U.S. Code citation	Civil monetary penalty description	2022 Adjustment penalty amounts	CPI–U multiplier	2023 Adjusted penalty amounts
15 U.S.C. 78ff(c)(1)(B) (Exchange Act sec. 32(c)(1)(B)).	Foreign Corrupt Practices—any issuer	23,011	1.07745	24,793
15 U.S.C. 78ff(c)(2)(B) (Exchange Act sec. 32(c)(2)(B)).	Foreign Corrupt Practices—any agent or stockholder acting on behalf of issuer.	23,011	1.07745	24,793
15 U.S.C. 80a–9(d) (Investment Company Act sec. 9(d)).	For natural person	10,360	1.07745	11,162
	For any other person	103,591	1.07745	111,614
	For natural person/fraud	103,591	1.07745	111,614
	For any other person/fraud	517,955	1.07745	558,071
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	207,183	1.07745	223,229
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	1,035,909	1.07745	1,116,140
15 U.S.C. 80a–41(e) (Investment Company Act sec. 42(e)).	For natural person	10,360	1.07745	11,162
	For any other person	103,591	1.07745	111,614
	For natural person/fraud	103,591	1.07745	111,614
	For any other person/fraud	517,955	1.07745	558,071
	For natural person/fraud/substantial losses or risk of losses to others.	207,183	1.07745	223,229
	For any other person/fraud/substantial losses or risk of losses to others.	1,035,909	1.07745	1,116,140
15 U.S.C. 80b–3(i) (Investment Advisers Act sec. 203(i)).	For natural person	10,360	1.07745	11,162
	For any other person	103,591	1.07745	111,614
	For natural person/fraud	103,591	1.07745	111,614
	For any other person/fraud	517,955	1.07745	558,071
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	207,183	1.07745	223,229
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	1,035,909	1.07745	1,116,140
15 U.S.C. 80b–9(e) (Investment Advisers Act sec. 209(e)).	For natural person	10,360	1.07745	11,162
	For any other person	103,591	1.07745	111,614
	For natural person/fraud	103,591	1.07745	111,614
	For any other person/fraud	517,955	1.07745	558,071
	For natural person/fraud/substantial losses or risk of losses to others.	207,183	1.07745	223,229
	For any other person/fraud/substantial losses or risk of losses to others.	1,035,909	1.07745	1,116,140
15 U.S.C. 7215(c)(4)(D)(i) (Sarbanes-Oxley Act sec. 105(c)(4)(D)(i)).	For natural person	152,557	1.07745	164,373
	For any other person	3,051,164	1.07745	3,287,477
15 U.S.C. 7215(c)(4)(D)(ii) (Sarbanes-Oxley Act sec. 105(c)(4)(D)(ii)).	For natural person	1,144,186	1.07745	1,232,803
	For any other person	22,883,723	1.07745	24,656,067

Pursuant to the 2015 Act and 17 CFR 201.1001, the adjusted penalty amounts in this Notice (and all penalty adjustments performed pursuant to the 2015 Act) apply to penalties imposed after the date the adjustment is effective for violations that occurred after November 2, 2015, the 2015 Act's enactment date. These penalty amounts supersede the amounts in the 2022 Adjustment.[15] For violations that occurred on or before November 2, 2015, the penalty amounts in table I to 17 CFR 201.1001 continue to apply.[16]

III. Small Business Regulatory Enforcement Fairness Act Status

OMB has concurred in our recommendation that this Notice is not a ''major rule'' as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act (''SBREFA''), 5 U.S.C. 804(2), because (1) it will not have an annual effect of $100 million dollars or more on the economy, (2) it does not present a major increase in prices for consumers or individual industries, and (3) it does not have significant adverse effects on competition, investment, or innovation.[17]

By the Commission.

Dated: January 6, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–00370 Filed 1–10–23; 8:45 am]

BILLING CODE 8011–01–P

[15] The penalty amounts in this Notice are being published in the **Federal Register** and will not be added to the Code of Federal Regulations in accordance with the 2015 Act and 17 CFR 201.1001(b). *See* 28 U.S.C. 2461 note sec. 4(a)(2); 17 CFR 201.1001(b). In addition to being published in the **Federal Register**, the penalty amounts in this Notice will be made available on the Commission's website at *https://www.sec.gov/enforce/civil-penalties-inflation-adjustments.htm,* as detailed in 17 CFR 201.1001(b). This website also lists the penalty amounts for violations that occurred on or before November 2, 2015.

[16] 17 CFR 201.1001(a).

[17] *See generally* SBREFA, Public Law 104–121 (1996).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96601; File No. SR–NASDAQ–2022–077]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Rule 4702 To Establish New ''Contra Midpoint Only'' and ''Contra Midpoint Only With Post-Only'' Order Types

January 5, 2023

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 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 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 amend Rule 4702 to establish new ''Contra Midpoint Only'' and ''Contra Midpoint Only with Post-Only'' Order Types.

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 Rule 4702(b) to establish ''Contra Midpoint Only'' or ''CMO'' and ''Contra Midpoint Only with Post-Only'' or ''CMO+PO'' as new Order Types on the Exchange.

A CMO is a non-displayed Order Type priced at the midpoint between the National Best Bid and the National Best Offer (the ''NBBO'' and the midpoint of the NBBO, the ''Midpoint''). The Exchange will cancel a CMO resting on the Order Book upon entry of certain types of incoming Orders that are indicative of pending price movements that would be less favorable to the CMO user than the prevailing price, thus providing protection to the CMO user against executions at the prevailing Midpoint price that the user may deem unfavorable. As explained below, once the System cancels a CMO under these circumstances, the user would be free to submit a new CMO at the new Midpoint price or, in certain cases, the Exchange would do so automatically on behalf of the user.

A CMO+PO is similar to a CMO, except that it provides for ''post-only'' functionality, meaning that like a Midpoint Peg Post-Only Order,[3] a CMO+PO will execute upon entry only in circumstances where economically beneficial to the party entering the Order.

The CMO and CMO+PO are the latest in a series of innovative Order Types that the Exchange has developed to provide market participants with options that allow them to make their own determinations with regards to various trade-offs that exist when executing their strategies in the markets. One such trade off might be the amount of liquidity they can obtain in the near term versus the potential for market movement relative to the Midpoint price. Some participants may value avoiding immediate executions in order to wait for a better price while others would rather obtain the liquidity instead of waiting. Further, these options allow similarly-minded market participants to interact via these Order Types. In 2018, for example, Nasdaq introduced the Midpoint Extended Life Order (''M–ELO'').[4] Like CMO, M–ELO is also a non-displayed Order Type that executes only at the Midpoint. It is eligible to execute only against other M–ELOs, and it protects users from interacting with time-sensitive orders by requiring them to wait a period of time (a ''Holding Period'') before their M–ELO is eligible to execute (originally one-half second, and subsequently reduced to 10 milliseconds). [5] In 2019, the Exchange enhanced the M–ELO concept by adding the Midpoint Extended Life Order Plus Continuous Book (''M–ELO+CB'').[6] A M–ELO+CB behaves exactly like a M–ELO, except that it may also interact with Midpoint Orders on the Exchange's Continuous Book (and thus have access to larger sources of liquidity) to the extent that such Midpoint Orders, in turn, opt to rest on the Continuous Book for at least 10 milliseconds before becoming eligible to execute against a M–ELO+CB. CMO and CMO+PO are the latest variations on the M–ELO/M–ELO+CB theme. M–ELOs only trade against other Orders from like-minded participants that are willing to wait the required time period before trading. CMOs and CMO+POs, by contrast, can trade in a wider array of situations, but like M–ELO, they will not trade in instances where the incoming order is likely to impact the prevailing price of the security. [7] This will provide users of CMOs and CMO+POs with opportunities for more liquidity interaction than M–ELO but with slightly less protection. On the other hand, CMOs and CMO+POs will provide more protection to users than regular Midpoint Orders, but with less opportunity to interact with liquidity. Instead of imposing a waiting period, the Exchange will cancel a resting CMO when it faces incoming orders that are likely to shift the Midpoint, while also providing an opportunity to a participant to receive price improvement if or when the participant resubmits its CMO or CMO+PO to take advantage of a shift in the Midpoint.

The specific proposed characteristics of the CMO are as follows.

A CMO is a non-displayed Order Type with the Midpoint Pegging Attribute that will be priced and ranked in time order at the Midpoint. A user may cancel a CMO at any time.

The System will cancel a CMO Order automatically if a CMO is resting at the Midpoint on the Exchange Book, an incoming Order is priced through the price of the CMO, the CMO would otherwise trade against the incoming Order,[8] and one or more of the following conditions apply, which the Exchange observes are indicative of a pending price shift in favor of the CMO user:

- The incoming Order is Displayed and its size is greater than that of the resting CMO;

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rule 4702(b)(5).

[4] *See* Securities Exchange Act Release No. 34–82825 (Mar. 7, 2018), 83 FR 10937 (Mar. 13, 2018) (order approving SR–NASDAQ–2017–074).

[5] In 2020, the Commission issued an order approving the Exchange's proposal to shorten the Holding Period for M–ELO and M–ELO+CB Orders from one-half second to 10 milliseconds. *See* Securities Exchange Act Release No. 34–88743 (April 24, 2020), 85 FR 24068 (April 30, 2020) (order approving SR–NASDAQ–2020–011).

[6] *See* Securities Exchange Act Release No. 34–86938 (September 11, 2019), 84 FR 48978 (September 17, 2019) (order approving SR–NASDAQ–2019–048).

[7] As part of its proposal, the Exchange proposes to amend Rule 4702(b)(15) to state that a M–ELO+CB that satisfies the Holding Period of that Order Type shall be eligible to execute (at the midpoint of the NBBO) against other eligible Contra Midpoint Only Orders and Contra Midpoint Only with Post-Only Orders.

[8] For example, if the incoming Order is filled fully by resting interest with price/time priority ahead of the resting CMO Order, then the CMO order will not be cancelled by the System.

• The incoming Order is not Displayed, it is priced at the far side of the NBBO, and its size is greater than that of the resting CMO; or

• The incoming Order is assigned the ISO attribute.

Again, in these instances, the Exchange observes that the incoming Order will likely cause the NBBO to shift, such that cancellation of the CMO will be preferable to allowing the CMO to execute at a Midpoint price that may be stale. The user may then choose to resubmit the CMO manually to take advantage of the price shift, in the case of a CMO with a price that the Exchange fixes at the Midpoint that prevails at the time of entry (a ''Fixed'' CMO, discussed below). In the case of a CMO entered as a *Peg Managed Order in accordance with Rule 4703(d), and which has* a price that the System updates in accordance with post-entry shifts in the Midpoint (a ''Managed'' CMO, also discussed below), the System will automatically re-submit a new CMO on behalf of the user after cancelling the original CMO.

Additionally, because a CMO inherently possesses the Midpoint Pegging Attribute, it will behave in accordance with Rule 4703(d), which governs Orders with Midpoint Pegging.[9] Thus, consistent with Rule 4703(d), the following behavior applies to CMOs:

• A CMO user may only enter a CMO Order during Market Hours.

• A CMO user may specify that a CMO peg to the Midpoint in one of two ways, either with fixed pegging (a'' Fixed CMO'') or with managed pegging (a ''Managed CMO'').

• For a Fixed CMO, the System will fix the price of the CMO at the Midpoint prevailing at the time of Order entry. After posting to the Exchange Book, the price of a Fixed CMO will not thereafter be adjusted based on changes to the Inside Bid or Offer. However, the System will cancel a Fixed CMO after initial entry and posting to the Exchange Book if any of following conditions are met (in addition to those cancellation conditions that will apply specifically to CMOs in the proposed rule): (i) there is no Inside Bid and/or Inside Offer; (ii) the Fixed CMO to buy (sell) is entered with a limit price above (below) the Midpoint and is ranked at the Midpoint, and thereafter, the Inside Bid and/or Inside Offer change so that the Midpoint changes and the Fixed CMO is no longer at the Midpoint); (iii) the Fixed CMO to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint and is ranked at its limit price; thereafter, the Inside Bid and/or Inside Offer change so that the Midpoint is lower (higher) than the limit price of the Fixed CMO; (iv) the Fixed CMO to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint and is ranked at its limit price, and thereafter, the Inside Bid and Inside Offer become crossed, such that the Midpoint of the crossed Quotation remains equal to or higher (lower) than the limit price of the Fixed CMO, and then a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Fixed CMO; or (v) the Fixed CMO to buy (sell) is entered at a limit price that is greater than (less than) the Midpoint and is therefore ranked at the Midpoint, and thereafter, the Inside Bid and Inside Offer become crossed but the Midpoint does not change, and then a new sell (buy) Order is received at a price that locks or crosses the Midpoint of the Inside Bid and Inside Offer.[10]

• A Managed CMO [11] will have its price set upon initial entry and will thereafter have its price reset in accordance with changes to the relevant Inside Quotation. A Managed CMO will receive a new timestamp whenever its price is updated and therefore will be evaluated with respect to possible execution (and routing, if it has been assigned a Routing Order Attribute) in the same manner as a newly entered Order. If the price to which a Managed CMO is pegged becomes unavailable, pegging would lead to a price at which the Managed CMO cannot be posted, or if the Inside Bid and Inside Offer become crossed, then the System will cancel the Managed CMO back to the participant if assigned a Routing Order Attribute. If Managed CMO is not assigned a Routing Order Attribute, and the price to which it is pegged becomes unavailable, pegging would lead to a price at which the Managed CMO cannot be posted, or if the Inside Bid and Inside Offer become crossed, them the Managed CMO will be removed from the Exchange Book and will be re-entered once there is a permissible price, provided however, that the System will cancel the Managed CMO if no permissible pegging price becomes available within one second after the Managed CMO was removed and no longer available on the Exchange Book (the Exchange may, in the exercise of its discretion modify the length of this one second time period by posting advance notice of the applicable time period on its website).[12]

• If at the time of entry, there is no price to which a Managed CMO, that has not been assigned a Routing Order Attribute or a Time in Force of Immediate-or-Cancel, can be pegged or pegging would lead to a price at which the Order cannot be posted, or if the Inside Bid and Inside Offer are Crossed, then the CMO will not be immediately available on the Exchange Book and will be entered once there is a permissible price provided however, that the System will cancel the Managed CMO if no permissible pegging price becomes available within one second after Order entry (the Exchange may, in the exercise of its discretion, modify the length of this one second time period by posting advance notice of the applicable time period on its website).

• For a Managed CMO Order that has been assigned a Routing Order Attribute, if there is no permissible price to which the Order can be pegged at the time of entry, pegging would lead to a price at which the Order cannot be posted, or the Inside Bid and Inside Offer are crossed, the Order will be rejected.

• A CMO will have its price set upon initial entry to the Midpoint, unless the CMO has a limit price, and that limit price is lower than the Midpoint for a CMO to buy (higher than the Midpoint for CMO to sell), in which case the Order will be ranked on the Exchange Book at its limit price. If the Inside Bid and Inside Offer are locked, a CMO will be priced at the locking price; and for Fixed CMOs, if the Inside Bid and Inside Offer are crossed or if there is no

[9] In part, this proposal references Rule text that the Exchange amended in a recent filing with the Commission but which the Exchange has yet to implement. *See* Securities Exchange Act Release No. 34–95768 (September 14, 2022), 87 FR 57534 (September 20, 2022) (SR–NASDAQ–2022–051); Securities Exchange Act Release No. 34–96341 (November 17, 2022), 87 FR 71712 (November 23, 2022) (delaying implementation of SR–NASDAQ–2022–051). To the extent that the Commission approves the proposal for adoption of the CMO and CMO+PO prior to implementation of SR–NASDAQ 2022–051, the Exchange may act to implement those features of the CMO and CMO+PO that do not require the availability of the Rule text amendments set forth in SR–NASDAQ–2022–051 to operate—namely, those features applicable to a Fixed CMO and Fixed CMO+PO. The Exchange will specify in an ETA exactly which features of the CMO and CMO+PO will be available to participants as of the initial implementation date and which of them will be available only as of the date of implementation of SR–NASDAQ–2022–051. A present, the Exchange expects that SR–NASDAQ–2022–051 will be ready for full implementation in the second or third quarter of 2023, although that time frame is subject to change.

[10] A user may enter a Fixed CMO using OUCH or FLITE. *See* Rule 4703(d).

[11] The features of Managed CMOs and Managed CMO+POs cross-reference a version of Rule 4703(d) that is set forth in SR–NASDAQ–2022–051 and not yet implemented. Thus, Managed CMOs and Managed CMO+POs will not be available for use prior to implementation of SR–NASDAQ 2022–051. *See* n.10, *supra.*

[12] A user may enter a Managed CMO using RASH, FIX, QIX, or OUCH. *See* Rule 4703(d).

Inside Bid and/or Inside Offer, the Fixed CMO will not be accepted. However, even if the Inside Bid and Inside Offer are locked, an Order with CMO that locked an Order on the Exchange Book would execute.

• If a CMO has been assigned a Discretion Order Attribute, the CMO may execute at any price within the discretionary price range, even if beyond the limit price specified with respect to the Midpoint Pegging Order Attribute. If CMO is priced at its limit price, the price of the CMO may nevertheless be changed to a less aggressive price based on changes to the Inside Quotation.

• Like other Orders with Pegging, CMOs are subject to a collar. Any portion of a CMO with a Routing attribute to buy (sell) that could execute, either on the Exchange or when routed to another market center, at a price of more than the greater of $0.25 or 5 percent higher (lower) than the NBO (NBB) at the time when the order reaches the System (the ''Collar Price''), will be cancelled. A CMO entered without a Routing attribute will be cancelled, if it would, as a result of the price determined by a Pegging Attribute, execute or post to the Exchange Book at a price through the Collar Price.

• The System will cancel CMOs when a trading halt is declared, and the System will reject any CMOs entered during a trading halt.

As noted above, a CMO will not be accepted outside of Market Hours, but it will be eligible to participate in the Nasdaq Closing Cross. A CMO remaining unexecuted after the Nasdaq Closing Cross occurs will be cancelled by the System unless, in the case of a Fixed CMO, the user selects a Time in Force for the Fixed CMO that provides for it to persist thereafter.

A CMO user may opt to apply the Minimum Quantity, Trade Now, or Discretion Order Attributes to a CMO. Again, the Non-Display and Midpoint Pegging Attributes always apply to CMOs.

A CMO+PO will possess all of the characteristics and attributes of a CMO, as described above, as well as those of a Midpoint Peg Post-Only Order, as set forth in Rule 4702(b)(5), with certain exceptions set forth below.

Like a Midpoint Peg Post-Only Order, a CMO+PO is a non-displayed Order that is priced at the Midpoint and executes upon entry only in circumstances where economically beneficial to the party entering the Order. If a CMO+PO has a Fixed Midpoint, then it may be adjusted after initial entry and posting to the Exchange Book. The price at which a Fixed CMO+PO is ranked on the Nasdaq Book is the midpoint between the NBBO, unless the Order has a limit price that is lower than the midpoint between the NBBO for an Order to buy (higher than the midpoint between the NBBO for an Order to sell), in which case the Order will be ranked on the Nasdaq Book at its limit price. The price of the Fixed CMO+PO will not thereafter be adjusted based on changes to the NBBO. However, a Fixed CMO+PO will be cancelled back to the Participant after initial entry and posting to the Nasdaq Book if any of the following conditions are met:

• There is no National Best Bid and/ or National Best Offer;

• The Fixed CMO+PO to buy (sell) is entered with a limit price above (below) the Midpoint of the NBBO and is ranked at the Midpoint of the NBBO; thereafter, the NBBO changes so that the Midpoint changes and the Fixed CMO+PO is no longer at the NBBO Midpoint;

• The Fixed CMO+PO to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint of the NBBO and is ranked at its limit price; thereafter, the NBBO changes so that the Midpoint of the NBBO is lower (higher) than the limit price of the Fixed CMO+PO;

• The Fixed CMO+PO to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint of the NBBO and is ranked at its limit price, thereafter the NBBO becomes crossed, such that the Midpoint of the crossed NBBO remains equal to or higher (lower) than the limit price of the Fixed CMO+PO, and then a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Fixed CMO+PO; or

• The Fixed CMO+PO to buy (sell) is entered at a limit price that is greater than (less than) the Midpoint of the NBBO and is therefore ranked at the Midpoint of the NBBO, thereafter the NBBO becomes crossed but the Midpoint does not change, and then a new sell (buy) Order is received at a price that locks or crosses the Midpoint of the NBBO.

If a CMO+PO has a Managed Midpoint, then also like a Midpoint Peg Post-Only Order, the price of the CMO+PO will be updated repeatedly to equal the midpoint between the NBBO; provided, however, that the CMO+PO will not be priced higher (lower) than its limit price. In the event that the midpoint between the NBBO becomes higher than (lower than) the limit price of a CMO+PO to buy (sell), the price of the CMO+PO will stop updating and the CMO+PO will post (with a Non-Display Attribute) at its limit price, but will resume updating if the midpoint becomes lower than (higher than) the limit price of the CMO+PO to buy (sell). Similarly, if a CMO+PO is on the Nasdaq Book and subsequently the NBBO is crossed, or if there is no NBBO, the Order will be removed from the Nasdaq Book and will be re-entered at the new midpoint once there is a valid NBBO that is not crossed. The CMO+PO receives a new timestamp each time its price is changed.

Like a Midpoint Peg Post-Only Order, but unlike an ordinary CMO, a CMO+PO will not be eligible to participate in the Nasdaq Opening Cross, Closing Cross, or Halt Cross, and all CMO+POs will be cancelled if they remain on the Exchange Book at the end of Market Hours.[13] Also like a Midpoint Peg Post-Only Order, but unlike an ordinary CMO, a CMO+PO may not possess the Discretion or Routing Order Attributes, and a CMO+PO must be priced at more than $1 per share. Finally, unlike a Midpoint Peg Post-Only Order, RASH may be used to enter a CMO+PO with a Time in Force of IOC (as well as OUCH, which can be used for such purposes with respect to a MPPO), and in such cases the Order will be canceled after determining whether it can be executed.

CMO and CMO+PO executions will be reported to Securities Information Processors and provided in the Exchange's proprietary data feed without any new or special indication.

As part of the surveillance the Exchange currently performs, CMOs and CMO+POs will be subject to real-time surveillance to determine if they are being abused by market participants. The Exchange is committed to determining whether there is opportunity or prevalence of behavior that is inconsistent with normal risk management behavior. Manipulative abuse is subject to potential disciplinary action under the Exchange's Rules, and other behavior that is not necessarily manipulative but nonetheless frustrates the purposes of the CMO or CMO+PO may be subject to penalties or other participant requirements to discourage such behavior, should it occur.[14]

The Exchange plans to implement CMO and CMO+PO within thirty days after Commission approval of the

[13] A CMO+PO entered prior to the beginning of Market Hours will be rejected. A CMO+PO will be cancelled by the System when a trading halt is declared, and any CMO+PO entered during a trading halt will be rejected.

[14] Punitive fees or other participant requirements tied to CMO and CMO+PO usage will be implemented by rule filing under Section 19(b) of the Act, 15 U.S.C. 78s(b), should the Exchange determine that they are necessary to maintain a fair and orderly market.

proposal. The Exchange will make the CMO and CMO+PO available to all members and to all securities upon implementation. The Exchange will announce the implementation date by Equity Trader Alert.[15]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] 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. In particular, the proposal is consistent with the Act because it would create additional options with respect to how participants can manage trading at the Midpoint. These additional options allow participants to more finely tune their interactions in the market, which can lead to more efficient trading opportunities on the Exchange for investors with similar investment objectives.[18] Much like the analogous M–ELO Order Type, which Nasdaq introduced a few years ago, CMO and CMO+PO would provide market participants with a means to avoid certain execution scenarios which they may deem unfavorable. Unlike M–ELO, however, which imposes a waiting period upon participants to bring like-minded participants together, the CMO and CMO+PO would have no such waiting period. That is, the Exchange designed CMO and CMO+PO for participants that want Midpoint executions, but have a greater urgency to execute their orders and are not concerned about interacting with other participants acting with similar urgency. At the same time, the CMO and CMO+PO will avoid interacting with orders that are likely to shift the midpoint even without a holding period by providing for the System to cancel a CMO or CMO+PO when faced with incoming Order that cross the Midpoint or are otherwise likely to cause a shift in the Midpoint. For Fixed CMOs and CMO+POs, users could then choose to enter a new CMO to take advantage of a better ensuing Midpoint; for Managed CMOs and CMO+PO, the System will do this automatically.

The CMO and CMO+PO will be available for voluntary use by all Exchange members. Moreover, the proposal is not unfair to participants with incoming Orders that trigger cancellation of CMOs because exchange functionality which permits like-minded participants the ability to achieve their objectives in an efficient manner will improve overall execution quality on the market, to the benefit of all market participants. Moreover, the protections that these Order Types provide are narrowly tailored to mitigate the risk of adverse executions.[19]

Like all other Order Types, the Exchange will conduct real-time surveillance to monitor the use of CMOs and CMO+POs to ensure that such usage is appropriately tied to the intent of the Order Type. Transactions in CMOs and CMO+POs will be reported to the Securities Information Processor and will be provided in the Exchange's proprietary data feed in the same manner as all other transactions occurring on the Exchange, without any new or special indication that it is a CMO or CMO+PO execution. The Exchange believes that doing so is important to ensuring that investors are protected from any market impact that may occur if CMO executions were reported with a special indication.

The Exchange does not believe that the proposed CMO or CMO+PO will negatively affect the quality of the market. To the contrary, the Exchange believes that the addition of CMO and CMO+PO will draw new market participants to the Exchange's transparent and well-regulated market, including participants that were previously not utilizing M–ELOs or M–ELO+CBs. Moreover, like these other Order Types, the CMO and CMO+PO will allow investors an opportunity to find like-minded counterparties at the midpoint on the Exchange, while also limiting executions users may deem unfavorable and providing opportunities for price improvement. Insofar as the CMO and CMO+PO would provide new options for participants to achieve efficient, high-quality midpoint executions, the CMO and CMO+PO stands to increase participation on the Exchange and to improve the quality of executions on the Exchange, to the benefit of all market participants.

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.

The Exchange believes that the introduction of the CMO and CMO+PO will draw new market participants to the Exchange while also providing a new option for existing participants that wish to achieve benefits similar to M–ELO or M–ELO+CB—high-quality Midpoint executions—but do not wish for their Orders to be subject to a Holding Period or care about their counterparties being subject to the same. To the extent the proposed change is successful in attracting additional market participants or increasing existing participation on the Exchange, Nasdaq believes that the proposed change will promote competition among trading venues by making the Exchange a more attractive trading venue for investors and participants.

Additionally, adoption of the CMO and CMO+PO will not burden competition among market participants. The CMO and CMO+PO will be available to all Exchange members and it will be available on an optional basis. Thus, any member that seeks to avail itself of the benefits of a CMO or CMO+PO can choose accordingly. Although the proposal provides potential benefits for investors that select the CMO and CMO+PO, the Exchange believes that all market participants will benefit to the extent that this proposal contributes to a healthy and attractive market that is attentive to the needs of all types of investors.

The proposal also will not adversely impact market participants that choose not to use these Order Types because no changes need to be made to participants' systems to account for it. As discussed above, CMO and CMO+PO executions will be reported the same as other executions, without any new or special indicator.

In any event, the Exchange notes that it operates in a highly competitive market in which market participants can

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[15] The Exchange plans to propose a fee structure for the CMO and CMO+PO in a subsequent Commission rule filing.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Cf.* Securities Exchange Act Release No. 34–82825 (March 7, 2018), 83 FR 10937 (March 13, 2018) (SR–NASDAQ–2017–074) (approving the Midpoint Extended Life Order (''M–ELO'') because it could ''create additional and more efficient trading opportunities on the Exchange for investors with longer investment time horizons, including institutional investors, and could provide these investors with an ability to limit the information leakage and the market impact that could result from their orders.'').

[19] *Cf.* Order Approving a Proposed Rule Change to Add a New Discretionary Limit Order Type Called D-Limit, Securities Exchange Act Release No. 34–89686 (August 26, 2020), 85 FR 54438 (September 1, 2020) (SR–IEX–2019–15) (''D-Limit orders will encourage long term investors to participate in the displayed exchange market by protecting them against one particular strategy employed by short term traders. It is not unfairly discriminatory for an exchange to address that advantage in a narrowly tailored manner that promotes investor protection and the public interest. Accordingly, the Commission concludes that IEX's proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.'').

readily choose between competing venues if they deem participation in the Exchange's market is no longer desirable. In such an environment, the Exchange must carefully consider the impact that any change it proposes may have on its participants, understanding that it will likely lose participants to the extent a change is viewed as unfavorable by them. Because competitors are free to modify the incentives and structure of their markets, the Exchange believes that the degree to which modifying the market structure of an individual market may impose any burden on competition is limited. Last, to the extent the proposed change is successful in attracting additional market participants or additional activity by existing participants, the Exchange also believes that the proposed change will promote competition among trading venues by making the Exchange a more attractive trading venue for participants and investors.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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.* Please include File Number SR–NASDAQ–2022–077 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–2022–077. 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–2022–077 and should be submitted on or before February 1,2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–00320 Filed 1–10–23; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34796; 812–15397]

Fidelity Multi-Strategy Credit Fund and Fidelity Diversifying Solutions LLC

January 5, 2023.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a)(2), 18(c), and 18(i) of the Act, pursuant to sections 6(c) and 23(c) of the Act for certain exemptions from rule 23c–3 under the Act, and pursuant to section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based service and/or distribution fees and early withdrawal charges.

APPLICANTS: Fidelity Multi-Strategy Credit Fund, and Fidelity Diversifying Solutions LLC.

FILING DATES: The application was filed on October 19, 2022, and amended on November 28, 2022 and December 13, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on January 30, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*. Applicant: Cynthia Lo Bessette, *cynthia.lo.bessette@fmr.com*.

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' second amended and restated application, dated December 13, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this