

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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<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.

overall quality and attractiveness of the market.

#### Impact of the Changes

Those participants that act as significant providers of liquidity to the Exchange, and who provide significant volumes of liquidity in securities listed on exchanges other than Nasdaq and NYSE, will benefit directly from the proposed addition of the new credit. Other participants will also benefit from the new credit insofar as any increase in liquidity adding activity on the Exchange will improve the overall quality of the market, to the benefit of all members.

The Exchange notes that its proposals are not otherwise targeted at or expected to be limited in their applicability to a specific segment of market participants nor will they apply differently to different types of market participants.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and further the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>5</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 proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

#### The Proposal Is Reasonable

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>6</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 "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>7</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. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange has designed its proposed new credit to provide an additional incentive to members to increase their liquidity adding activity on the Exchange, and in particular, their liquidity adding activity in securities listed on exchanges other than Nasdaq and NYSE. An increase in liquidity adding activity on the Exchange will, in turn, improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants.

The Exchange notes that those market participants that are dissatisfied with the new credit are free to shift their order flow to competing venues that offer them lower charges or higher credits.

#### The Proposal Is an Equitable Allocation of Credits

The Exchange believes its proposal will allocate its credits fairly among its market participants. It is equitable for the Exchange to establish the proposed new credit as a means of incentivizing members to provide meaningful amounts of liquidity to the Exchange, including in securities listed on exchanges other than Nasdaq and NYSE. To the extent that the Exchange succeeds in increasing liquidity on the Exchange, including liquidity adding activity in securities listed on exchanges other than Nasdaq and NYSE, then the Exchange would experience improvements in its market quality, which would benefit all market participants.

Any participant that is dissatisfied with the proposed new credit is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

#### The Proposed Credit Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

Moreover, the Exchange believes that its new proposed credit is not unfairly discriminatory because it stands to improve the overall market quality of the Exchange, to the benefit of all market participants, by incentivizing members to provide meaningful amounts of liquidity, including in securities listed on exchanges other than Nasdaq and NYSE.

Finally, any participant that is dissatisfied with the proposed new credit is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

<sup>6</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>7</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

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

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

### *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 participant at a competitive disadvantage. To the contrary, the proposed change will provide an opportunity for members that do not qualify for the \$0.0030 per share executed credit to receive a lower credit based upon achieving similar, albeit lower thresholds of liquidity adding activity. Any member may elect to provide the levels of market activity required in order to receive the new credit. Furthermore, all members of the Exchange will benefit from any increase in market activity that the proposal effectuates.

Moreover, members are free to trade on other venues to the extent they believe that the proposed credit is too low or the qualification criteria are not attractive. 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. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

#### *Intermarket Competition*

The Exchange believes that its proposal will not burden competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the multitude of other live exchanges and from off-exchange venues. 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 and credits 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 and credit changes in this market may impose any burden on competition is extremely limited.

The proposed new credit is reflective of this competition because, even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% 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 upwards of 40% of industry volume.

The Exchange's proposal is pro-competitive in that the Exchange intends for it to increase liquidity adding activity on the Exchange and thereby render the Exchange a more attractive and vibrant venue to market participants.

In sum, if the change proposed herein is unattractive to market participants, it is likely that the Exchange will 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)(ii) of the Act.<sup>8</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: (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-2021-003 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-2021-003. 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-2021-003 and should be submitted on or before February 16, 2021.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90949; No. SR-NYSEArca-2021-06]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule Regarding the Limits on Fees for Options Strategy Executions

January 19, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January 13, 2021, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 NYSE Arca Options Fee Schedule (“Fee Schedule”) regarding the Limit of Fees on Options Strategy Executions. The Exchange proposes to implement the fee change effective January 13, 2021. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.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 self-regulatory organization 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 those 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 parts of such statements.

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

##### 1. Purpose

The purpose of this filing is to amend the Fee Schedule to modify the Limit of Fees on Options Strategy Executions (“Strategy Cap”), effective January 13, 2021.

Currently, the Fee Schedule provides that transaction fees for OTP Holders and OTP Firms (collectively, “OTP Holders”) are limited or capped at \$1,000 for certain options strategy executions “on the same trading day,” meaning it is a daily fee cap.<sup>4</sup> Strategy executions that qualify for the Strategy Cap are (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls, which are described in detail in the Fee Schedule (the “Strategy Executions”).<sup>5</sup>

The Exchange proposes to modify the Strategy Cap to offer a lower cap of \$200 for those OTP Holders that trade at least 25,000 monthly billable contract sides in Strategy Executions.<sup>6</sup> Thus, at the end of the month, qualifying OTP Holders would have transaction fees for their Strategy Executions for each day of the month capped at \$200 (as opposed to \$1,000 for non-qualifying OTP Holders).<sup>7</sup>

For example, assume an OTP Holder executes the following Strategy Executions against interest in the Trading Crowd on the third business day of the month on behalf of a non-Customer that is not a Lead Market Maker, which participants are subject to a \$0.25 per Manual transaction fee. Under the current Fee Schedule, an OTP Holder would be charged a total of \$1,000 in options fees, per the daily fee cap:

- *Trade 1:* A Reversal Conversion in DEF comprised of 3,000 call options against 3,000 put options would be \$1,500 (at \$0.25 per execution), absent the \$1,000 Strategy Cap.
- *Trade 2:* A Reversal Conversion in ABC comprised of 1,000 call options

<sup>4</sup> See Fee Schedule, Limit of Fees on Options Strategy Executions, available here: [https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE\\_Arca\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf).

<sup>5</sup> See *id.*

<sup>6</sup> See proposed Fee Schedule, Limit of Fees on Options Strategy Executions.

<sup>7</sup> See *id.*

against 1,000 put options would be \$500 (at \$0.25 per execution), absent the Strategy Cap, but the OTP Holder, having reached the daily cap, would not be charged for these transactions.

However, if, in addition to the two trades above, the OTP Holder executes a “jelly roll” consisting of 5,000 October puts and 5,000 October calls against 5,000 November calls and 5,000 November puts on the fifteenth business day of the month, the total fees for these qualifying Strategy Executions under the proposed Fee Schedule would be capped at \$200 for this trading day, given that the total number of contracts on day three and day fifteen is above the minimum 25,000 billable contract sides threshold. Similarly, having met this threshold, the fees charged on Trades 1 and 2 that were executed on the third business day would likewise be capped at \$200. Thus, the fees for each of the third and fifteenth trading days would be capped at \$200 each, for a monthly total of \$400 for Strategy Executions.

The Exchange’s fees are constrained by intermarket competition, as OTP Holders may direct their order flow to any of the 16 options exchanges, including another exchange that provides a cap on fees for strategy executions.<sup>8</sup> Thus, OTP Holders have a choice of where they direct their order flow. This proposed change is designed to incent OTP Holders to increase their Strategy Execution volumes by executing (often smaller) strategies that are not necessarily economically viable on a per symbol basis, but which may be profitable when fees on Strategy Executions—regardless of symbol—are capped for the trading day. The Exchange notes that all market participants stand to benefit from increased volume, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

The Exchange cannot predict with certainty whether any, or how many, OTP Holders would avail themselves of this proposed fee change. The Exchange believes that OTP Holders that execute Strategy Executions on the Exchange can achieve the proposed 25,000 minimum contract sides threshold to qualify for the proposed (reduced) Strategy Cap and that this proposal may encourage OTP Holders to execute (and aggregate) Strategy Executions on the

<sup>8</sup> See, e.g., Cboe fee schedule, footnote 13. Cboe caps fees for each participant at \$0.00 for the following strategies executed on the same trading day: Short stock interest, reversal, conversion, jelly roll, and merger strategies.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.