SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89781; File No. SR–NASDAQ–2020–059]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 114(e) and Equity 7, Section 118 of the Fee Schedule

September 8, 2020.

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 August 31, 2020, 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 (i) amend the Exchange's transaction fees to adjust the qualification requirements for certain Qualified Market Maker (''QMM'') fees and rebates at Equity 7, Section 114(e); and (ii) establish new credits and fee tiers and amend the qualification requirements for existing credit tiers 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

Over the course of the last few months, the Exchange has experimented with various modifications of its pricing schedule with the aim of increasing activity on the Exchange, improving market quality, and increasing market share.[3] Although these changes have met with success, the Exchange continues to examine and amend its pricing schedule to achieve the results it desires. Accordingly, the Exchange proposes to make modifications to its pricing schedule in a further attempt to improve the attractiveness of the market to new and existing market participants.

Changes to Section 114

The Exchange proposes to amend the QMM fees and credits pursuant to Equity 7, Section 114, in two respects.

First, a QMM currently qualifies for the Tier 3 credit if the QMM (i) executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 1.25% of Consolidated Volume[4] during the month; (ii) quotes at the NBBO at least 25% of the time during the month during regular market hours in an average of at least 2,700 symbols per day; (iii) quotes at the NBBO at least 25% of the time during the month during regular market hours in an average of at least 1,200 symbols in securities in Tape A per day; and (iv) executes shares of liquidity provided in securities in Tape A through one or more of its Nasdaq Market Center MPIDs that represent an increase of at least 0.50% of Consolidated Volume relative to May 2020. The Exchange proposes to offer the rebate per MPID by amending the requirements to provide a credit when a QMM's MPID meets the qualifying criteria. The proposed amendment would remove the current Tier 3 rebate[5] and instead provide an additional $0.00005 per share executed credit for a QMM's MPID if the MPID (i) executes shares of liquidity provided that represents above 1.25% of Consolidated Volume during the month; (ii) quotes at the NBBO at least 50% of the time during the month during regular market hours in an average of at least 2,700 symbols per day; (iii) quotes at the NBBO at least 50% of the time during the month during regular market hours in an average of at least 1,200 symbols in securities in Tape A per day; and (iv) executes shares of liquidity provided that represents an increase of at least 0.50% of Consolidated Volume relative to May 2020. Additionally, the Exchange is proposing clarifying language to explain that, for purposes of this rebate, an MPID is considered to be quoting at the NBBO if the MPID has a displayed order (other than a Designated Retail Order) at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, the Exchange will determine the number of securities that satisfy the 50% NBBO requirements for the MPID. The QMM would be eligible for the proposed credit in addition to qualifying for the Tier 2 credit. By amending the credit to allow a QMM to qualify at the MPID level, the Exchange intends to provide a further incentive for members to increase their activity on the Exchange that is attributable to adding liquidity and quoting at the NBBO.

Second, the Exchange currently charges a QMM a fee of $0.00295 per share executed for orders in securities listed on exchanges other than Nasdaq priced at $1 or more per share that access liquidity on the Nasdaq Market Center; provided, however, that the QMM's volume of liquidity added through one or more of its Nasdaq Market Center MPIDs during the month (as a percentage of Consolidated Volume) is not less than 0.85%. The Exchange also charges a $0.0029 per share executed fee to QMMs that meet the criteria of Tier 2 or Tier 3 for orders in securities listed on exchanges other than Nasdaq priced at $1 or more per share that access liquidity on the Nasdaq Market Center if the QMM has a combined Consolidated Volume (adding and removing liquidity) of at least 3.7% and MOC/LOC volume greater than 0.25% of Consolidated Volume. The Exchange proposes to modify the requirements for charging a QMM a fee of $0.00295 per share

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 89343 (July 20, 2020), 85 FR 44941 (July 24, 2020) (SR–Nasdaq–2020–041); 89115 (June 22, 2020), 85 FR 38414 (June 26, 2020) (SR–Nasdaq–2020–030); 87882 (January 2, 2020); 85 FR 939 (January 8, 2020) (SR–Nasdaq–2019–101); 87708 (December 10, 2019), 84 FR 68496 (December 16, 2019) (Nasdaq–2019–094); 85861 (May 15, 2019) 84 FR 23105 (May 21, 2019) (Nasdaq–2019–036).

[4] 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.

[5] The Exchange is also proposing to remove the asterisk accompanying the current Tier 3 rebate.

executed by increasing the volume of liquidity added from 0.85% to 1.00% during the month (as a percentage of Consolidated Volume). Additionally, the Exchange proposes to modify the requirements for charging a fee of $0.0029 per share executed to a QMM that meets the criteria of Tier 2 by increasing the required MOC/LOC volume from 0.25% to 0.35% of Consolidated Volume, and introducing a new requirement of providing 0.15% or more of Consolidated Volume through midpoint orders. The Exchange also proposes to remove the reference to Tier 3 and make a technical modification by changing the 3.7% qualification requirement for the $0.0029 fee to 3.70%. By modifying the requirements for members to qualify for the lower fee, the Exchange will incentivize members to increase their liquidity, which will promote price discovery and transparency.

Changes to Section 118

The Exchange is also proposing to amend the schedule of fees and credits provided to member organizations, pursuant to Equity 7, Section 118(a), in several respects and amend the Tier A closing cross fees, pursuant to Section 118(d).

First, the Exchange proposes to amend Section 118(a) to charge a fee of $0.0020 to a member entering RTFY orders that remove liquidity from Nasdaq Market Center or that execute in a venue other than the Nasdaq Market Center and has less than a 75% ratio of its RTFY liquidity adding activity to its RTFY total volume. The proposed fee would be applicable to Tape A, Tape B and Tape C and would only apply to orders submitted with the RTFY [6] routing option. By proposing a new fee for participants that have less than a 75% ratio [7] of its RTFY liquidity adding activity to its RTFY total volume, the Exchange hopes to incentivize participants to increase their RTFY liquidity adding activity rather than removing liquidity or submitting orders that route outside of the Exchange. The Exchange also proposes to make a non-substantive change to add the word ''other'' to the RTFY fees that remain at $0.0000 per share executed.

Second, the Exchange proposes to lower the $0.0030 per share executed credit in Section 118(a) to $0.0029 per share executed for a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.625% or more of Consolidated Volume during the month, including shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent 0.15% or more of Consolidated Volume. The proposed change would be applicable to Tape A, Tape B and Tape C. Although the Exchange is lowering the credit, it is providing members with three additional new credit options as discussed below.

Third, the Exchange proposes to add three new credits in Section 118(a). The Exchange proposes to adopt a credit of $0.00295 per share executed across Tapes A, B and C to a member (i) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.70% or more of Consolidated Volume during the month; (ii) executes 0.20% or more of Consolidated Volume during the month through providing midpoint orders and through MELO; and (iii) removes at least 1.10% of Consolidated Volume during the month. The Exchange also proposes to adopt a credit of $0.0030 per share executed across Tapes A, B and C to a member with 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 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 Exchange also proposes to add a $0.00075 per share executed credit for Tape C securities for certain non-displayed orders that provide liquidity if the member, during the month (i) provides 0.90% or more of Consolidated Volume; (ii) increases providing liquidity through non-displayed orders (other than midpoint orders) by 10% or more relative to the member's July 2020 Consolidated Volume provided through non-displayed orders (other than midpoint orders) and; (iii) provides 0.20% or more Consolidated Volume through non-displayed orders (other than midpoint orders). The Exchange believes that the availability of the three new credits will incentivize members to increase their liquidity adding and removing activity on the Exchange in order to attain one of the new credits. An increase in liquidity adding and removing activity on the Exchange would help to improve the quality of the market for all participants.

Fourth, the Exchange currently provides a credit of $0.0030 per share executed in Section 118(a) to a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.75% of Consolidated Volume during the month and provides a daily average of at least 5 million shares of non-displayed liquidity. The Exchange proposes to amend the qualifications by increasing the volume threshold from 0.75% to 1.00%. The Exchange also proposes to remove the requirement for providing a daily average of at least 5 million shares of non-displayed liquidity and to add a requirement that a member's non-displayed liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs represents more than 0.25% of Consolidated Volume.

Lastly, the Exchange currently charges a Tier A fee of $0.0008 per executed share in Section 118(d) for Market-on-Close and Limit-on-Close (''MOC/LOC'') orders for members with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 1.80% of Consolidated Volume or MOC/LOC volume above 0.50% of Consolidated Volume. Additionally, the Exchange currently charges a Tier B fee of $0.0011 per executed share in Section 118(d) for MOC and LOC orders for members with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.80% to 1.80% of Consolidated Volume or MOC/LOC volume above 0.30% to 0.50% of Consolidated Volume. The Exchange proposes to lower the volume threshold from 1.80% to 1.75% for Tier A and proposes to make a conforming change for Tier B. Similarly to lowering the volume threshold for credits, by lowering the volume threshold from 1.80% to 1.75%for charging the fee, the Exchange hopes to incentivize members who are close to, but currently do not meet the 1.75% threshold to increase their liquidity in order to qualify for the lower fee.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

[6] RTFY is a routing option available for an order that qualifies as a Designated Retail Order under which orders check the System for available shares only if so instructed by the entering firm and are thereafter routed to destinations on the System routing table. If shares remain unexecuted after routing, they are posted to the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. RTFY is designed to allow orders to participate in the opening, reopening and closing process of the primary listing market for a security. *See* Rule 4748(a)(1)(v)(b).

[7] The ratio is calculated by dividing the participant's RTFY liquidity adding activity on Nasdaq by the participant's total RTFY volume executed on all venues.

of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[9] 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 changes to its schedule of fees and credits are 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'. . . .'' [10]

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.'' [11]

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. [12]

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange has designed its proposed schedule of credits and charges to provide increased overall incentives to members to increase their liquidity removal and adding activity on the Exchange. An increase in liquidity removal and adding activity on the Exchange will, in turn, improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants. Generally, the proposed new credits and charges will be comparable to, if not favorable to, those that its competitors provide.[13]

Moreover, the Exchange believes that it is reasonable to modify certain fees and credits within its fee schedule as a means of incentivizing market participants to increase their contributions to the improvement of the quality of the Exchange.

In particular, the Exchange believes that it is reasonable to create a stricter qualification for the additional rebate of $0.00005 per share executed for a QMM and to apply the qualifications to each MPID because the activity of QMMs that currently qualify for the Tier 3 credit has grown, such that an increase in credit qualifying criteria is needed to ensure that this credit remains relevant to current levels of liquidity providing activity on the Exchange and continues to incentivize QMMs to provide liquidity and quote at the NBBO in more securities. To the extent that this proposal results in an increase in liquidity adding and quoting activity on the Exchange, this will improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants.

Additionally, the Exchange believes it is reasonable to increase the volume threshold for the QMM fees. By increasing the volume threshold and adding a new threshold requirement for liquidity adding activity to qualify for the lower fee, the Exchange hopes to incentivize liquidity adding activity on the Exchange.

The Exchange also believes that it is reasonable to charge a fee of $0.0020 per share executed in Section 118(a) to a member entering RTFY orders that remove liquidity from Nasdaq Market Center or that execute on a venue other than the Nasdaq Market Center and has less than a 75% ratio of its RTFY liquidity adding activity to its RTFY total volume. Since the inception of the RTFY routing option, there has been no charge to participants entering RTFY orders even if the order ultimately executes on the Exchange.[14] Retail order flow firms benefit from the RTFY routing option by not incurring liquidity removal fees while obtaining potential price improvements and better execution quality. By proposing a new fee for participants that have less than a 75% ratio of its RTFY liquidity adding activity to its RTFY total volume, the Exchange hopes to incentivize participants to increase their RTFY liquidity adding activity rather than removing liquidity or submitting orders that route outside of the Exchange.

The Exchange believes that it is reasonable to lower the $0.0030 per share executed credit in Section 118(a) to $0.0029 per share executed because the Exchange is proposing three new credit options for members to qualify for.

Moreover, the Exchange believes it is reasonable to add three new credits to Section 118(a). The Exchange believes that the availability of the three new credits will incentivize members to increase their liquidity adding and removing activity on the Exchange in order to attain one of the new credits. An increase in liquidity adding and removing activity on the Exchange would help to improve the quality of the market for all participants.

Additionally, the Exchange believes that it is reasonable to modify the Section 118(a) requirements for the credit of $0.0030 per share executed by increasing the volume threshold from 0.75% to 1.00% and removing the requirement for providing a daily average of at least 5 million shares of non-displayed liquidity and adding a requirement that a member's non-

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] *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)).

[11] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[12] As an example, CBOE EDGX provides a standard rebate for liquidity adders of $0.00170 per share executed (or between $0.0020 and $0.0029) per share executed if a member qualifies for a volume tier.

[13] *Id.*

[14] *See* Securities Exchange Act Release No. 75987 (September 25, 2015), 80 FR 59210 (October 1, 2015) (SR–Nasdaq–2015–112).

displayed liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs represents more than 0.25% of Consolidated Volume. By increasing the volume threshold for displayed liquidity and changing the requirement for the shares of non-displayed liquidity, the Exchange believes it will incentivize members to increase the extent of their liquidity adding activity on the Exchange to qualify for and to continue to qualify for this credit.

Similarly to lowering the volume threshold for credits, the Exchange believes that it is reasonable to lower the volume threshold in Section 118(d) for MOC and LOC fees from 1.80% to 1.75% for Tiers A and B because the Exchange hopes to incentivize members who are close to, but currently do not meet the 1.75% threshold to increase their liquidity in order to qualify for the lower fee.

To the extent that these proposed changes lead to an increase in overall liquidity activity on the Exchange and more competitive pricing, this will improve the quality of the Exchange's market and increase its attractiveness to existing and prospective participants. The Exchange notes that those market participants that are dissatisfied with the new fees or credits 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 and fees fairly among its market participants. The proposal will amend the $0.00005 per share executed credit for QMMs in Section 114 to allow a QMM to qualify at the MPID level. It is equitable to make the qualification requirement in Section 114 stricter for the additional rebate of $0.00005 per share executed for QMMs as a means of ensuring the credit remains relevant to current levels of liquidity providing activity on the Exchange. By amending the credit to allow a QMM to qualify at the MPID level, the Exchange intends to provide a further incentive for members to increase their activity on the Exchange that is attributable to adding liquidity and quoting at the NBBO. An increase in liquidity providing activity on the Exchange will improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants.

Furthermore, the Exchange also believes that it is equitable to establish three new credits in Section 118(a). In particular, the Exchange believes that it is equitable to establish a new $0.00295 per share executed credit in Tapes A, B and C and a new $0.0030 per share executed credit in Tapes A, B and C as a means of incentivizing members to provide and remove meaningful amounts of liquidity to the Exchange. To the extent that the Exchange succeeds in increasing liquidity adding and removal activity on the Exchange and in attracting additional order flow, then the Exchange would experience improvements in its market quality, which would benefit all market participants. Further, the Exchange believes it is equitable to lower the $0.0030 per share executed credit to $0.0029 because the Exchange has added two new credits with the Exchange's goal to promote increased liquidity. An increase in overall liquidity adding activity on the Exchange will improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants.

Lastly, the Exchange believes it is equitable to provide a $0.00075 per share executed credit for other non-displayed orders in Tape C securities. The Exchange believes it is equitable for the Exchange to propose a credit for members with non-displayed orders in securities in Tapes C due to the Exchange's goal to specifically promote increased liquidity in securities in Tape C. Additionally, the Exchange has not seen the level of volume in Tape C that it has expected. An increase in overall liquidity adding activity on the Exchange will improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal will allocate its fees fairly among its market participants. It is equitable to modify the fees to members who execute MOC and LOC orders in the closing cross in Section 118(d) and the fees to members whose RTFY orders remove liquidity or are routed out of the Exchange.

In particular, the Exchange believes it is equitable for the Exchange to charge a fee of $0.0020 to a member entering RTFY orders that remove liquidity from Nasdaq Market Center or that execute in a venue other than the Nasdaq Market Center and has less than a 75% ratio of its RTFY liquidity adding activity to its RTFY total volume. By adding this fee, the Exchange hopes to incentivize participants to increase their RTFY liquidity adding activity rather than removing liquidity or submitting orders that route outside of the Exchange. Additionally, the Exchange believes that the fee will encourage market participants to increase their liquidity adding activity.

Additionally, it is equitable for the Exchange to lower the volume threshold for obtaining the $0.0008 per executed share fee for MOC and LOC orders by incentivizing members to increase their liquidity in order to qualify for the lowest closing cross fee offered by the exchange.

Furthermore, it is equitable for the Exchange to increase the volume threshold and add a new threshold requirement for QMM liquidity adding activity to qualify for the lower fees because increasing the volume threshold, the Exchange hopes to incentivize liquidity adding activity on the Exchange.

The Proposed Amended Credits Are 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.

Although Section 114(e) of the Exchange's proposal to allow a QMM to qualify for an additional $0.00005 per share executed credit will require that a QMM meet the criteria at the MPID level, any resulting increase in liquidity on the Exchange will improve market-wide quality and price discovery, to the benefit of all participants. Moreover, to the extent that the proposal causes members to increase the extent of their liquidity adding and quoting activity on the Exchange, the Exchange market quality will improve, and all market participants will benefit. Moreover, any market participant that does not wish to receive lower a credit is free to shift its order flow to a competing venue.

The Exchange also believes that its three proposed new credits in Section 118(a) are not unfairly discriminatory.

These proposed credits stand 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 to the Exchange, including in securities in Tape C. Additionally, it is not unfairly discriminatory to target the $0.00075 per share executed credit in Tape C, in part, to increase activity in other non-displayed orders, because attracting additional order flow stands to benefit all market participants. Likewise, it is not unfairly discriminatory to target the $0.00075 per share executed credit, in part, to liquidity adding activity in securities in Tape C, because the Exchange believes that the market for such securities would benefit from additional liquidity. As discussed above the Exchange has not seen the level of volume in Tape C that it has expected. The Exchange notes that it has limited funds to apply in the form of incentives, and thus must deploy those limited funds to incentives that it believes will be the most effective at improving market quality in areas that the Exchange determines are in need of improvement.

The Proposed Amended Fees Are Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. Nasdaq currently charges a QMM a fee of $0.0030 per share executed for orders in Nasdaq-listed securities priced at $1 or more per share that access liquidity on the Nasdaq Market Center. The Exchange currently charges a QMM a fee of $0.00295 per share and $0.0029 per share if the QMM meets certain volume thresholds. It is not unfairly discriminatory for the Exchange to increase the volume thresholds for these fees and and to add a new volume thresholds for the $0.0029 per share fee because an increase in overall liquidity adding activity on the Exchange will improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective market participants.

The Exchange does not believe that it is discriminatory to charge a fee of $0.0020 to a member entering RTFY orders that remove liquidity Nasdaq Market Center or that execute in a venue other than the Nasdaq Market Center and has less than a 75% ratio of its RTFY liquidity adding activity to its RTFY total volume. The Exchange is proposing to add the fee to Tapes A, B and C. By adding this fee related to RTFY volume, the Exchange hopes to incentivize participants to increase their RTFY liquidity adding activity rather than removing liquidity or submitting orders that route outside of the Exchange. Similarly, the Exchange does not believe it is discriminatory to lower the volume threshold for obtaining the $0.0008 per executed share fee for MOC and LOC orders because it will incentivize members to increase their liquidity adding activity in order to obtain the lower fee, which enhances price discovery, and improves the overall quality of the equity markets.

Moreover, any market participant that does not wish to pay higher charges is free to shift its order flow to a competing venue.

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 proposals will place any category of Exchange participant at a competitive disadvantage. To the contrary, the proposed changes will provide opportunities for members to receive new and amended credits or lower fees based on their market-improving behavior. Any member may elect to provide the levels of market activity required in order to receive the new or amended credits or lower fees. Furthermore, all members of the Exchange will benefit from any increase in market activity that the proposals effectuates.

Moreover, members are free to trade on other venues to the extent they believe that the credits provided are 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 proposed modification to its schedule of credits will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 34 alternative trading systems. 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 amended fees and credits are reflective of this competition because, even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 43% of industry volume for the month of July 2020.

The Exchange's proposals are pro-competitive in that the Exchange intends for them to increase liquidity on the Exchange and thereby render the Exchange a more attractive and vibrant venue to market participants.

In sum, if the changes proposed herein are 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 changes 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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[15] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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.* Please include File Number SR–NASDAQ–2020–059 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–2020–059. 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–2020–059 and should be submitted on or before October 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

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[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89786; File No. SR–MIAX–2020–30]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Exchange Rule 1326, Transfer of Positions

September 8, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 4, 2020, Miami International Securities Exchange, LLC (''MIAX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 is filing a proposal to adopt new Exchange Rule 1326, Transfer of Positions.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX's principal office, 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 adopt new Exchange Rule 1326, Transfer of Positions, to provide a process by which Members[5] may transfer option positions in limited circumstances. This proposed rule specifies the specific limited circumstances under which a Member may effect transfers of positions. This rule would permit market participants to move positions from one account to another without first exposure of the transaction on the Exchange. This rule would permit transfers upon the occurrence of significant, non-recurring events. The proposed rule change is similar to Nasdaq ISE Options 6, Section 5.

Currently, the rules of the Exchange do not specifically address transfers of option positions between accounts, individuals, or entities. The Exchange, however, plans on aligning its Rule with its competitors by allowing transfers in situations similar to those permitted on other exchanges. The proposed rule will

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.