

alternative venues that they may participate on, including 15 other equities exchanges, as well as off-exchange venues, including over 50 alternative trading systems.<sup>13</sup> The Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 16% market share.<sup>14</sup> Indeed, participants can readily choose to submit their order flow to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable.<sup>15</sup> In addition to this the Exchange notes that at least one other exchange currently has MPID fees in place,<sup>16</sup> which have been previously filed with the Commission. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, 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.” The fact that this market is competitive has also 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’ . . . .” Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>13</sup> See U.S. Securities and Exchange Commission Alternative Trading Systems (“ATS”) List (December 4, 2020), available at <https://www.sec.gov/foia/docs/atlist.htm>.

<sup>14</sup> See *supra* note 4.

<sup>15</sup> See *e.g.*, *supra* note 10.

<sup>16</sup> See *supra* note 11.

*C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>18</sup> because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B) of the Act<sup>19</sup> 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 No. SR-CboeBYX-2021-004 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 No. SR-CboeBYX-2021-004. 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/>

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).

<sup>19</sup> 15 U.S.C. 78s(b)(2)(B).

[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 No. SR-CboeBYX-2021-004, and should be submitted on or before February 16, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-01583 Filed 1-25-21; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-90952; File No. SR-NASDAQ-2020-082]

**Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Offer Certain Listed Companies Access to a Complimentary Board Recruiting Solution To Help Advance Diversity on Company Boards**

January 19, 2021.

On December 1, 2020, The Nasdaq Stock Market LLC (“Exchange”) 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 offer certain listed companies

<sup>20</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.

access to a complimentary board recruiting solution to help advance diversity on company boards. The proposed rule change was published for comment in the **Federal Register** on December 10, 2020.<sup>3</sup>

Section 19(b)(2) of the Act<sup>4</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 this proposed rule change is January 24, 2021.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comment letters.<sup>5</sup>

Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> the Commission designates March 10, 2021 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NASDAQ-2020-082).

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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**BILLING CODE 8011-01-P**

<sup>3</sup> See Securities Exchange Act Release No. 90571 (December 4, 2020), 85 FR 79556. Comments received on the proposed rule change are available on the Commission's website at: <https://www.sec.gov/comments/sr-nasdaq-2020-082/srnasdaq2020082.htm>.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> Additionally, the Exchange consented to extending to March 10, 2021 the date by which the Commission must either approve, disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change. See letter from Jeffrey S. Davis, Senior Vice President and Senior Deputy General Counsel, Exchange, to Vanessa A. Countryman, Secretary, Commission, dated January 8, 2021.

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90954; File No. SR-NASDAQ-2021-003]

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

January 19, 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 January 12, 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, 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 credits at Equity 7, Section 118, 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 Exchange proposes to amend its schedule of credits at Equity 7, Section

118, to add a new credit for executing orders in securities in all three Tapes.

Presently, the Exchange offers a member a credit of \$0.0030 per share of displayed orders/quotes (other than Supplemental Orders or Designated Retail Orders) to the extent such member has shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.30% or more of Consolidated Volume<sup>3</sup> during the month, which includes shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent 0.40% or more of Consolidated Volume. The purpose of this credit is to incentivize members to add substantial liquidity to the Exchange, and to do so to a significant extent by adding liquidity in securities listed on exchanges other than Nasdaq or NYSE.

The Exchange now proposes to add a new, lower credit for members that meet similar criteria, albeit with less stringent volume requirements. Specifically, the Exchange proposes to provide a new credit of \$0.00295 per share of displayed orders/quotes (other than Supplemental Orders or Designated Retail Orders) that provide liquidity for a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.90% or more of Consolidated Volume during the month, which includes shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent 0.25% or more of Consolidated Volume.

By proposing to add this new tier, the Exchange will provide a new means for its members to qualify for a credit for adding significant liquidity to the Exchange in securities listed on exchanges other than Nasdaq and NYSE. This new credit will be lower than the existing credit for such activity, but members will also qualify for it by satisfying less stringent criteria. By providing an additional incentive for members to add liquidity to the Exchange in securities listed on exchanges other than Nasdaq and NYSE, the Exchange intends to improve the

<sup>3</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.

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

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