perform certain functions pursuant to an RSA,<sup>9</sup> including the handling of contested disciplinary proceedings arising out of Nasdaq Regulation-led investigation and enforcement activities.

The Exchange now proposes to reallocate operational responsibility from FINRA to Nasdaq Regulation for certain enforcement activity, specifically, the handling of certain contested disciplinary proceedings.<sup>10</sup> The Exchange states that it anticipates handling those contested disciplinary proceedings that FINRA is unable or unwilling to handle due to strained resources or other similar limitations.<sup>11</sup> Furthermore, the Exchange states that in all cases, the Exchange will continue to use FINRA’s Office of Hearing Officers to administer the hearing process, and that the rules applicable to the disciplinary process will remain the same.<sup>12</sup>

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>13</sup> and, in particular, with Sections 6(b)(5) and 6(b)(7) of the Act.<sup>14</sup> As noted above, since it became a national securities exchange, the Exchange has contracted with FINRA through various regulatory services agreements to perform certain regulatory functions on its behalf.<sup>15</sup> Nasdaq General Rule 1, Section 7 requires that,

<sup>8</sup> Securities Exchange Act Release No. 85505 (April 3, 2019), 84 FR 14170 (April 9, 2019).

<sup>9</sup> In addition to work performed pursuant to a RSA, FINRA also performs work for matters covered by agreements to allocate regulatory responsibility under Rule 17d-2 of the Act.

<sup>10</sup> See Amendment No. 1, *supra* note 4, at 6. The Exchange states that Nasdaq Regulation’s decision to assume operational responsibility for any given contested disciplinary proceeding will be made on a case by case basis. See Amendment No. 1, *supra* note 4, at 6, fn.13. Furthermore, the Exchange states that for those contested disciplinary proceedings that Nasdaq Regulation does not assume operational responsibility for, the Exchange will continue to use FINRA to litigate those matters. See Amendment No. 1, *supra* note 4, at 6.

<sup>11</sup> See Amendment No. 1, *supra* note 4, at 6.

<sup>12</sup> See Amendment No. 1, *supra* note 4, at 6, fn.12; 7.

<sup>13</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b)(5), (7).

<sup>15</sup> See *supra* note 5 and accompanying text.

unless Nasdaq obtains prior Commission approval, the regulatory functions subject to the regulatory services agreement in effect at the time when Nasdaq began to operate a national securities exchange must at all times continue to be performed by FINRA or an affiliate thereof or by another independent self-regulatory organization. The Exchange now proposes to reallocate operational responsibility for the certain contested disciplinary activities discussed above from FINRA to Nasdaq Regulation.<sup>16</sup>

The Commission believes that the Exchange could leverage its knowledge of its markets and members, its experience with investigation and enforcement work, and its surveillance, investigation, and enforcement staff, in helping to effectively, efficiently, and with immediacy, litigate certain contested disciplinary proceedings.<sup>17</sup> The Commission also notes that, as discussed above, the proposal would not change or alter in any way the disciplinary process around how contested matters are handled, and FINRA’s Office of Hearing Officers will continue to administer the hearing process for all contested disciplinary proceedings.<sup>18</sup> Furthermore, as the Exchange states, by assuming operational responsibility for certain contested disciplinary proceedings, the Exchange may be able to deliver increased efficiencies in the regulation of its markets and to act promptly and provide more effective regulation by enabling timely and more efficient action.<sup>19</sup> Accordingly, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

## IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 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-2020-007 on the subject line.

<sup>16</sup> See *supra* notes 10 and 11 and accompanying text.

<sup>17</sup> See Amendment No. 1, *supra* note 4, at 7.

<sup>18</sup> See *id.*

<sup>19</sup> See Amendment No. 1, *supra* note 4, at 7, 9.

<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. 88209 (February 13, 2020), 85 FR 9870.

<sup>4</sup> In Amendment No. 1, the Exchange: (1) Clarified that the Exchange itself, not a third-party, would be assuming operational responsibility for certain contested disciplinary matters; (2) clarified that FINRA’s Office of Hearing Officers would continue to administer the hearing process for all contested disciplinary matters; and (3) made other technical, clarifying, and conforming changes. Amendment No. 1 is available at <https://www.sec.gov/comments/sr-nasdaq-2020-007/srnasdaq2020007-6990674-214688.pdf>.

<sup>5</sup> See Amendment No. 1, *supra* note 4 at 4.

<sup>6</sup> See *id.*

<sup>7</sup> According to the Exchange, as appropriate, Nasdaq Regulation coordinates with other SROs to the extent it is investigating activity occurring on non-Nasdaq options markets to ensure no regulatory duplication occurs.

### Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2020–007. 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–2020–007 and should be submitted on or before April 24, 2020.

### V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. The Commission notes that, in Amendment No. 1, the Exchange provided additional information to clarify and support the proposal, and did not materially change the substance of the proposal. The Commission also notes that the original proposal was subject to a 21-day comment period and no comments were received. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2)

of the Act,<sup>20</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change (SR–NASDAQ–2020–007), as modified by Amendment No. 1 be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**J. Matthew DeLesDernier**,

*Assistant Secretary*.

[FR Doc. 2020–06959 Filed 4–2–20; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88512; File No. SR–FICC–2020–003]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Revise the Clearing Agency Investment Policy

March 30, 2020.

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 March 26, 2020, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act <sup>3</sup> and Rule 19b–4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would revise the Clearing Agency Investment Policy (“Investment Policy”) of FICC and its affiliates, The Depository Trust Company (“DTC”) and National Securities Clearing Corporation (“NSCC,” and together with DTC and FICC, the “Clearing Agencies”) in order

to (1) include the proceeds of the issuance of term debt by NSCC as part of the description of “Default Liquidity Funds” within the section for “Investable Funds”; (2) clarify the allowable investments for DTC's Participants Fund;<sup>5</sup> and (3) enhance the description of collateral that may be posted in connection with investments in reverse repurchase agreements; as described in greater detail below.

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### (A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Clearing Agencies are proposing to revise the Investment Policy, which was adopted for each clearing agency in December 2016 <sup>6</sup> and is maintained in compliance with Rule 17Ad–22(e)(16) under the Act,<sup>7</sup> in order to (1) include the proceeds of the issuance of term debt by NSCC as part of the description of “Default Liquidity Funds” within the section for “Investable Funds”; (2) clarify the allowable investments for DTC's Participants Fund; and (3) enhance the description of collateral that may be posted in connection with investments in reverse repurchase

<sup>5</sup> The respective Clearing Funds of NSCC and FICC, and the DTC Participants Fund are described in the Rules & Procedures of NSCC (“NSCC Rules”), the DTC Rules, By-laws and Organization Certificate (“DTC Rules”), the Clearing Rules of the Mortgage-Backed Securities Division of FICC (“MBSD Rules”) and the Rulebook of the Government Securities Division of FICC (“GSD Rules”), respectively, available at <http://dtcc.com/legal/rules-and-procedures>. See Rule 4 (Clearing Fund) of the NSCC Rules, Rule 4 (Participants Fund and Participants Investment) of the DTC Rules, Rule 4 (Clearing Fund and Loss Allocation) of the GSD Rules and Rule 4 (Clearing Fund and Loss Allocation) of the MBSD Rules.

<sup>6</sup> See Securities Exchange Act Release No. 79528 (December 12, 2016), 81 FR 91232 (December 16, 2016) (SR–DTC–2016–007, SR–FICC–2016–005, SR–NSCC–2016–003).

<sup>7</sup> 17 CFR 240.17Ad–22(e)(16). As discussed in this filing, the Investment Policy also addresses compliance with the requirements of Rule 17Ad–22(e)(3). 17 CFR 240.17Ad–22(e)(3).

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> *Id.*

<sup>22</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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b–4(f)(6).