requesting and conducting such hearings between paragraphs (A) and (B) could lead to confusion. Therefore, the Commission believes that providing the same procedures for requesting and conducting a hearing under Rules 5815(d)(4)(A) and (B) and consolidating these procedures into proposed paragraph (C) provides transparency and clarity to such hearings, and thus may help ensure that the Exchange's rules do not permit unfair discrimination between issuers, and provides a fair procedure for review of a Staff Delisting Determination, consistent with the Act.

As the Commission has previously noted, the development and enforcement of meaningful listing standards [26] for an exchange is of substantial importance to financial markets and the investing public. Among other things, listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies that have or will have sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets.[27] Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.[28] Therefore it is important for exchanges to prevent companies that are deficient in their listing standards or that do not meet initial listing standards from remaining or becoming listed on an exchange. Clarifying the rules and procedures for appeal where a listed Company has recurrent deficiencies so is under a Hearings Panel Monitor and cannot avail itself of additional time to demonstrate compliance, should further investor protection under Section 6(b)(5) of the Act by helping to eliminate potential confusion about the application of Rule 5815(d)(4), while at the same time ensuring such Companies have a fair procedure for review consistent with Section 6(b)(7) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NASDAQ–2021–099) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06091 Filed 3–22–22; 8:45 am]

BILLING CODE 8011–01–P

[26] The Commission notes that this is referring to both initial and continued listing standards.

[27] In addition, once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained. *See, e.g.,* Securities Exchange Act Release Nos. 82627 (Feb. 2, 2018), 3 FR 5650, 5653, n.53 (Feb. 8, 2018) (SR–NYSE–2017–30); 81856 (Oct. 11, 2017), 82 FR 48296, 48298 (Oct. 17, 2017) (SR–NYSE–2017–31); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (SR–NYSE–2017–11). The Commission has stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. *See, e.g.,* Securities Exchange Act Release Nos. 82627 (Feb. 2, 2018), 3 FR 5650, 5653, n.53 (Feb. 8, 2018) (SR–NYSE–2017–30); 87648 (Dec. 3, 2019), 84 FR 67308, 67314, n.42 (Dec. 9, 2019) (SR–NASDAQ–2019–059); 88716 (Apr. 21, 2020), 85 FR 23393, 23395, n.22 (Apr. 27, 2020) (SR–NASDAQ–2020–001).

[28] *See, e.g.,* Securities Exchange Act Release Nos. 65708 (Nov. 8, 2011), 76 FR 70799 (Nov. 15, 2011) (SR–NASDAQ–2011–073) (order approving a proposal to adopt additional listing requirements for companies applying to list after consummation of a ''reverse merger'' with a shell company), and 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (SR–NYSE–2018–17) (order approving a proposal to adopt new initial and continued listing standards to list securities of special purpose acquisition companies).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94451; File No. SR–NASDAQ–2022–025]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Fees and Credits at Equity 7, Sections 114 and 118 March 17, 2022

March 17, 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 March 9, 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.

[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 transaction credits 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 amend the Exchange's schedule of fees and credits, at Equity 7, Sections 114 and 118 to establish pricing for orders executed in the new Extended Trading Close or ''ETC,'' which the Commission approved earlier this year.[3] The proposed fee will be effective coincident with the commencement of the ETC, which the Exchange intends to occur on March 7, 2022.

As set forth in Rule 4755, the Extended Trading Close will allow Participants an additional opportunity to access liquidity in Nasdaq-listed securities at the Nasdaq Official Closing Price for a five minute period of time after the Nasdaq Closing Cross [4] or the LULD Closing Cross,[5] (collectively, the

[3] *See* Securities Exchange Act Release No. 34–94038 (January 24, 2022), 87 FR 4683 (January 28, 2022) (order approving SR–Nasdaq–2021–40, as amended).

[4] The ''Nasdaq Closing Cross'' refers to Nasdaq's process for determining the price at which it will execute orders at the close and for executing those orders, as set forth in Rule 4754.

[5] The ''LULD Closing Cross'' refers to Nasdaq's modified process for determining the price at which

Continued

''Closing Cross'') concludes. During this five minute period, the System will continuously match and execute ''ETC Eligible Orders''—which include ''ETC Orders'' and ''ETC Eligible LOC Orders'' (discussed below)—at the Nasdaq Official Closing Price, as determined by the Closing Cross, unless the System suspends executions in two scenarios. First, the System will suspend executions of matched orders in a Nasdaq-listed security in the ETC if and when it detects an order in the security resting on the Nasdaq Continuous Book in After Hours Trading [6] with an After Hours Trading bid (offer) price that is higher (lower) than the Nasdaq Official Closing Price. Second, the System will suspend executions of matched orders in a Nasdaq-listed security in the ETC if and when the last sale price during After Hours Trading, or the best After Hours Trading bid (offer) price, of the security, other than on the Nasdaq Continuous Book, is higher (lower) than the Nasdaq Official Closing Price by the greater of 0.5% or $0.01. The Exchange will cancel any portion of an ETC Eligible Order that remains unexecuted at the conclusion of the ETC, or for which the System has suspended execution, where that suspension remains active as of the conclusion of the ETC. The ETC will not occur for a security on any day when insufficient interest exists in the System to conduct the Closing Cross for that security or when the Exchange invokes contingency procedures due to a disruption that prevents execution of the Closing Cross.

As noted above, two types of orders may participate in the ETC: (1) ETC Eligible Limit-on-Close (''LOC'') Orders; and (2) Extended Trading Close (''ETC'') Orders. As set forth in Rule 4702(b)(12), ETC Eligible LOC Orders are LOC Orders that are eligible to, and by default are designated to participate in the ETC [7] to the extent that such LOC Orders are entered through RASH or FIX and remain unexecuted, in whole or part, in the Closing Cross. An ETC Order, meanwhile, is an order in a Nasdaq-listed security that that is eligible for entry and execution exclusively during the ETC, at the Nasdaq Official Closing Price, as determined by the Closing Cross.

The Exchange now proposes to amend Equity 7, Section 118 to adopt fees for ETC Eligible LOC Orders and ETC Orders that execute in the ETC. In short, the Exchange proposes to charge the same fees to execute ETC Eligible Orders as it does to execute ordinary LOC Orders (and Market on Close (''MOC'') Orders) in the Closing Cross.

Equity 7, Section 118(d) governs pricing for orders executed in the Nasdaq Closing Cross. It provides for a system of tiered fees for MOC and LOC Orders executed in the Closing Cross. These tiers are as follows:

Tiers	Volume	Price per executed share
Tier A	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 1.75% of Consolidated Volume [8] or MOC/LOC volume above 0.50% of Consolidated Volume.	$0.0008 per executed share.
Tier B	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.80% to 1.75% of Consolidated Volume or MOC/LOC volume above 0.30% to 0.50% of Consolidated Volume.	$0.0011 per executed share.
Tier C	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.50% to 0.80% of Consolidated Volume or MOC/LOC volume above 0.10% to 0.30% of Consolidated Volume.	$0.0012 per executed share.
Tier D	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.30% to 0.50% of Consolidated Volume.	$0.00135 per executed share.
Tier E	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.015% to 0.30% of Consolidated Volume.	$0.00145 per executed share.
Tier F	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.00% to 0.015% of Consolidated Volume.	$0.0016 per executed share.
Tier G	member adds Nasdaq Options Market Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.80% or more of national customer volume in multiply-listed equity and ETF options classes in a month.	$0.0010 per executed share.

The Exchange proposes to amend this tier schedule so that its fees also apply to executions of ETC Eligible LOC Orders and ETC Orders in the ETC. For example, if at the end of a month, a member provides liquidity on Nasdaq that represents 1.20% of Consolidated Volume and/or provides MOC or LOC volume in the Nasdaq Closing Cross amounting to 0.40% of Consolidated Volume, then the member would qualify for Tier B pricing of $0.0011 per share executed for both its LOC and MOC Orders executed in the Nasdaq Closing Cross and its ETC Eligible LOC Orders and ETC Orders executed in the ETC.

Under the proposal, shares in ETC Eligible LOC Orders and ETC Orders will not count towards determining a participant's qualification for any of the fee or credit tiers in Section 118(a) or 118(d). Likewise, the Exchange proposes to amend Equity 7, Section 114(a) to

it will execute orders at the close, following a Trading Pause, as set forth in Rule 4120(a), which exists at or after 3:50 p.m. and before 4:00 p.m., as well as the process for executing those orders, as set forth in Rule 4754(b)(6).

[6] For purposes of the ETC, the term ''After Hours Trading'' refers to trading in a Nasdaq-listed security that commences immediately following the conclusion of the Nasdaq Closing Cross or the LULD Closing Cross, during Post-Market Hours, as that term is defined in Equity 1, Section 1(a)(9).

[7] By default, all LOC Orders in Nasdaq-listed securities will be set to participate in the Extended Trading Close in the event that the LOC Orders are not fully executed during the Closing Cross. However, a Participant may opt to exclude its LOC Orders from participating in the Extended Trading Close. When ETC eligibility is disabled, the System will simply cancel LOC Orders in Nasdaq-listed securities that remain unexecuted after the Closing Cross occurs. Also, if Participants select a time-in-force for their LOC Orders in Nasdaq-listed securities that continues after the Closing Cross occurs, then if such LOC Orders remain unexecuted after the Closing Cross, the Exchange will cause the remaining unexecuted shares to bypass the Extended Trading Close and participate in After Hours Trading.

[8] Pursuant to Equity 7, Section 118(a), the term ''Consolidated Volume'' means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes is excluded from both total Consolidated Volume and the member's trading activity. For the purposes of calculating the extent of a member's trading activity during the month on Nasdaq and determining the 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.

specify that, to the extent that any of the market quality incentive programs described in Section 114 [9] prescribe pricing tiers for which eligibility depends upon a participant achieving certain threshold volumes in LOC or MOC shares, then ETC Eligible LOC Orders and ETC Orders will not count towards such eligibility determinations.

The Exchange's proposal is reasonable to adopt the same execution fees for ETC Eligible LOC Orders and ETC Orders that execute in the ETC as it charges for ordinary LOC and MOC Orders that execute in the Nasdaq Closing Cross because the ETC will act as an extension of the Closing Cross. That is, ordinary LOC Orders which do not execute fully in the Nasdaq Closing Cross will become eligible automatically for participation in the ETC as an ETC Eligible LOC Order (unless a member opts out of such participation), and if such ETC Eligible LOC Orders execute in the ETC, then they will do so at the Nasdaq Official Closing Price, as determined by the Nasdaq Closing Cross. Given the close relationship between LOC Orders that execute in the Nasdaq Closing Cross, and those that execute in the ETC, the Exchange believes that it is logical for the same fee structure to apply to each of them. The Exchange also believes that this same price structure is appropriate for ETC Orders that execute in the ETC because this structure is simple for participants and properly calibrates incentives to participate in the ETC so that they are neither too high nor too low. The Exchange does not wish for ETC Order execution fees to be too high, lest it will discourage participation in the ETC in favor of competing on- and off-exchange mechanisms that also allow for participants to execute orders at the Nasdaq Closing Cross price. The Exchange also does not wish for the fees to be too low, lest it may discourage participation in the Nasdaq Closing Cross.

Similarly, the Exchange believes it is reasonable to exclude ETC Eligible LOC and ETC Orders from determining a participant's qualification for any of the MOC or LOC based fee tiers in Equity 7, Sections 114, 118(a), and 118(d). Again, the Exchange does not wish to provide undue incentives to participate in the ETC that might occur at the expense of participation in the Nasdaq Closing Cross.

The Exchange notes that those participants that are dissatisfied with the proposed fees are free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[11] 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 the execution of order flow from broker dealers'. . . .'' [12]

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.'' [13]

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 reasonable to adopt the same execution fees for ETC Eligible LOC Orders and ETC Orders that execute in the ETC as it charges for ordinary LOC and MOC Orders that execute in the Nasdaq Closing Cross because the ETC will act as an extension of the Closing Cross. That is, ordinary LOC Orders which do not execute fully in the Nasdaq Closing Cross will become eligible automatically for participation in the ETC as an ETC Eligible LOC Order (unless a member opts out of such participation), and if such ETC Eligible LOC Orders execute in the ETC, then they will do so at the Nasdaq Official Closing Price, as determined by the Nasdaq Closing Cross. Given the close relationship between LOC Orders that execute in the Nasdaq Closing Cross, and those that execute in the ETC, the Exchange believes that it is logical for the same fee structure to apply to each of them. The Exchange also believes that this same price structure is appropriate for ETC Orders that execute in the ETC because this structure is simple for participants and properly calibrates incentives to participate in the ETC so that they are neither too high nor too low. The Exchange does not wish for ETC Order execution fees to be too high, lest it will discourage participation in the ETC in favor of competing on- and off-exchange mechanisms that also allow for participants to execute orders at the Nasdaq Closing Cross price. The Exchange also does not wish for the fees to be too low, lest it may discourage participation in the Nasdaq Closing Cross.

Similarly, the Exchange believes it is reasonable to exclude ETC Eligible LOC and ETC Orders from determining a participant's qualification for any of the

[9] These market quality incentive programs are the Qualified Market Maker Program, the NBBO Program, the Designated Liquidity Provider Program, and the Nasdaq Growth Program.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] *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)).

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

MOC or LOC based fee tiers in Equity 7, Sections 114, 118(a), and 118(d). Again, the Exchange does not wish to provide undue incentives to participate in the ETC that might occur at the expense of participation in the Nasdaq Closing Cross.

The Exchange notes that those participants that are dissatisfied with the proposed fees are free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

The Proposal Is an Equitable Allocation of Fees

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

The Exchange believes that its proposed fees for ETC executions is an equitable allocation. The proposed fees are consistent with those it presently charges for MOC and LOC Orders that execute in the Nasdaq Closing Cross. Given the close relationship between LOC Orders that execute in the Nasdaq Closing Cross, and those that execute in the ETC, the Exchange believes that it is logical for the same fee structure to apply to each of them. The Exchange also believes that this same price structure is appropriate for ETC Orders that execute in the ETC because this structure is simple for participants and properly calibrates incentives to participate in the ETC so that they are neither too high nor too low. The Exchange does not wish for ETC Order execution fees to be too high, lest it will discourage participation in the ETC. The Exchange also does not wish for the fees to be too low, lest it may discourage participation in the Nasdaq Closing Cross.

For similar reasons, it is equitable to exclude ETC Eligible LOC and ETC Orders from determining a participant's qualification for any of the MOC or LOC based fee tiers in Equity 7, Sections 114, 118(a), and 118(d). Again, the Exchange does not wish to provide undue incentives to participate in the ETC that might occur at the expense of participation in the Nasdaq Closing Cross.

The Exchange notes that those participants that are dissatisfied with the proposed fees are free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

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 is not unfairly discriminatory because the proposed tiered ETC execution fees already apply to members that execute MOC and LOC Orders in the Nasdaq Closing Cross, and thus are familiar and understood. Moreover, the fee tiers are accessible to any Nasdaq member that engages in qualifying activity on Nasdaq or that chooses to grow the extent of that activity to qualify for a more favorable tier.

Again, any participants that are dissatisfied with the proposed fees are free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

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 proposed pricing for ETC executions is intended to be consistent with its pricing for LOC and MOC Closing Cross executions due to similarities in the two mechanisms and the desire to properly calibrate incentives to spur member participation in each of them. The Exchange notes that its members are free to trade on other venues, or to not participate in the ETC, to the extent they believe that the proposed fees are not attractive.

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 proposal is reflective of this competition. Any participant that is dissatisfied with the proposal is free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14]

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–2022–025 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–2022–025. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2022–025 and should be submitted on or before April 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06092 Filed 3–22–22; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94444; File No. SR–GEMX–2022–05]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Harmonize Various Processes Under Options 3, Section 20 Across the Affiliated Nasdaq Options Exchanges

March 17, 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 March 8, 2022, Nasdaq GEMX, LLC (''GEMX'' 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.

[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 Harmonize various processes under Options 3, Section 20 across the affiliated Nasdaq options exchanges.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/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 proposes to harmonize its existing processes with those of its affiliate Nasdaq Phlx LLC (''Phlx'') concerning the review of decisions on appeal under Options 3, Section 20. The Exchange also proposes a number of non-substantive changes. Each change is discussed in detail below.

Appeal

Today, Options 3, Section 20(k) governs the appeal process for determinations by Exchange staff made under this Rule, including obvious error determinations. Specifically, if a Member affected by a determination under this Rule so requests within the permitted time period, an Exchange Review Council panel will review decisions made by the Official under Options 3, Section 20, including whether an obvious error occurred and whether the correct determination was made. A request for review on appeal must be made in writing via email or other electronic means specified from time to time by the Exchange in an Options Trader Alert distributed to Members within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The