

competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.¹⁵ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in December 2021, the Exchange had less than 14% market share of executed volume of multiply-listed equity & ETF options trades.¹⁶

The Exchange does not believe the proposed rule change would impose any burden on intermarket competition that is not necessary or appropriate because the Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges if they deem fee levels at those other venues to be more favorable. The Exchange believes that fees to prevent excessive use of Exchange systems are constrained by the robust competition for order flow among exchanges. Accordingly, the Exchange believes that the proposed change would continue to make the Exchange a competitive venue for order execution by enabling OTP Holders to maintain their current levels of interaction with the Exchange or make adjustments as needed during the transition to Pillar platform, without incurring fees based on their monthly order to execution ratios during the Waiver Period, thus facilitating OTP Holders' migration to the newer, more efficient Pillar technology platform.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁷ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁸ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2022-04 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-NYSEArca-2022-04. 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-NYSEArca-2022-04, and should be submitted on or before February 24, 2022.

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

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022-02184 Filed 2-2-22; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94097; File No. SR-NASDAQ-2022-011]

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

January 28, 2022.

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 January 27, 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, 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.

¹⁵ See *supra* note 11.

¹⁶ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.*, the Exchange's market share in equity-based options increased from 9.65% for the month of December 2020 to 13.21% for the month of December 2021.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(2).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's pricing schedule at Equity 7, Section 114 and Section 118, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's schedule of credits, at Equity 7, Section 114 and Section 118(a). Specifically, the Exchange proposes to (1) amend the Exchange's Tier 1 rebate to Qualified Market Maker ("QMM") at Equity 7, Section 114(e); (2) amend a supplemental credit in Tapes A, B and C for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders); (3) amend certain supplemental credits for displayed quotes/orders (other than Supplemental Orders) in Tapes A, B and C and (4) allow members to receive the higher rebate when the member's non-Designated Retail Order rebate is greater than its Designated Retail Order rebate.

Changes to Section 114

The Exchange proposes to amend its pricing schedule, at Equity 7, Section 114(e), to make a change to its Qualified Market Maker ("QMM") Program. The QMM Program provides supplemental incentives to member organizations that meet certain quality standards in acting as market makers for securities on the Exchange.

Specifically, the Exchange proposes to adjust the threshold to also allow a

QMM to qualify for the Tier 1 incentive if the QMM executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 70 million shares of average daily volume during the month (inclusive of volume and Consolidated Volume³ that consists of securities priced less than \$1). Therefore, the amended Tier 1 incentive would provide a \$0.0001 supplemental credit if a QMM 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 or 70 million shares of average daily volume during the month (inclusive of volume and Consolidated Volume that consists of securities priced less than \$1). The Exchange intends for the additional threshold to provide greater incentives to members during times when the market is trading at a higher than usual daily volume.⁴

Changes to Section 118

The Exchange currently provides a \$0.0001 per share supplemental credit to members for displayed quotes/orders that provide liquidity (other than Supplemental Orders or Designated Retail Orders) where the members, through one or more of its Nasdaq Market Center MPIDs, (i) increases its shares of liquidity provided in all securities by at least 30% as a percentage of Consolidated Volume⁵

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). (For purposes of calculating a member's qualifications for Tiers 1 and 2 of the QMM Program credits set forth in paragraph (e) of this Section, the Exchange will calculate a member's volume and total Consolidated Volume twice. First, the Exchange will calculate a member's volume and total Consolidated Volume inclusive of volume that consists of executions in securities priced less than \$1. Second, the Exchange will calculate a member's volume and total Consolidated Volume exclusive of volume that consists of executions in securities priced less than \$1, while also applying distinct qualifying volume thresholds to each Tier, as set forth above in paragraph (e). The Exchange will then assess which of these two calculations would qualify the member for the most advantageous credits for the month and then it will apply those credits to the member.)

⁴ The proposal provides a third alternative for members to qualify for the Tier 1 rebate.

⁵ Pursuant to Equity 7, Section 118(a), the term "Consolidated Volume" shall 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 shall be excluded from both total Consolidated Volume and the member's trading activity. For the purposes of calculating the extent of a member's trading activity during the month on Nasdaq and determining the

during the month relative to the month of October 2021 and (ii) has shares of liquidity provided of at least 15 million ADV during the month. The Exchange now proposes to amend the threshold to allow a member to qualify if the member increases its shares of liquidity provided in all securities by at least 30% relative to the month of October 2021 or November 2021. The Exchange hopes that it will incentivize members to increase their liquidity providing activity on the Exchange by giving members the option of an additional month of Consolidated Volume to measure their liquidity against, which the Exchange hopes will improve market quality.

Additionally, the Exchange proposes to amend in two respects, its schedule of credits, which it provides to members for displayed quotes/orders that provide liquidity. First, the Exchange is proposing to remove the \$0.0001 per share executed and the \$0.00015 per share executed supplemental credits in Tapes A, B and C that are provided to members for displayed quotes/orders (other than Supplemental Orders) that provide liquidity. Second, the Exchange is proposing to add these two supplemental credits to the current credits in Tapes A, B and C that are provided to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity.

Specifically, one of the two supplemental credits is a \$0.0001 per share executed credit provided when a member, through one or more of its Nasdaq Market Center MPIDs, either: (i) Increases the extent of its ADV of MELO Orders and/or midpoint orders (that execute against MELO Orders) in all securities by an ADV of 1 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least 3 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 100% or more during the month relative to the month of June 2021. The other supplemental credit is a \$0.00015 per share executed credit provided when a member, through one or more of its Nasdaq Market Center MPIDs, either: (i) Increases the extent of its ADV of MELO Orders and/or midpoint orders (that execute against MELO Orders) in all securities by an ADV of 2 million shares

charges and credits applicable to such member's activity, all M-ELO Orders that a member executes on Nasdaq during the month will count as liquidity-adding activity on Nasdaq.

or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least 4 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 150% or more during the month relative to the month of June 2021. These two credits may not be combined with each other.

Although the Exchange did not exclude retail orders when it proposed these two supplemental credits in Tapes A, B and C,⁶ the Exchange did not intend to include Designated Retail Orders in the payment of these supplemental credits. Currently, Designated Retail Orders receive their own separate credits on the Exchange's fee schedule and those orders generally receive higher rebates. The Exchange does not commonly provide additional rebates to Designated Retail Orders and therefore, is proposing to update its fee schedule to accurately reflect the manner in which it will pay these supplemental credits going forward.⁷

Lastly, the Exchange is proposing to allow a member to receive the higher rebate for its Designated Retail Orders if the member's total rebate for non-Designated Retail Orders (including any supplemental credits provided in Section 114 and Section 118, except the NBBO Program credit provided in Section 114(g)) is greater than its rebate for Designated Retail Orders (including supplemental credits provided in Section 114 and Section 118). For example, a member that provides liquidity for Designated Retail Orders could qualify for a credit of \$0.00325 per share executed. However, if the member provides liquidity for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders), the member could qualify for a credit of \$0.00305 per share executed and could also qualify for an additional \$0.0002 per share executed through the QMM Program, as well as an additional supplemental credit of \$0.0001 per share executed, making the member's total possible credit for displayed non-Designated Retail Orders \$0.00335 per share. In this case, the member would also receive a credit of \$0.00335 per share for its Designated Retail Orders.

⁶ Securities Exchange Act Release No. 92433 (July 6, 2021), 86 FR 38772 (July 22, 2021).

⁷ Since the \$0.0001 per share executed and the \$0.00015 per share executed credits were established in July 2021, the Exchange has not been applying the credit to Designated Retail Orders when calculating a firm's credits. Therefore, the Exchange is working to retroactively provide credits to firms that would have received credits if their Designated Retail Orders were not excluded. Under the proposal, there will be three ways for firm [sic].

The Exchange is excluding the NBBO Program when calculating a member's highest rebate because the NBBO Program only applies to displayed orders in securities priced at \$1 or more per share that provide liquidity, establish the national best bid or best offer ("NBBO"), and display a quantity of at least one round lot at the time of execution. Consistent with the proposed rule, the NBBO Program explicitly excludes Designated Retail Orders.

The Exchange is proposing this change to ensure that none of its members are disadvantaged and that all members can obtain the maximum possible rebate.

The Exchange notes that those participants that are dissatisfied with this new proposal are free to shift their order flow to competing venues.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) 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 proposal is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

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.

The Exchange believes it is reasonable to amend the Tier 1 threshold of its QMM Program to provide the option for a QMM to qualify if the QMM executes shares of liquidity provided that represent 70 million shares of average daily volume during the month (inclusive of volume that consists of securities priced less than \$1). The Exchange also believes that the additional threshold option of 70 million shares of average daily volume will provide an increased incentive to members during times when the market is trading at a higher than usual daily volume. An increase in liquidity adding activity on the Exchange will, in turn, improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants.

The Exchange notes that those participants that are dissatisfied with the new threshold option are free to shift their order flow to competing venues.

Additionally, the Exchange believes that it is reasonable to include the option of an additional baseline month to measure whether a member increases its shares of liquidity provided in all

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").

securities by at least 30%. The Exchange believes that the additional month will encourage members who had a lower baseline in November than October to increase their liquidity adding activity on the Exchange to receive the credit, which will improve the overall market quality to the benefit of all market participants.

The Exchange's fee schedule is intended to reflect the Exchange's current assessment of its fees and credits. The Exchange does not currently pay Designated Retail Orders the \$0.0001 and \$0.00015 supplemental credits discussed above. As discussed above, Designated Retail Orders receive their own separate credits on the Exchange's fee schedule and those orders generally receive higher rebates. The Exchange does not commonly provide additional rebates to Designated Retail Orders. Therefore, the Exchange believes it is reasonable to amend its supplemental credits on Tapes A, B and C to accurately reflect that Designated Retail Orders are excluded from the Exchange's payment of these two supplemental credits.

Lastly, the Exchange believes that it is reasonable to provide a member's Designated Retail Orders with the highest rebate that a member qualifies for because the Exchange is always seeking ways to attract more retail order flow. Therefore, if a member's rebate for non-Designated Retail Orders (including any supplemental credits provided in Section 114 and Section 118, except the NBBO Program credit provided in Section 114(g)) is greater than its rebate for Designated Retail Orders (including supplemental credits provided in Section 114 and Section 118), the Exchange is proposing to provide the member with the higher rebate for its Designated Retail Orders. Additionally, the Exchange believes that it is reasonable to exclude the NBBO Program when calculating a member's highest rebate because, as discussed above, the NBBO Program only applies to displayed orders in securities priced at \$1 or more per share that provide liquidity, establish the national best bid or best offer ("NBBO"), and display a quantity of at least one round lot at the time of execution. Consistent with the proposed rule, the NBBO Program explicitly excludes Designated Retail Orders. The Exchange is proposing this change to ensure that none of its members are disadvantaged and that all members can obtain the maximum possible rebate.

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

more generous pricing or less stringent qualifying criteria.

The Proposal Is an Equitable Allocation of Credits

The Exchange believes its proposal will allocate its charges and credits fairly among its market participants.

The Exchange believes that it is an equitable allocation to establish an additional threshold for its QMM Program's Tier 1 supplemental credit and to include the option of an additional baseline month to measure whether a member qualifies for the \$0.0001 per share executed supplemental credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity. The proposals will encourage members to increase the extent to which they add liquidity to the Exchange. To the extent that the Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, then the Exchange will experience improvements in its market quality, which stands to benefit all market participants.

The Exchange also believes that it is equitable to amend the \$0.0001 per share executed and the \$0.00015 per share executed supplemental credits for displayed quotes/orders (other than Supplemental Orders) by applying the credits to members for displayed quotes/orders [sic], which accurately reflect the most current application of these two supplemental credits. The Exchange believes that it is equitable to exclude Designated Retail Orders from these supplemental credits because Designated Retail Orders receive their own separate credits on the Exchange's fee schedule and those orders generally receive higher rebates. The Exchange does not commonly provide additional rebates to Designated Retail Orders.

Lastly, the Exchange also believes it is equitable to allow a member to receive the higher credit if the member's total credits for non-Designated Retail Orders (including any supplemental credits provided in Section 114 and Section 118, except the NBBO Program credit provided in Section 114(g)) is greater than its credit for Designated Retail Orders (including supplemental credits provided in Section 114 and Section 118) in order to encourage firms to continue to provide retail order flow even if the firms expect to receive a higher rebate from their non-Designated Retail Orders. Moreover, the Exchange also believes it is equitable to exclude the NBBO Program from the calculation to ensure that the Exchange does not inadvertently disadvantage any member and that all members are treated

equitably by obtaining the maximum rebate possible. Moreover, the Exchange believes that it is equitable to exclude the NBBO Program from this proposal as it remains consistent with the current rules of the program. Additionally, the Exchange expects any impact from this exclusion to be de minimis because Designated Retail Orders do not frequently set the NBBO.

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

The Proposal is Not Unfairly Discriminatory

The Exchange believes that its 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 enhances price discovery and improves the overall quality of the equity markets.

The Exchange also believes that its proposal to add an additional threshold for its QMM Program's Tier 1 supplemental credit is not unfairly discriminatory because the additional qualifications will be available to all members. Similarly, the Exchange believes that it is not unfairly discriminatory to include the option of an additional baseline month to measure whether a member qualifies for the \$0.0001 per share executed supplemental credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity because the additional qualifications will be available to all members.

Additionally, the Exchange believes that it is not unfairly discriminatory to amend its fee schedule to align with the way the Exchange pays its supplemental credits. Moreover, all non-retail market participants will continue to be entitled to the credits and the amendment will provide market participants with clarity on how certain supplemental credits are paid. Additionally, Designated Retail Orders receive their own separate

credits on the Exchange's fee schedule and those orders generally receive higher rebates.

Lastly, the Exchange believes that its proposals to provide a member with the higher rebate for its Designated Retail Orders if the member's rebate for non-Designated Retail Orders (including any supplemental credits provided in Section 114 and Section 118, except the NBBO Program credit provided in Section 114(g)) is greater than its credit for Designated Retail Orders (including supplemental credits provided in Section 114 and Section 118) is not unfairly discriminatory because the higher rebate option will be available to all members. Moreover, providing members with the higher rebate will ensure that firms are not disincentivized from increasing their retail order flow due to the higher rebate they may receive from their non-Designated Retail Orders. Additionally, exclusion of the NBBO Program credit from the calculation of the higher rebate is also not discriminatory because the exclusion will also apply to all members.

Overall, the proposals stand to improve the overall market quality of the Exchange, to the benefit of all market participants, by incentivizing members to increase the extent of their liquidity provision or activity on the Exchange. Any participant that is dissatisfied with the proposal 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 change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage.

As noted above, the Exchange's proposals are intended to have market-improving effects, to the benefit of all members. The Exchange notes that its members are free to trade on other venues to the extent they believe that these proposals 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.

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 additional proposed thresholds for the Exchange's QMM Program's Tier 1 supplemental credit and the \$0.0001 per share executed supplemental credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders), as well as the allowance for members to receive the better of their Designated Retail Order credit or its non-Designated Retail Order credit, is reflective of this competition. Moreover, aligning the Exchange's fee schedule with the Exchange's application of its rebates does not burden competition. 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.

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.

In sum, if the change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their

competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹² 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-2022-011 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-2022-011. 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

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

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-2022-011 and should be submitted on or before February 24, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2022-02183 Filed 2-2-22; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[License No. 07/07-0112]

Eagle Fund II, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 07/07-0112 issued to Eagle Fund II, L.P., said license is hereby declared null and void.

United States Small Business Administration.

Bailey DeVries,
Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2022-02222 Filed 2-2-22; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17328 and #17329; Hawaii Disaster Number HI-00067]

Administrative Declaration of a Disaster for the State of Hawaii

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of HAWAII dated 01/28/2022.

Incident: Severe Storms, Flooding and Landslides.

Incident Period: 12/05/2021 through 12/10/2021.

DATES: Issued on 01/28/2022.

Physical Loan Application Deadline Date: 03/29/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 10/28/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Areas: City and County of Honolulu, Maui.

Contiguous Counties:

Hawaii:
Kalawao.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	2.875
Homeowners without Credit Available Elsewhere	1.438
Businesses with Credit Available Elsewhere	5.660
Businesses without Credit Available Elsewhere	2.830

	Percent
Non-Profit Organizations with Credit Available Elsewhere ...	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	2.830
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17328 6 and for economic injury is 17329 0.

The State which received an EIDL Declaration # is Hawaii.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,
Administrator.

[FR Doc. 2022-02191 Filed 2-2-22; 8:45 am]

BILLING CODE 8026-03-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17330 and #17331; WASHINGTON Disaster Number WA-00102]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Washington

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of WASHINGTON (FEMA-4635-DR), dated 01/27/2022.

Incident: Severe Storms, Straight-line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 11/05/2021 through 12/02/2021.

DATES: Issued on 01/27/2022.

Physical Loan Application Deadline Date: 03/28/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 10/27/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/27/2022, Private Non-Profit

¹³ 17 CFR 200.30-3(a)(12).