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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90164; File No. SR-NASDAQ-2020-067]

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 Equity 7, Section 118 of the Fee Schedule

October 13, 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 October 1, 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 additional rebate to Qualified Market Maker (“QMM”) at Equity 7, Section 114(e); (ii) remove a rebate provided through the Nasdaq Growth Program at Equity 7, Section 114(j); and (iii)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

establish and amend certain credits and fees at Equity 7, Section 118, as described further below.

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

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

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

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

1. Purpose

The purpose of the proposed rule change is to make modifications to the Exchange's pricing schedule in a further attempt to improve the attractiveness of the market to new and existing market participants. Accordingly, the Exchange proposes to amend its schedule of fees and credits pursuant to Equity 7, Section 114 and Section 118 in several respects. The Exchange also proposes to make certain non-substantive changes to Equity 7, Section 118.

Changes to Section 114

Currently, the Exchange provides an additional rebate of \$0.00005 per share executed when a QMM's MPID meets certain requirements in Section 114(e). The Exchange is proposing to amend the rebate to provide \$0.000075 per share executed in

Tapes A and C, while maintaining the current rebate amount for Tape B in order to incentivize firms to increase their liquidity providing activity on the Exchange, thereby encouraging market quality.

The Nasdaq Growth Program discussed in Section 114(j), which was established in 2016,³ presently provides a member with credits of \$0.0025 per share executed and a \$0.0027 per share executed to qualified members. The credit of \$0.0027 per share executed was introduced in 2017 to provide members with additional flexibility in qualifying for the Growth Program and incentive to provide greater Consolidated Volume, thereby furthering the Growth Program's goal of incentivizing participation on the Exchange.⁴ The Exchange proposes to eliminate the credit of \$0.0027 per share executed because the thresholds for the pricing incentive is no longer effective in incentivizing liquidity adding activity.

Changes to Section 118(a)

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.

First, by way of background, when the Exchange initially established the RTFY order type,⁵ the Exchange explained that it would allow Designated Retail Orders to post

³ See Securities Exchange Act Release No. 78977 (September 29, 2016), 81 FR 69140 (October 5, 2016) (SR-NASDAQ-2016-132).

⁴ See Securities Exchange Act Release No. 80997 (June 22, 2017), 82 FR 29348 (June 28, 2017) (SR-NASDAQ-2017-060).

⁵ RTFY is a routing option designed to enhance execution quality and benefit retail investors by providing price improvement opportunities to retail order flows. This routing strategy is 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

on the exchange or be routed externally to seek price improvement. The Exchange routes to several destinations that are ineligible for a protected quotation under Regulation NMS when seeking price improvement. Over time the Exchange has seen more orders remove liquidity on Nasdaq and route to other exchanges. When introduced, the fees associated with removing liquidity on Nasdaq and routing away were covered by the Exchange as a promotion to incentivize usage of the order type. Since its inception, RTFY has become more widely used and the Exchange has waived more fees for removing liquidity on Nasdaq and incurred more fees for routing to other exchanges. As a result, the Exchange established a \$0.0020 per share executed fee in August 2020.⁶

Currently, the Exchange charges a fee of \$0.0020 per share executed to a member entering RTFY orders that remove liquidity from the 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 fee is applicable to Tape A, Tape B and Tape C and only applies to orders submitted with the RTFY routing option. The Exchange continued to charge a \$0.0000 per share executed fee to other members entering a RTFY order that removes liquidity on the Nasdaq Market Center or executes in a venue other than the Nasdaq Market Center.

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)(A)(v)(b).

⁶ See Securities Exchange Act Release No. 89781 (September 8, 2020), 85 FR 56663 (September 14, 2020) (SR-NASDAQ-2020-059).

The Exchange is proposing to increase the fee to \$0.0030 per share executed and to amend the requirement by charging a member for shares executed above 4 million shares during the month for RTFY orders that remove liquidity from the Nasdaq Market Center or that execute in a venue with a protected quotation under Regulation NMS other than the Nasdaq Market Center. Although the Exchange will continue to not charge a fee for RTFY orders in all other instances, the Exchange is also proposing to amend the descriptions of its two RTFY fees of \$0.0000 per share executed, to reflect that members will not incur a fee for shares up to 4 million, during the month, that remove from the Exchange or a venue with a protected quotation under Regulation NMS, or if executed in a venue ineligible for a protected quotation under Regulation NMS.

Second, the Exchange currently provides a \$0.0029 per share credit to members with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.40% 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 more than 0.10% of Consolidated Volume. The Exchange is proposing to amend the threshold for the \$0.0029 per share executed credit to apply to a member (i) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.50% 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 more than 0.10% of Consolidated Volume, and (ii) with a ratio of at least 15% volume that sets the NBBO provided through one or more of its Nasdaq Market Center MPIDs to all displayed volume that provides liquidity through one

or more of its Nasdaq Market Center MPIDs during the month. This change will apply to Tapes A, B and C. The Exchange hopes that this proposed amendment will incentivize firms to increase their liquidity providing activity on Nasdaq, to set the NBBO, and will promote tighter spreads and improve market quality.

Third, the Exchange proposes to add a new supplemental credit for displayed quotes/orders (other than Supplemental Orders⁷ or Designated Retail Orders) that provide liquidity. The proposed credit would provide \$0.000025 per share executed to a member with (i) shares of liquidity provided in Tape A securities during the month representing at least 1.40% of Consolidated Volume during the month, and (ii) shares of liquidity provided in Tape C representing at least 1.40% of Consolidated Volume during the month. This supplemental credit only applies to Tapes A and C securities because the Exchange hopes to incentivize firms to increase their display liquidity added in Tapes A and C securities.

Fourth, the Exchange proposes in Section 118(a) to add two new credits across Tapes A, B and C for certain non-displayed orders (other than Supplemental Orders) that provide liquidity. The Exchange proposes to adopt a credit for such non-displayed orders if the member, during the month (i) provides 0.30% or more of Consolidated Volume through non-displayed orders (including midpoint orders) and through M-ELO orders; and (ii) increases providing liquidity through non-displayed orders (including midpoint orders) and through M-ELO orders by 0.06% or more relative to the member's August 2020 Consolidated Volume provided through non-displayed orders (including midpoint

⁷ A Supplemental Order is an Order Type with a Non-Display Order Attribute that is held on the Nasdaq Book in order to provide liquidity at the NBBO through a special execution process described in Rule 4757(a)(1)(D). See Rule 4702(b)(6).

orders) and through M-ELO (“credit 1”). Additionally, the Exchange proposes to adopt a credit for such non-displayed orders if the member, during the month (i) provides 0.30% or more of Consolidated Volume through non-displayed orders (including midpoint orders) and through M-ELO orders; and (ii) increases providing liquidity through non-displayed orders (including midpoint orders) and through M-ELO orders by 0.10% or more relative to the member’s August 2020 Consolidated Volume provided through non-displayed orders (including midpoint orders) and through M-ELO (“credit 2”). The Exchange will provide a credit of \$0.00075 per share executed to Tape C and a credit of \$0.0010 per share executed to Tapes A and B for credit 1. The Exchange will provide a credit of \$0.0010 per share executed to Tape C and a credit of \$0.00125 per share executed to Tapes A and B for credit 2. The Exchange hopes that by proposing these new credits it will incentive firms to increase their non-display volume on the Exchange.

Lastly, the Exchange is making certain non-conforming changes to remove the duplicative words “during the month” from the \$0.0027 per share executed credit to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity in Tape A. Additionally, the Exchange is adding the word “and” to the \$0.0025 per share executed credit for non-displayed orders (other than Supplemental Orders) that provide liquidity in Tape B.

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

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

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

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)).

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

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.

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 increase the additional QMM credit of \$0.00005 per share executed to \$0.000075 per share executed for Tapes A and C in Section 114(e) because with the launch of new exchanges this month, the Exchange hopes to incentivize participants to maintain or increase their liquidity adding activity and quoting at the NBBO in Tapes A and C. 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 remove the credit of \$0.0027 per share executed for the Nasdaq Growth Program in Section 114(j) because the credit did not accomplish the growth in activity as originally intended because the thresholds for the pricing incentive is no longer effective in incentivizing liquidity adding activity.¹⁴ It is reasonable to evaluate and update the Exchange's fee schedule to reflect the fees and rebates that are effective for the Exchange and market participants.

The Exchange also believes it is reasonable to adjust the fee and the qualifications for RTFY orders. Until August 2020,¹⁵ there had been no charge to participants entering RTFY orders because there were no fees charged to participants for removing liquidity

¹³ See n. 12, supra.

¹⁴ See n. 4, supra.

¹⁵ See n. 6, supra.

from the Exchange and fees charged by other venues with a protected quotation under Regulation NMS for RTFY orders that are routed away to other venues were covered by the Exchange as a promotion to incentivize usage of the order type. Given that RTFY orders have become more widely used and as a result, the Exchange has waived more fees for removing liquidity from the Exchange and incurred more costs for covering the fees for routing to other venues with a protected quotation under Regulation NMS, the Exchange believes that it is reasonable to amend its RTFY fees to cap the number of executed RTFY shares that members receive for free when such orders remove liquidity from the Nasdaq Market Center or execute in a venue with a protected quotation under Regulation NMS. Similarly, the Exchange believes that it is reasonable to amend the RTFY fee qualifications for the \$0.0000 per share executed to align with the qualifications for the proposed \$0.0030 per share executed fee. The Exchange hopes to continue to encourage market participants to increase their RTFY usage while allowing the Exchange to mitigate the costs it incurs by capping the number of shares that members receive for free when such orders remove liquidity from the Nasdaq Market Center or execute in a venue with a protected quotation under Regulation NMS.

The Exchange also believes that it is reasonable to adjust the qualifications for the \$0.0029 per share executed credit in Section 118(a) provided to members for displayed quotes/orders (other than Supplemental Order or Designated Retail Orders¹⁶) that provide

¹⁶ Pursuant to Rule Section 118, a “Designated Retail Order” is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this section, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An order from a “natural person” can include orders on behalf of accounts that are held in a

liquidity. The proposed change is intended to incentivize members to increase liquidity and set the NBBO, which will further improve overall market quality.

Additionally, the Exchange believes it is reasonable to add three new credits to Section 118(a). The Exchange believes that the availability of the new \$0.000025 per share executed supplemental credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity, as well as the two new credits for certain non-displayed orders (other than Supplemental Orders) that provide liquidity will incentivize members to increase their liquidity adding activity on the Exchange in order to qualify for the new credits. An increase in liquidity adding activity on the Exchange would help to improve the quality of the market for all participants. Moreover, the Exchange believes that it is reasonable to apply the supplemental credit only to Tapes A and C because the Exchange's goal is to promote increased liquidity in Tapes A and C and hopes to incentivize market participants to increase their liquidity adding activity by providing these additional credits. Similarly, the Exchange believes that it is reasonable to provide a higher credit certain for non-displayed orders (other than Supplemental Orders) that provide liquidity in Tapes A and B due to the Exchange's goal to specifically promote increased non-displayed order liquidity in securities in these Tapes because the Exchange is not seeing the level of liquidity that it expected in Tapes A and B.

corporate legal form - such as an Individual Retirement Account, Corporation, or a Limited Liability Company - that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. Members must submit a signed written attestation, in a form prescribed by Nasdaq, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as "Designated Retail Orders" comply with these requirements. Orders may be designated on an order by-order basis, or by designating all orders on a particular order entry port as Designated Retail Orders.

The Proposal is an Equitable Allocation of Fees and Credits

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

In particular, it is equitable to increase the additional credit in Section 114(e) for QMMs in securities in Tapes A and C in order to incentivize members to increase their liquidity adding activity in those Tapes because the Exchange is not seeing the volume that it had hoped to see in Tapes A and C. Moreover, the fees will be applied uniformly to all QMMs.

The Exchange also believes that it is equitable to increase certain fees and qualifications for RTFY orders in Section 118(a) because the Exchange must balance providing a variety of order types, including order types that allow market participants to remove liquidity and route orders out of the Exchange, while ensuring that the Exchange is not incurring significant costs as a result of providing a discounted fee. Additionally, the Exchange is assessed various fees for the execution of such orders at away venues and the proposed fee is reflective of the value provided by the Exchange in providing this functionality and the overall fees assessed by such venues. Moreover, the fee and qualifications will apply uniformly to all participants that enter RTFY orders.

Moreover, it is equitable for the Exchange to remove the \$0.0027 per share executed credit from the Growth Program in Section 114(j) because, discussed above, the credit did not accomplish the growth in activity as originally intended. When the fees and credits of the Exchange are not meeting their expected goals, it is reasonable for the Exchange to re-evaluate them, and equitable for the Exchange to amend its fees and credits for all members.

Furthermore, it is equitable for the Exchange to adjust the qualifications for the \$0.0029 per share executed credit for displayed quotes/orders (other than Supplemental Orders and Designated Retail Orders). The Exchange provides credits with varying qualifications to provide its members with various ways for obtaining the credit. The Exchange believes that it is equitable to adjust the qualifications for a credit in order to incentivize an increase in liquidity adding activity and setting the NBBO on the Exchange. As discussed above, greater liquidity on the Exchange will further improve overall market quality.

The Exchange also believes that it is equitable to establish new credits in Section 118(a). In particular, the Exchange believes it is equitable to establish a new supplemental credit for members that provide liquidity for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders). Additionally, the Exchange believes that it is equitable for the Exchange to establish two new credits for members that provide liquidity for certain non-displayed orders (other than Supplemental Orders). The Exchange hopes that these credits will increase the incentive for participants to add 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. Moreover, the Exchange believes it is equitable to apply the \$0.000025 per share executed credit to Tapes A and C for members that provide liquidity for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) because it is the Exchange's goal to specifically promote increased liquidity in securities in Tapes A and C for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders). Additionally, the Exchange believes that it is equitable to

provide a higher credit to members with certain non-displayed orders (other than Supplemental Orders) in securities in Tape A and B due to the Exchange's goal to specifically promote increased non-displayed order liquidity in securities in these tapes. 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 Proposed Amended Fees and 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.

The Exchange intends for its proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. Net adders of liquidity to the Exchange stand to benefit directly from the proposed changes. Moreover, to the extent that the proposed changes increase liquidity adding and removing activity on the Exchange, this will improve

market quality and the attractiveness of the Nasdaq market, to the benefit of all existing and prospective participants.

More particularly, to the extent that Section 114(e) of the Exchange's proposal to allow a QMM to qualify for a credit of \$0.000075 per share executed in Tapes A and C will result in an increase in liquidity on the Exchange, it 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 the higher credit is free to shift its order flow to a competing venue. Additionally, the proposal to remove the Growth Program \$0.0027 per share executed credit in Section 114(j) is not unfairly discriminatory because the credit will be removed for all market participants given that it did not accomplish the growth in activity as originally intended.

Additionally, the Exchange does not believe that the proposed RTFY fee increase in Section 118(a) is unfairly discriminatory because all members sending Designated Retail Orders to Nasdaq for execution are eligible to use RTFY. Each member may elect to use the RTFY routing strategy and to execute as many shares as the member sees fit. Furthermore, given that the Exchange only incurs a fee for RTFY orders that route and execute at venues with a protected quotation under Regulation NMS, the Exchange does not believe that it is unfairly discriminatory to not charge a fee for RTFY orders that route and execute at venues without a protected quotation under Regulation NMS because the Exchange is not charged a fee for those RTFY orders. Moreover, assessing different rates when a member elects to use a routing strategy but executes on the venue

where the order was originally entered is not novel. For example, the Exchange charges fees ranging from \$0.0030 per share executed to no charge to a member entering an MIDP Order.¹⁷ The fees vary based on whether the MIDP Order routes and executes at venues with a protected quotation under Regulation NMS other than BX or Nasdaq, or whether the MIDP Order routes and executes at venues ineligible for a protected quotation under Regulation NMS.¹⁸ The charge for MIDP Orders that route and execute at venues with a protected quotation under Regulation NMS, other than BX or Nasdaq, is the same as the proposed charge for RTFY orders that route and execute at venues with a protected quotation under Regulation NMS. Therefore, the Exchange is not seeking to charge RTFY orders a greater amount than MIDP Orders; rather, the fees are comparable.

Moreover, the Exchange does not believe that it is unfairly discriminatory to add new credits or to amend the qualifications for a member to obtain a current credit in Section 118(a) because to the extent that the proposal increases liquidity adding activity on the Exchange, this will result in improved market quality, which will benefit all existing and prospective participants.

Furthermore, the Exchange does not believe it is unfairly discriminatory for the Exchange to propose a supplemental credit for members that provide liquidity for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) in Tapes A and C because the Exchange seeks to promote increased liquidity adding activity specifically in securities in Tapes A and C. Similarly, the Exchange does not believe that

¹⁷ The MIDP routing option allows Nasdaq members to seek midpoint liquidity on Nasdaq and other markets on the Nasdaq system routing table.

¹⁸ See Rule Equity 7, Section 118(a). See also Securities Exchange Act Release No. 87186 (October 1, 2019), 84 FR 53504 (October 7, 2019) (SR-Nasdaq-2019-080).

it is unfairly discriminatory to provide a higher credit to QMMs who provide liquidity adding activity in Tapes A and C because the Exchange seeks to encourage liquidity adding activity and quoting at the NBBO by QMMs in Tapes A and C. Likewise, the Exchange does not believe that it is unfairly discriminatory to provide a higher credit for certain non-displayed orders (other than Supplemental Orders) that provide liquidity in Tapes A and B than it proposes for participants with orders in Tape C because the Exchange seeks to promote increased liquidity adding activity for certain non-displayed orders (other than Supplemental Orders) specifically in securities in Tapes A and B.

Finally, any participant that is dissatisfied with the proposed amended fees or credits is free to shift their order flow to competing venues that provide more favorable 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 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 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. Furthermore, all members of the Exchange will benefit from any increase in market activity that the proposals effectuates. Additionally, As discussed above, the \$0.0027 per share executed

Growth Program credit removal is applicable to all members and does not place anyone at a competitive disadvantage because the thresholds for the pricing incentive is no longer effective in incentivizing liquidity adding activity.

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 14 live exchanges (soon to be 16) 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 44% of industry volume for the month of August 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,¹⁹ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2020-067 on the subject line.

Paper Comments:

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

- 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-2020-067. This file number should be included on the subject line if e-mail 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-2020-067 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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

J. Matthew DeLesDernier,

Assistant Secretary.

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²⁰ 17 CFR 200.30-3(a)(12).