If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

On December 17, 2020, the NRC solicited comments on DG–1361. The public comment period closed on February 16, 2021. DG–1361 is proposed revision 2 of regulatory guide (RG) 1.89 of the same name. The proposed revision describes an approach that is acceptable to the staff of the NRC to meet regulatory requirements for environmental qualification of certain electric equipment important to safety for nuclear power plants. The previous revision of RG 1.89 was issued in June 1984 and endorsed the use of Institute of Electrical and Electronic Engineers (IEEE) Standard (Std.) 323–1974. This proposed revision incorporates additional information regarding the dual logo International Electrotechnical Commission (IEC)/IEEE Std. 60780–323, ''Nuclear Facilities—Electrical Equipment Important to Safety—Qualification,'' Edition 1, 2016–02. The NRC received two requests to extend the public comment period (ADAMS Accession Nos. ML20142A003 and ML21041A128), but the agency was unable to extend the comment period before the close of the comment period. The NRC has decided to reopen the public comment period for an additional 60 days to allow more time for members of the public to develop and submit their comments.

Dated: February 11, 2021.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91107; File No. SR–NASDAQ–2021–006]

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, Sections 114 and 118(a)

February 11, 2021.

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 February 1, 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, Sections 114 and 118(a), 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 purpose of the proposed rule change is to amend the Exchange's schedule of credits, at Equity 7, Sections 114 and 118(a).

Proposed Changes to Qualified Market Maker Rebates

Presently, in Equity 7, Section 114, the Exchange offers several special pricing programs that are based, in part, upon members' activities in securities priced at or more than $1 relative to total ''Consolidated Volume.'' [3] Among them is a program that provides rebates to Qualified Market Makers (''QMMs'').[4] Pursuant to Equity 7, Section 114(e), a member that qualifies as a QMM is entitled to receive a rebate per share executed with respect to all displayed orders (other than Designated Retail Orders, as defined in Equity 7, Section 118) in securities priced at $1 or more per share that provide liquidity in each of Tapes A, B, and C. Such a rebate is in addition to any rebate payable under Equity 7, Section 118(a). Specifically, the Exchange offers several tiers of rebates to QMMs. Among them, it offers a Tier 1 rebate of $0.0001 per share executed to any QMM that executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.70% up to, and including, 0.90% of Consolidated Volume during the month. Additionally, the Exchange offers a Tier 2 rebate of $0.0002 per share executed to any QMM that executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.90% of Consolidated Volume during the month.

For the month of December 2020 only, the Exchange amended the definition of ''Consolidated Volume'' in Equity 7, Section 114,[5] to account for an unexpected rise in sub-dollar trading which stood to adversely impact

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

[2] 17 CFR 240.19b–4.

[3] Pursuant to Equity 7, Section 114(h), the term ''Consolidated Volume'' shares the meaning of that term set forth in Equity 7, Section 118(a). Equity 7, Section 118(a) defines ''Consolidated Volume'' to mean 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.

[4] Pursuant to Equity 7, Section 114(d), a member may be designated as a QMM if: (1) The member is not assessed any ''Excess Order Fee'' under Equity 7, Section 118 during the month; and (2) the member quotes at the NBBO at least 25% of the time during regular market hours in an average of at least 1,000 securities per day during the month.

[5] *See* Securities Exchange Act Release No. 34–90719 (December 18, 2020), 85 FR 84437 (December 28, 2020) (SR–NASDAQ–2020–87).

members' qualifications for tiered pricing programs—including the QMM pricing program—because such qualifications depend upon members achieving threshold percentages of volumes as a percentage of Consolidated Volume, and the rise in sub-dollar volume had diluted these percentage calculations. Specifically, the Exchange amended the definition of ''Consolidated Volume'' to state that for purposes of determining which credits were applicable to a member during the month of December 2020, the Exchange would calculate the member's volume and total Consolidated Volume twice. First, it would calculate the member's volume and Consolidated Volume as presently set forth in Equity 7, Section 118(a). Second, it would calculate the member's volume and Consolidated Volume by excluding volume and Consolidated Volume that consists of executed orders in securities priced less than $1. Thereafter, the Exchange would evaluate which of these two member volume and Consolidated Volume calculations would qualify members for the most advantageous credits and charges for the month of December 2020 and then it would apply those credits and charges to its members. Thus, if but for the rise of sub-dollar volume in December, a member would have qualified for a higher credit or a lower fee tier that month, then the Exchange would have applied that higher credit or lower fee tier to the member's trading activity during the month.

In making this change, the Exchange reasoned that it would have been unfair for its members that execute significant dollar volumes in securities priced at or above $1 on the Exchange to fail to achieve or to lose their existing qualifications for special pricing in December 2020 due to anomalous behavior to which they did not contribute. The Exchange noted that although the change applied only to pricing in December 2020, it would monitor sub-dollar volumes going forward, and assess whether additional pricing adjustments are warranted if sub-dollar volumes remained elevated relative to the norm.

In fact, the Exchange has observed that the rise in sub-dollar volume has not abated, and that it continues to threaten the ability of some Exchange members to qualify for their pricing tiers. In January 2021, sub-dollar volume comprised 13.65 percent of Consolidated Volume. By comparison, sub-dollar volume comprised only 9.28 percent of Consolidated Volume, on average, during all of 2020. In particular, the sub-dollar phenomenon continues to threaten the ability of QMMs to attain their Tier 1 and Tier 2 credit tiers. In January 2021, several QMMs experienced these adverse impacts.

Accordingly, the Exchange proposes to amend the definition of ''Consolidated Volume'' in Equity 7, Section 114(h) to apply the December 2020 pricing formulation going forward for purposes of determining whether a QMM qualifies for Tier 1 or Tier 2 QMM rebates.[6] That is, the Exchange will calculate a QMM's volume and total Consolidated Volume twice. First, it will calculate the QMM's volume and Consolidated Volume as presently set forth in Equity 7, Section 118(a). Second, with certain modifications discussed below, it will calculate the QMM's volume and Consolidated Volume by excluding volume and Consolidated Volume that consists of executed orders in securities priced less than $1. Thereafter, the Exchange will evaluate which of these two QMM volume and Consolidated Volume calculations would qualify QMMs for the most advantageous credit tier and then it will apply those credits.

The Exchange believes that its QMM program plays an important role in improving the quality of, deepening liquidity in, and tightening spreads in its market. The QMM pricing program, in turn, offers rebates that are critical to incenting members to meet the quoting requirements for acting as QMMs. To the extent that a rise in sub-dollar trading by non-QMMs imperils the ability of QMMs to qualify for the rebates that motivate members to serve as QMMs, the Exchange believes that it is appropriate to act to preserve the effectiveness of these rebates, including by potentially excluding sub-dollar volume from the rebate eligibility criteria.

Where the Exchange proposes to exclude sub-dollar volume from the QMM rebate qualification formulas, the Exchange also proposes to raise the threshold percentages of Consolidated Volume that a QMM must achieve to qualify for Tier 1 rebates. The Exchange proposes to raise the eligibility threshold for the Tier 1 rebate to ensure that it is calibrated appropriately. That is, while the Exchange proposes to exclude sub-dollar volume to prevent the rebate qualification criteria from becoming too difficult to attain, the Exchange also wants to ensure that, exclusive of sub-dollar volume, these criteria do not become too easy to attain and that they continue to incentivize QMMs to add more liquidity to the Exchange in securities priced at $1 or more. The Exchange believes that a small upward adjustment to the Consolidated Volume threshold will ensure that the Tier 1 rebate remains reasonably challenging for QMMs to achieve if sub-dollar volume is excluded. Specifically, to qualify for the Tier 1 rebate (when excluding sub-dollar volume), the Exchange proposes that a QMM must execute shares of liquidity in securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.80%, up to and including, 0.90% of Consolidated Volume during a month. Meanwhile, to qualify for the Tier 2 rebate (again, when excluding sub-dollar volume), the Exchange proposes that the qualification requirements will remain unchanged: A QMM must execute shares of liquidity in securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.90% of Consolidated Volume during a month.

The following example illustrates the operation of the proposed changes to the QMM rebate tiers when taken together. During a month, a QMM adds 90 million shares to the Exchange, of which 300,000 shares consists of volume in sub-dollar securities. Meanwhile, total Consolidated Volume for that month is 13 billion shares, of which 1.8 billion shares consists of executions in sub-dollar securities. To determine whether the QMM qualifies for a Tier 1 QMM rebate under the proposal, the Exchange would first determine whether the QMM's volume, inclusive of its sub-dollar activity, is between 0.70% and 0.90% of Consolidated Volume (including sub-dollar volume). In this example, the QMM would not qualify for Tier 1 under this formula because the QMM added only 0.69% of Consolidated Volume during the month. Nevertheless, the Exchange would determine next whether the QMM would qualify for the Tier 1 rebate under the alternative formula in which the QMM's sub-dollar volume and sub-dollar-attributable Consolidated Volume are excluded from the calculation, while also raising the QMM's qualifying threshold percentages of Consolidated Volume to between 0.80% and 0.90%. Under this alternative formula, the QMM would

[6] The Exchange also proposes to delete rule text in Equity 7, Section 118 that set forth the same special methodology for calculating volumes as a percentage of Consolidated Volume during the month of December 2020. At this time, the Exchange does not propose to apply this special methodology beyond December 2020 to its schedule of transaction fees and credits, at Equity 7, Section 118. This, for purposes of calculating the pricing tiers set forth in Equity 7, Section 118, the Exchange does not exclude sub-dollar volume. The Exchange proposes to remove the special methodology from the rule text, as it is no longer operative.

qualify for Tier 1 rebates as it added 0.80% of Consolidated Volume (exclusive of sub-dollar volume). Insofar as the proposal would provide for the Exchange to apply the calculation results that are most advantageous to the QMM, the Exchange in this example would apply the Tier 1 rebate to the QMM.

Proposed Amendments to Existing Transaction Credits

In addition to the above, the Exchange proposes to amend three of the credits it offers to members in displayed quotes or orders in securities in all three Tapes (other than Supplemental Orders or Designated Retail Orders) that add liquidity to the Exchange, as set forth in Equity 7, Section 118(a).

First, the Exchange proposes to amend a credit it presently offers of $0.00295 per share executed to 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. The Exchange proposes to decrease the threshold percentage of Consolidated Volume necessary to qualify for this credit from 0.90% to 0.85%. The Exchange proposes to lower this threshold to render it easier for members to qualify for the $0.00295 per share executed credit. More members may seek to attain this credit to the extent that it is more accessible to them. If more members increase their liquidity adding activity on the Exchange to attain this credit, then the quality of the market will improve, to the benefit of all participants.

Second, the Exchange proposes to amend a credit it presently offers of $0.0029 per share executed 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 0.70% of Consolidated Volume during the month. The Exchange proposes to decrease the threshold percentage of Consolidated Volume necessary to qualify for this credit from 0.70% to 0.675%. The Exchange also proposes to lower this threshold to render it easier for members to qualify for the $0.0029 per share executed credit. Again, more members may seek to attain this credit to the extent that it is more accessible to them. If more members increase their liquidity adding activity on the Exchange to attain this credit, then the quality of the market will improve, to the benefit of all participants.

Third, the Exchange proposes to amend a credit it presently offers of $0.0025 per share executed to a member that provides a daily average of at least 4 million shares of liquidity, of which greater than 1.5 million shares per day must comprise non-displayed liquidity, excluding midpoint orders. The Exchange proposes to amend the credit to state that the ''greater than 1.5 million shares per day'' requirement may be satisfied, not only by adding non-displayed liquidity (excluding midpoint orders), but also by using Midpoint Extended Life Orders (''M–ELOs''). The Exchange proposes this change to provide a new incentive for members to increase significant liquidity each day in M–ELO Orders, as well as to render the credit easier for members to attain, thereby enticing more members to try to grow their liquidity adding activity on the Exchange to do so. To the extent that the proposed amended credit succeeds in increasing the number of its members that attain the credit, and in increasing the volume of liquidity provided to the Exchange, then the quality of the market will improve for all participants.

New Proposed Growth Tier

Finally, the Exchange proposes to amend Equity 7, Section 118(a), to establish a new $0.0029 per share executed credit to a member, for displayed quotes or orders in securities in all three Tapes (other than Supplemental Orders or Designated Retail Orders) that add liquidity to the Exchange, to the extent that the member, through one or more of its Nasdaq Market Center MPIDs: (i) Provides shares of liquidity in all securities that represent equal to or greater than 0.65% of Consolidated Volume during the month; (ii) increases its average daily volume of M–ELO Orders executed by 150% or more during the month relative to the month of January 2021; and (iii) executes an average daily volume of at least 750,000 shares in M–ELO Orders for the month. The Exchange intends for this new credit to encourage members to grow the extent to which they utilize the M–ELO Order Type on the Exchange, and to reward those members that do so in significant volumes. The Exchange believes that any ensuing increase in M–ELO liquidity on the Exchange will improve the quality of the Nasdaq market generally as well as the experiences of those members that choose to interact with the market through M–ELO. To the extent that the proposed new credit succeeds in having its members attain the credit, and in increasing the volume of liquidity provided to the Exchange, then the quality of the market will improve for all participants.

2. Statutory Basis

The Exchange believes that its proposals are consistent with Section 6(b) of the Act,[7] in general, and further the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposals are also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposals Are Reasonable

The Exchange's proposals 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'. . . .''[9]

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

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] *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)).

broader forms that are most important to investors and listed companies.'' [10]

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 proposals represent reasonable attempts by the Exchange to increase its liquidity and market share relative to its competitors.

As to the Exchange's proposal to potentially exclude sub-dollar volume for purposes of determining QMMs' qualifications for Tier 1 and Tier 2 rebates, the Exchange believes that this proposal is reasonable because in its absence, QMMs may fail to qualify for their existing QMM pricing tiers or fail to qualify for better pricing tiers. The Exchange does not wish to penalize QMMs that engage in significant activity on the Exchange in securities priced at or above $1 due to the sub-dollar trading activities of other firms. The proposed rule change would seek to avoid such a penalty by calculating eligibility for Tier 1 and Tier 2 rebates by first including and then excluding sub-dollar volume, and then by applying the calculation that would result in the pricing determination that is most advantageous to each QMM.

At the same time, the Exchange believes that it is reasonable, when excluding sub-dollar volume from its QMM Tier eligibility formulas, to increase the threshold percentages of Consolidated Volume that a QMM must achieve to qualify for the Tier 1 rebate. This proposal will help to properly calibrate eligibility criteria for the QMM Tier 1 rebate so that, when excluding sub-dollar volume, the Tier is neither too hard nor too easy for QMMs to attain. That is, even though excluding sub-dollar volume from the calculations may help QMMs to remain in their existing Tiers even as sub-dollar activity by other firms rises, the Exchange also wants to be sure that the Tiers continue to challenge QMMs to add additional volume in stocks priced at or above $1. The Exchange notes that if QMMs are unable to meet the higher Consolidated Volume percentage requirements for Tier 1, they still may qualify for the Tier under the existing qualification formula, which includes sub-dollar volume but applies lower Consolidated Volume percentage requirements.

As to the Exchange's proposals to ease the qualification criteria for three of its transaction credits, at Equity 7, Section 118(a), the Exchange believes that these proposals are reasonable because they will ease or broaden the eligibility criteria for the credits and, in doing so, they will encourage more members to try to attain the credits by adding additional liquidity to the Exchange. If more members increase their liquidity adding activity on the Exchange to attain these credits, then the quality of the market will improve, and the Exchange will become more attractive to existing and prospective participants.

Finally, the Exchange believes that its proposal is reasonable to establish a new add credit with a growth component tied to M–ELO activity. The proposal will encourage members to increase the extent to which they utilize M–ELO Orders on the Exchange, and it will reward members that do so in significant volumes. The Exchange believes that any ensuing increase in M–ELO liquidity on the Exchange will improve the quality of the Nasdaq market generally as well as the experiences of those members that choose to interact with the market through M–ELO. Additionally, if members increase their liquidity adding activity on the Exchange to attain this new credit, then the quality of the market will improve, and the Exchange will become more attractive to existing and prospective participants. The Exchange notes that it selected January 2021 as the baseline for the growth requirements because it is the month immediately preceding the establishment of the new tier.

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

The Proposals Are Equitable Allocations of Credits

The Exchange believes its proposals will allocate its credits fairly among its market participants.

The Exchange believes that its proposal to amend the qualification criteria for Tier 1 and Tier 2 QMM rebates is an equitable allocation because it would bolster the effectiveness of QMM rebates, which are imperiled by a rise in sub-dollar trading. Maintaining the attainability of QMM rebates is crucial to ensuring participation in the QMM program, which in turn is an important contributor to the quality of the Nasdaq market. Although the recent spike in sub-dollar pricing also threatens to upend the ability of members to qualify for Nasdaq's other volume-based tiers of credits and charges, the Exchange believes that its most pressing need is to address the threat to the QMM program given that several QMMs are already experiencing adverse pricing effects from the sub-dollar phenomenon. The Exchange notes that it continues to assess whether and how to modify its other volume-based pricing programs going forward to accommodate the rise in sub-dollar volumes.

The Exchange also believes that it an equitable allocation, when excluding sub-dollar volume from the QMM Tier 1 eligibility formula, to increase the threshold percentage of Consolidated Volume that a QMM must achieve to qualify for the credit. The Exchange believes that it is fair to calibrate eligibility criteria for the Tier 1 rebate so that the Tiers are neither too hard nor too easy for QMMs to attain. That is, just as the Exchange believes that it is equitable, for the reasons discussed above, to help QMMs to remain in their existing Tiers by excluding sub-dollar activity, the Exchange also believes it is beneficial to market quality to continue to challenge QMMs to add additional volume in stocks priced at or above $1. The Exchange notes that if QMMs are unable to meet the higher Consolidated Volume percentage requirement for the Tier 1 rebate, they still may qualify for the Tier under the existing qualification formula, which includes sub-dollar volume but applies lower Consolidated Volume percentage requirements.

It is also equitable for the Exchange to amend three of its transaction credits, by lowering and broadening their eligibility requirements, respectively, as a means of encouraging more members to try to attain the credits by adding additional liquidity to the Exchange, including in M–ELO Orders. To the extent that the Exchange succeeds in increasing liquidity on the Exchange, including in M–ELO Orders, then the Exchange will experience improvements in its market quality, which will benefit all market participants.

Lastly, the Exchange believes that it is equitable to establish a new add credit tier that is tied to the growth of M–ELO activity. The M–ELO Order Type

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

provides a valuable means by which like-minded participants, with shared time horizons, can safely interact on the market and mitigate the risk of adverse selection and information leakage. The addition of this new proposed credit tier will encourage members to increase the extent of their use of M–ELO Orders on the Exchange, and it will reward members that do so in significant volumes. The Exchange believes that any increase in M–ELO liquidity on the Exchange that follows from the introduction of this new credit will improve the quality of the Nasdaq market generally as well as the experiences of those members that choose to interact with the market through M–ELO Orders. Additionally, if members increase their liquidity adding activity on the Exchange to attain this credit, then the quality of the market will improve, and the Exchange will become more attractive to existing and prospective participants.

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

The Proposals Are Not Unfairly Discriminatory

The Exchange believes that its proposals ae 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.

The Exchange believes that its proposal to amend the qualification criteria for Tier 1 and Tier 2 QMM rebates is not unfairly discriminatory. Although the rise in sub-dollar trading affects the attainability of many of Nasdaq's volume-based pricing tiers, it is fair for the Exchange to address the impact on QMM rebates, in particular, because maintaining the attainability of QMM rebates is crucial to maintaining participation in the QMM program, which in turn is an important contributor to the quality of the Nasdaq market. Even as the Exchange continues to assess whether and how to generally modify its volume-based pricing programs going forward to accommodate the rise in sub-dollar volumes, the Exchange believes that a pressing need exists now to address the particular threat this phenomenon poses to the QMM program given that several QMMs are already experiencing adverse pricing effects.

At the same time, it is not unfairly discriminatory to increase the threshold percentage of Consolidated Volume that a QMM must achieve to qualify for the Tier 1 rebate when the Exchange also excludes sub-dollar volume from the eligibility calculation. The Exchange believes that it is fair to calibrate eligibility criteria for the QMM Tier 1 rebate so that the Tiers are neither too hard nor too easy for QMMs to attain. That is, just as the Exchange believes that it is not unfairly discriminatory, for the reasons discussed above, to help QMMs to remain in their existing Tiers by excluding sub-dollar activity, the Exchange also believes it is beneficial to market quality to continue to challenge QMMs to add additional volume in stocks priced at or above $1. The Exchange notes that if QMMs are unable to meet the higher Consolidated Volume percentage requirement for Tier 1, they still may qualify for the Tier under the existing qualification formula, which includes sub-dollar volume but applies lower Consolidated Volume percentage requirements.

Moreover, the Exchange believes that its three proposed amendments to its transaction credits are not unfairly discriminatory because they stand to improve the overall market quality of the Exchange, to the benefit of all market participants, by incentivizing more members to provide additional liquidity to the Exchange, including M–ELO liquidity.

Likewise, the Exchange believes that its new proposed add credit with a growth component is not unfairly discriminatory because it is aimed at encouraging the growth of M–ELO Orders on the Exchange, which if successful, stands to improve the quality of the Nasdaq market generally, to the benefit of all market participants, as well as improve the experiences of those members that choose to interact with the market through M–ELO. Additionally, if members increase their liquidity adding activity on the Exchange to attain this credit, then the quality of the market will improve, and the Exchange will become more attractive to existing and prospective participants.

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

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes 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.

As noted above, the proposal to amend the Exchange's QMM rebate pricing methodology will help to ensure that no QMM suffers a pricing disadvantage due to the ongoing spike in sub-dollar volumes, while at the same time it will provide an appropriately-calibrated incentive for QMMs to continue to add additional liquidity to the Exchange in securities priced at or above $1. It is not intended to provide a competitive advantage to any particular QMM.

Meanwhile, the proposed changes to the qualifying criteria for three of the Exchange's transaction credits will make it easier for members to attain these credits, and will thereby encourage more members to try to attain these credits by increasing their market-improving behavior. Any member may elect to provide the levels or types of liquidity required in order to receive the credits. Furthermore, all members of the Exchange will benefit from any increase in market activity that the proposals effectuate.

Likewise, the proposed addition of a rebate tied to a member's activity in M–ELO Orders will encourage growth in that activity, to the benefit of users of those Order Types as well as the quality of the market in general. Any member may elect to engage in the levels of M–ELO liquidity required to qualify for this new credit.

The Exchange notes that its members are free to trade on other venues to the extent they believe that the proposed amended credits 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 its pricing tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

In terms of inter-market competition, 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 credits and fees 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 credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited.

The proposed new and amended credits are 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 50% of industry volume.

The Exchange's proposals are pro-competitive in that the Exchange intends for them to preserve and enhance its incentive programs, as well as to increase liquidity adding activity on the Exchange, thereby rendering 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11]

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–2021–006 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–2021–006. 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–2021–006 and should be submitted on or before March 11, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–03212 Filed 2–17–21; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 86 FR 8061, February 3, 2021.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, February 16, 2021 at 5:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Tuesday, February 16, 2021 at 5:00 p.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: February 16, 2021.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2021–03402 Filed 2–16–21; 4:15 pm]

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