Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal to allow the Exchange, in exceptional cases and where good cause is shown, to grant a Market-Maker's request for a reset of the Electronic Volume Threshold in subparagraph (d)(1)(A) of Rule 5.52 should promote just and equitable principles of trade by not requiring a Market-Maker that is accustomed to floor trading, and potentially lacking the appropriate technology, to provide continuous electronic quotes. The Commission notes that in determining whether to grant a Market-Maker's request for a reset of the Electronic Volume Threshold, the Exchange may consider, among other things: (i) A Market-Maker's trading activity and business model in the appointed class; (ii) any previous requests for a reset of the Electronic Volume Threshold in the appointed class, including previously granted requests; and (iii) market conditions and general trading activity in the appointed class. The Commission believes that the proposed rule is reasonably designed to limit application of the reset to only those firms who incidentally breached the Electronic Volume Threshold in certain appointed classes due to extraordinary or extreme market volatility or other circumstances outside of the Market-Maker's control.

In addition, the Commission believes that the proposal to remove the rollout period for new classes in Rule 5.52(d)(1) is consistent with the Act. The Commission notes that the rollout period was implemented in connection with the transition of certain classes to the Exchange's former Hybrid System and that all classes listed for trading on the Exchange now trade on the same platform. The Commission believes the proposal will help to protect investors and the public interest by removing outdated and potentially confusing language from the Exchange's rules.

Based on the foregoing, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–2021–013) be, and hereby is, approved.

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

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–08860 Filed 4–27–21; 8:45 am]

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impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91639; File No. SR–BX–2021–014]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118

April 22, 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 April 13, 2021, Nasdaq BX, Inc. (''BX'' 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 proposal to amend: (i) The Exchange's transaction fees and credits, at Equity 7, Section 118(a); and (ii) its Qualified Market Maker Program, at Equity 7, Section 118(f), as described further below.

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

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

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

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

1. Purpose

The Exchange operates on the ''taker-maker'' model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, Section 118(a), which consists of several different credits that it provides for orders in securities priced at $1 or more per share that access liquidity on the Exchange and several different charges that it assesses for orders in such securities that add liquidity on the Exchange. It also has a program, at Equity 7, Section 118(f), to reward those of its members that make significant contributions to the market.

Over the course of the last few years, the Exchange has experimented with various reformulations of its pricing schedule with the aim of increasing activity on the Exchange, improving market quality, and increasing market share.[3] Although these changes have met with some success, the Exchange has yet to achieve the results it desires. Accordingly, the Exchange proposes to again revise its pricing schedule, in large part, in a further attempt to

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–89554 (August 14, 2020), 85 FR 51518 (August 20, 2020) (SR–BX–2020–018); Securities Exchange Act Release No. 34–89114 (June 22, 2020), 85 FR 38418 (June 26, 2020) (SR–BX–2020–011); Securities Exchange Act Release No. 34–88857 (May 12, 2020), 85 FR 29766 (May 18, 2020) (SR–BX–2020–008); Securities Exchange Act Release No. 34–87271 (October 10, 2019), 84 FR 55621 (October 17, 2019) (SR–BX–2019–035); Securities Exchange Act Release No. 34–87093 (September 24, 2019), 84 FR 57530 (October 25, 2019) (SR–BX–2019–031); Securities Exchange Act Release No. 34–86447 (July 24, 2019); 84 FR 36989 (July 30, 2019) (SR–BX–2019–026); Securities Exchange Act Release No. 34–85912 (May 22, 2019); 84 FR 24834 (May 29, 2019) (SR–BX–2019–013).

improve the attractiveness of the market to new and existing participants.

Description of the Changes

Credits for Accessing Liquidity Through the Exchange

The Exchange proposes to revise its current schedule of credits. Generally speaking, the proposed revised credits will be lower than the existing credits.[4] Lowering the credits for orders that remove liquidity from the Exchange will help to offset the costs of providing the proposed lower fees, as discussed below, to members whose orders add liquidity to the Exchange.

Currently, the Exchange provides a $0.0029 per share executed credit for orders in securities in Tapes A and B and a $0.0028 per share executed credit for orders in securities in Tape C that access liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member: (i) Whose combined liquidity removing and adding activities equal to or exceed 0.225% of total Consolidated Volume during a month and (ii) that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange is proposing to lower the credit to $0.0018 per share executed for orders in securities in Tapes A, B and C, and lowering the threshold from 0.225% to 0.15%. The Exchange is providing the same credit for all three tapes in this tier in order to incentivize increased participation across all tapes equally. Additionally, the Exchange is proposing to add a requirement that the member accesses liquidity equal to or exceeding 0.05% of total Consolidated Volume during a month.

The Exchange also currently provides a $0.0027 per share executed credit for orders in securities in Tapes A and B and a $0.0026 per share executed credit for orders in securities in Tape C that access liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member: (i) Whose combined liquidity removing and adding activities equal to or exceed 0.185% of total Consolidated Volume during a month and (ii) that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange is proposing to lower the credit to $0.0016 per share executed for orders in securities in Tapes A and B and $0.0015 per share executed for orders in securities in Tape C. The Exchange is also proposing to lower the threshold from 0.185% to 0.10% and to add a requirement that the member access liquidity equal to or exceeding 0.05% of total Consolidated Volume during a month.

Additionally, the Exchange currently provides a $0.0026 per share executed credit for orders in securities in Tapes A and B and a $0.0025 per share executed credit for orders in securities in Tape C that access liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that: (i) Accesses liquidity equal to or exceeding 0.08% of total Consolidated Volume during a month and (ii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange is proposing to lower the credit to $0.0015 per share executed for orders in securities in Tapes A and B and $0.0014 per share executed for orders in securities in Tape C. The Exchange is also proposing to adjust the liquidity removal threshold to require that the member have a combined liquidity removing and adding activity equal to or exceeding 0.075% of total Consolidated Volume during a month.

The Exchange also currently provides a $0.0021 per share executed credit for orders in securities in Tapes A and B and a $0.0020 per share executed credit for orders in securities in Tape C that access liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that: (i) Accesses liquidity equal to or exceeding 0.05% of total Consolidated Volume during a month and (ii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange is proposing to lower the credit to $0.0010 per share executed for orders in securities in Tapes A and B and $0.0009 per share executed for orders in securities in Tape C. The Exchange is also proposing to adjust the liquidity removal threshold to require the member's combined liquidity removing and adding activity equal to or exceeding 0.05% of total Consolidated Volume during a month.

The Exchange is also proposing to eliminate its current credit of $0.0018 per share executed for orders in Tapes A and B and $0.0017 per share executed for orders in Tape C that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that: (i) Accesses at least 35% more liquidity, as a percentage of total Consolidated Volume during a month, than it did during July 2020; (ii) accesses liquidity equal to or exceeding 0.01% of total Consolidated Volume during a month; and (iii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. Based on the proposed changes to the credits provided to members, the Exchange believes the thresholds for this pricing incentive are no longer effective in incentivizing liquidity removal activity.

Lastly, the Exchange proposes to lower its current credit of $0.0015 per share executed for Tapes A and B and $0.0014 per share executed in Tape C to $0.0005 per share executed for Tapes A and B and $0.0004 per share executed for Tape C, for orders that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month.

Charges for Adding Liquidity to Displayed Orders on the Exchange

In addition to the proposed revised credits discussed above, the Exchange proposes to revise its existing schedule of charges for adding displayed liquidity on the Exchange. Generally speaking, the range of the proposed charges will be lower than the current charges for most orders in Tapes A, B and C.[5] The Exchange believes that lower overall charges will incentivize members to increase their liquidity adding activity.

Currently, the Exchange charges $0.0024 per share executed for displayed orders in all three Tapes entered by a member that adds liquidity equal to or exceeding 0.25% of total

[4] Whereas the highest credit under the existing schedule (for an order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member (i) whose combined liquidity removing and adding activities equal or exceed 0.225% of total Consolidated Volume during a month and (ii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month) is $0.0029 per share executed for orders in securities in Tapes A and B and $0.0028 per share executed for orders in securities in Tape C, the top such credit in the proposed schedule will be $0.0018 per share executed for Tapes A, B and C.

[5] Whereas under the existing pricing schedule, the Exchange charges between $0.0022 and $0.0028 per share executed for displayed orders in all three Tapes, that add liquidity to the Exchange, the proposed revised schedule will charge fees for such displayed orders in securities in all three Tapes ranging from $0.0012 to $0.0020 per share executed.

Consolidated Volume during a month. The Exchange proposes to lower the fee to $0.0012.

The Exchange also charges $0.0025 per share executed for displayed orders in all three Tapes entered by a member that adds liquidity equal to or exceeding 0.175% of total Consolidated Volume during a month. The Exchange proposes to lower the threshold to 0.15% and lower the fee to $0.0014.

Similarly, the Exchange charges $0.0026 per share executed for displayed orders in all three Tapes entered by a member that adds liquidity equal to or exceeding 0.11% of total Consolidated Volume during a month. The Exchange proposes to lower the threshold to 0.10% and lower the fee to $0.0017.

Currently, the Exchange charges $0.0028 per share executed for displayed orders in all three Tapes entered by a member that adds liquidity equal to or exceeding 0.07% of total Consolidated Volume during a month. The Exchange proposes to lower the threshold to 0.05% and lower the fee to $0.0020.

The Exchange also charges a $0.0022 fee for displayed orders in all three Tapes entered by a member that (i) adds liquidity equal to or exceeding 0.12% of total Consolidated Volume during a month and (ii) adds at least 35% more liquidity, as a percentage of total Consolidated Volume during a month, than it did during August 2020. The Exchange proposes to lower the fee to $0.0020 and change the threshold for members to (i) add liquidity equal to or exceeding an average daily volume of 2,500,000 shares in a month and (ii) add at least 25% more liquidity relative to the member's March 2021 average daily volume of liquidity provided.

Additionally, the Exchange is also proposing a new fee of $0.0017 per share executed for displayed orders entered by a member that (i) adds liquidity equal to or exceeding an average daily volume of 9,500,000 shares in a month, and (ii) adds at least 15% more liquidity relative to the member's March 2021 average daily volume of liquidity provided.

Charges for Adding Liquidity to Midpoint Pegging and Non-Displayed Orders on the Exchange

The Exchange is also proposing to lower certain fees for Midpoint pegging and non-displayed orders in its existing schedule of charges. Specifically, the Exchange currently charges $0.0015 per share executed for orders with Midpoint pegging entered by other member excluding a buy (sell) order that receives an execution price that is lower (higher) than the midpoint of the national best bid and offer (''NBBO''). The Exchange proposes to lower the fee to $0.0010 per share executed. Additionally, the Exchange currently has a fee of $0.0028 per share executed for non-displayed orders (other than orders with Midpoint pegging) entered by a member that adds and removes liquidity equal to or exceeding 0.225% total Consolidated Volume during a month. The Exchange is proposing to lower the fee to $0.0024 and change the threshold for a member to (i) add and remove liquidity equal to or exceeding 0.15% total Consolidated Volume during a month and (ii) achieve at least 35% ratio of its displayed liquidity adding activity to its total liquidity adding activity during a month.

Changes to the Qualified Market Maker Program

The Exchange presently has a Qualified Market Maker (''QMM'') program, at Equity 7, Section 118(f), which rewards members that make significant contributions to market quality by providing liquidity at the NBBO in a large number of securities for a significant portion of the day. In particular, the existing QMM program provides a two-tiered discount to QMMs that quote at the NBBO for a certain percentage of time in an average minimum number of securities per day during a month, and provides a certain percentage of liquidity volume during the month.

Currently the Exchange provides a discount of $0.0001 per share executed to a QMM for entering displayed orders in securities priced at $1 or more that provide liquidity to the Exchange if the QMM quotes at the NBBO at least 25% of the time during Market Hours in an average of at least 400 securities per day during a month and provides add volume of at least 0.07% of total Consolidated Volume during a month. The Exchange is proposing to lower the thresholds to require the QMM to quote at the NBBO at least 10% of the time during Market Hours in an average of at least 325 securities per day during a month. Lowering the thresholds for qualifying for the discount will incentivize members who currently do not meet the proposed thresholds to increase their liquidity adding and NBBO quoting activity in order to become QMMs, which will result in the improvement of overall market quality.

The Exchange is also proposing to remove the discount of $0.0002 per share executed given to QMMs that quote at the NBBO at least 25% of the time during market hours in an average of at least 750 securities per day during a month, and provides add volume of at least 0.15% of total Consolidated Volume during a month for displayed orders in securities priced at $1 or more that provide liquidity to the Exchange. Members will not be impacted directly by the removal of the second tier discount because no member currently qualifies for that discount.

Applicability to and Impact on Participants

The proposed revisions to the credits and fees are intended to specifically increase liquidity adding activity on the Exchange, and to thereby improve the overall quality and attractiveness of the Nasdaq BX market. The Exchange intends to accomplish this objective by providing overall lower fees to participants that engage in large volumes of liquidity adding activity on the Exchange. The cost of lowering these fees will be offset by the Exchange's proposal to also lower the credits to those participants that engage in large volumes of liquidity removal activity on the Exchange. The Exchange also intends for its proposed changes to its QMM program to provide greater incentives to members to increase their contributions to market quality and to eliminate incentives that have not contributed to significant improvements of the market.

Those participants that act as net adders of liquidity to the Exchange will benefit from lower charges and from any improvement in the overall quality of the market. Those participants that act as net removers of liquidity from the Exchange will also benefit from any improvement in the overall quality of the market. The Exchange notes that its proposal is not otherwise targeted at or expected to be limited in its applicability to a specific segment(s) of market participants nor will it apply differently to different types of market participants.

Members will not be impacted directly by the removal of the existing $0.0002 credit because no member currently qualifies for that tier.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] 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

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

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 change to its schedule of credits and charges 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 the execution of order flow from broker dealers'. . . .'' [8]

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.'' [9]

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, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. 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.[10]

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.[11]

The Exchange has revised 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 by lowering the fees for adding liquidity on the Exchange. Increasing liquidity adding activity will also encourage additional liquidity removing activity on the Exchange. Additionally, changes to the qualifying credit and fee thresholds will incentivize participants to meet the qualifying tiers, and consequently, increase liquidity on the Exchange. Similarly, the Exchange believes it is reasonable to add the $0.0017 fee to all three tapes in order to incentivize more liquidity removal activity. An increase in liquidity removal and adding activity on the Exchange will, in turn, improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants. The Exchange believes it is reasonable to remove the $0.0018 credit to Tapes A and B and the $0.0017 credit to Tape C because the credit is no longer necessary given the proposed changes to the other credit thresholds. Generally, the proposed changes to the credits and charges will be comparable to, if not favorable to, those that its competitors provide.[12]

Moreover, the Exchange believes that it is reasonable to make adjustments to its QMM program because the changes to the $0.0001 tier will make it easier to qualify, and therefore, participants who currently do not meet the threshold will be incentivized to strive to meet the proposed threshold. The Exchange also believes it is reasonable to remove incentives that are not being met by QMMs and therefore, are not improving the quality of the Nasdaq BX Exchange.

The Exchange notes that those participants that are dissatisfied with the proposed changes to the fees and credits are free to shift their order flow to competing venues that offer them lower charges or higher credits.

The Proposal Is an Equitable Allocation of Credits and Charges

The Exchange believes its proposal will allocate its revised credits and charges fairly among its market participants. It is equitable for the Exchange to lower its credits to participants whose orders remove liquidity from the Exchange as a means of offsetting the costs of lowering the fees to incentivize increased liquidity adding activity. Likewise, it is equitable for the Exchange to reduce charges to participants whose orders add liquidity to the Exchange as a means of incentivizing liquidity adding activity. An increase in overall liquidity removal and addition activity on the Exchange will improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants.

The Exchange believes it is reasonable to remove the $0.0018 credit to Tapes A and B and the $0.0017 credit to Tape C because the credit is no longer necessary given the proposed changes to the other credit thresholds. Similarly, the Exchange believes it is reasonable to add the $0.0017 fee to all three tapes in order to incentivize more liquidity removal activity.

Moreover, the Exchange believes it is reasonable to propose changes to the credit and fee thresholds because such changes will increase the incentive for participants to meet the qualifying tiers, and consequently, increase liquidity on the Exchange. The Exchange also believes that it is equitable to lower the threshold for the $0.0001 discount provided to QMMs in order to incentivize participants to increase quoting at the NBBO and increase liquidity provision, and to remove the $0.0002 discount it offers to members that qualify as QMMs because no members are currently meeting the additional incentive.

Although under the proposal, certain market participants will attain lower credits than they do now, those participants will also benefit from any improvements in the quality and attractiveness of the market that the lower charges will provide for liquidity adding activity. Moreover, any participant that wishes to avoid receiving lower credits is free to shift

[8] *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)).

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

[10] *See* CBOE BYX Fee Schedule, at *http://markets.cboe.com/us/equities/membership/fee_schedule/byx/;* NYSE National Fee Schedule, at *https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.*

[11] The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it. In particular, the Exchange notes that these examples of shifts in liquidity and market share, along with many others, have occurred within the context of market participants' existing duties of Best Execution and obligations under the Order Protection Rule under Regulation NMS.

[12] *See* n. 10, *supra.*

their order flow to competing venues that provide more favorable pricing.

The Proposed Fee and Credit 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. Although net adders of liquidity will benefit most from the proposal, this result is fair insofar as increased liquidity adding activity will help to improve market quality and the attractiveness of the Nasdaq BX market to all existing and prospective participants. And although certain participants will bear the costs of the proposed rule change through lower credits, this too is fair because these participants will also benefit from improvements in market quality. Moreover, any participant that does not wish to pay higher charges or receive lower credits is free to shift its order flow to a competing venue.

Finally, the Exchange believes that its proposed amendment to its QMM program is not unfairly discriminatory because the lowering of the threshold and the removal of one of the tiers will apply to all members. The Exchange notes that none of its members will be affected directly by the proposed removal of the second tier discount insofar as no member currently qualifies as a QMM under the existing program.

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, all members of the Exchange will benefit from any increase in market activity that the proposal effectuates. Members may grow or modify their businesses so that they can receive credits or pay lower charges. Moreover, members are free to trade on other venues to the extent they believe that the fees assessed, and credits provided, 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

Addressing whether the proposed fees and credits could impose a burden on competition on other SROs that is not necessary or appropriate, the Exchange believes that its proposed modifications to its schedule of credits and charges 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 15 live exchanges and from off-exchange venues, which include 34 alternative trading systems. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees 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 changes in this market may impose any burden on competition is extremely limited.

The proposed changes to the existing schedule of credits and charges is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume has less than 17% 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 41% of industry volume for the month of March 2021.

The Exchange intends for the proposed changes to its schedule of fees and credits, in the aggregate, to increase member incentives to engage in the removal and addition of liquidity on the Exchange. Similarly, the Exchange intends for the proposed changes to its QMM program to incentivize participants who currently do not meet the proposed thresholds, to increase their liquidity adding and NBBO quoting activity in order to become QMMs and to obtain the additional discount. These changes are pro-competitive and reflective of the Exchange's efforts to make it an 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.[13]

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

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

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–BX–2021–014 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–BX–2021–014. 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–BX–2021–014 and should be submitted on or before May 19, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91629; File No. SR–NYSE–2021–27]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 9261 and 9830

April 22, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 20, 2021, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 extending the expiration date of the temporary amendments to Rules 9261 and 9830 as set forth in SR–NYSE–2020–76 from April 30, 2021, to August 31, 2021, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE Rules 9261 and 9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* 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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

The Exchange proposes extending the expiration date of the temporary amendments as set forth in SR–NYSE–2020–76[4] to Rules 9261 (Evidence and Procedure in Hearing) and 9830 (Hearing) from April 30, 2021, to August 31, 2021 to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSE–2020–76 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID–19 pandemic. The proposed rule change would not make any changes to the text of Exchange Rules 9261 and 9830.[5]

Background

In 2013, the NYSE adopted disciplinary rules that are, with certain exceptions, substantially the same as the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.[6] The NYSE

[14] 17 CFR 200.30–3(a)(12).

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 90024 (September 28, 2020), 85 FR 62353 (October 2, 2020) (SR–NYSE–2020–76) (''SR–NYSE–2020–76'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond August 31, 2021 if the Exchange requires additional temporary relief from the rule requirements identified in NYSE–SR–2020–76. The amended NYSE rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR–NYSE–2013–02) (''2013 Notice''), 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR–NYSE–2013–02) (''2013 Approval Order''), and 69963 (July 10, 2013), 78 FR 42573 (July 16, 2013) (SR–NYSE–2013–49).