Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–20207 Filed 9–17–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92974; File No. SR–NASDAQ–2021–069]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend The Nasdaq Options Market's Pricing Schedule at Options 7, Section 2(1)

September 14, 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 September 1, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend The Nasdaq Options Market's (''NOM'') Pricing Schedule at Options 7, Section 2(1).

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 NOM's Pricing Schedule at Options 7, Section 2(1) to amend the (i) Customer[3] and Professional[4] Rebates to Add Liquidity in Penny Symbols, and (ii) Tier 3 Market Maker[5] Rebate to Add Liquidity in Penny Symbols.

Customer and Professional Rebate To Add Liquidity in Penny Symbols

Today, the Exchange pays tiered Customer and Professional Rebates to Add Liquidity in Penny Symbols that are $0.20 (Tier 1), $0.25 (Tier 2), $0.42 (Tier 3), $0.43 (Tier 4), $0.45 (Tier 5), and $0.48 (Tier 6). These rebates are paid per the highest tier achieved below.

Monthly volume	
Tier 1	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols of up to 0.10% of total industry customer equity and ETF option average daily volume (''ADV'') contracts per day in a month.
Tier 2	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month.
Tier 3	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month.
Tier 4	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month.
Tier 5	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.40% to 0.80% of total industry customer equity and ETF option ADV contracts per day in a month.

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

[2] 17 CFR 240.19b–4.

[3] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Options 1, Section 1(a)(47)).

[4] The term ''Professional'' or (''P'') means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Options 1, Section 1(a)(47). All Professional orders shall be appropriately marked by Participants.

[5] The term ''NOM Market Maker'' or (''M'') is a Participant that has registered as a Market Maker on NOM pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

Monthly volume	
Tier 6	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.80% or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds: (1) Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.20% or more of total industry customer equity and ETF option ADV contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS (defined below).

In addition, the Exchange currently ties the tiered Penny Symbol add liquidity rebate program described above to its Market Access and Routing Subsidy (''MARS'') program in Section 2(4) as a means to attract additional liquidity to the Exchange from market participants. Under MARS, the Exchange pays qualifying Participants to subsidize their costs of providing routing services to route orders to NOM. To qualify for MARS, Participants must have System Eligibility.[6] In addition, Participants that have System Eligibility, and have routed and executed the requisite number of Eligible Contracts[7] daily in a month (''Average Daily Volume'' or ''ADV'') that add liquidity on NOM are entitled to tiered MARS Payments, which are currently paid per the highest tier achieved below.[8]

Tiers	Average daily volume (''ADV'')
1	2,000
2	5,000
3	10,000
4	20,000
5	45,000
6	75,000
7	100,000
8	125,000
9	150,000

One of the present ways that the Exchange ties the tiered Penny Symbol add liquidity rebate program and MARS, each as described above, is through note ''8'' of Options 7, Section 2(1) where Participants that qualify for any MARS Payment Tier in Options 7, Section 2(4) receive: (1) An additional $0.05 per contract Penny Symbol Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Symbols in that month, in addition to qualifying Customer Rebate to Add Liquidity Tiers 1, or (2) an additional $0.04 per contract Penny Symbol Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Symbols in that month, in addition to qualifying Penny Symbol Customer Rebate to Add Liquidity Tiers 2–6.[9] The purpose of the note ''8'' incentive is to attract additional order flow to NOM by way of encouraging participation in both the tiered Penny Symbol add liquidity Customer rebate program and in MARS.

The Exchange now proposes a number of changes to the current tiered Penny Symbol add liquidity rebate program described above. The Exchange first proposes to increase the Tier 3 and Tier 4 Customer and Professional rebates from $0.42 to $0.43 per contract and from $0.43 to $0.44 per contract, respectively. The Exchange believes that the higher Tier 3 and Tier 4 rebates, together with the proposed changes described below, will further encourage Participants to reach for the higher Customer and Professional rebate tiers by bringing additional order flow that adds liquidity on the Exchange, which will be ultimately beneficial to all market participants.

The Exchange also proposes to add an alternative route to achieve the proposed $0.43 per contract Tier 3 Customer and Professional Rebate to Add Liquidity in Penny Symbols that will be tied to MARS. Specifically, the Exchange proposes that Participants will also be eligible to receive the proposed $0.43 per contract Tier 3 Customer and Professional Rebate to Add Liquidity in Penny Symbols if the Participant adds Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.15% to less than 0.20% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for MARS. The Exchange also proposes to make related changes by renumbering the existing method to qualify for the Tier 3 Customer and Professional rebate as paragraph (a) and the proposed alternative method as paragraph (b).[10] By adding an alternative route to achieve the Tier 3 Customer and Professional rebate that is tied to MARS, the Exchange is seeking to incentivize Participants to increase their liquidity adding activity on NOM to improve the quality of the market.

Lastly, the Exchange proposes to amend note 8 of Options 7, Section 2(1) to increase the additional $0.04 per contract rebate currently offered to Participants that qualify for any MARS Payment Tier in addition qualifying for Penny Symbol Customer Rebates to Add Liquidity Tiers 2–5 to $0.05 per contract. As proposed, Participants may earn Customer Rebates to Add Liquidity in Penny Symbols up to $0.30 in Tier 2, $0.48 in Tier 3, $0.49 in Tier 4, and $0.50 in Tier 5, provided they meet the note 8 qualifications.[11] Participants that

[6] Specifically, to qualify for MARS, the Participant's routing system (''System'') would be required to: (1) Enable the electronic routing of orders to all of the U.S. options exchanges, including NOM; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with NOM's API to access current NOM match engine functionality. Further, the Participant's System would also need to cause NOM to be the one of the top three default destination exchanges for (a) individually executed marketable orders if NOM is at the national best bid or offer (''NBBO''), regardless of size or time or (b) orders that establish a new NBBO on NOM's Order Book, but allow any user to manually override NOM as a default destination on an order-by-order basis. Any NOM Participant would be permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described above and satisfies NOM that it appears to be robust and reliable. The Participant remains solely responsible for implementing and operating its System.

[7] For the purpose of qualifying for the MARS Payment, Eligible Contracts may include Firm, Non-NOM Market Maker, Broker-Dealer, or Joint Back Office or ''JBO'' equity option orders that add liquidity and are electronically delivered and executed. Eligible Contracts do not include Mini Option orders.

[8] The specified MARS Payment will be paid on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System and meet the requisite Eligible Contracts ADV. No payment will be made with respect to orders that are routed to NOM, but not executed. Furthermore, a Participant will not be entitled to receive any other revenue from the Exchange for the use of its System specifically with respect to orders routed to NOM.

[9] Accordingly, a Participant that qualifies for the additional incentives in note ''8'' by executing the requisite MARS volume and qualifying for a Customer Rebate to Add Liquidity Tiers 1–6 in Penny Symbols can earn up to $0.25 in Tier 1, $0.29 in Tier 2, $0.46 in Tier 3, $0.47 in Tier 4, $0.49 in Tier 5, and $0.52 in Tier 6.

[10] As described above, the existing Tier 3 rebate qualification requires the Participant to add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month.

[11] As proposed above, the Tier 3 and Tier 4 Customer Rebates to Add Liquidity in Penny

qualify for the note 8 incentives will continue to be eligible to earn up to $0.25 for the Penny Symbol Customer Rebate to Add Liquidity in Tier 1 and $0.52 for the Penny Symbol Customer Rebate to Add Liquidity in Tier 6 as these incentives will not be amended under this proposal. The purpose of the proposed changes to the Penny Symbol Customer Rebates to Add Liquidity Tiers 2–5 is to further encourage Participants to bring additional Customer liquidity to the Exchange by reaching for the higher Customer tiers, and further fortify participation in MARS by encouraging Participants to route/execute the requisite number of Eligible Contracts that add liquidity in order to qualify for any of the MARS Payment Tier 1–9 describe above.

Market Maker Rebate To Add Liquidity in Penny Symbols

Today, the Exchange pays tiered Market Maker Rebates to Add Liquidity in Penny Symbols that are $0.20 (Tier 1), $0.25 (Tier 2), $0.30 (Tier 3),[12] $0.32 (Tier 4),[13] $0.44 (Tier 5), and $0.48 (Tier 6). These rebates are paid per the highest tier achieved below.

Monthly volume	
Tier 1	Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of up to 0.10% of total industry customer equity and ETF option average daily volume (''ADV'') contracts per day in a month.
Tier 2	Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month.
Tier 3	Participant: (a) Adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month: or (b)(1) transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.80% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market, (2) transacts in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.15% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, and (3) executes greater than 0.01% of CV via Market-on- Close/Limit-on-Close (''MOC/LOC'') volume within The Nasdaq Stock Market Closing Cross in the same month.
Tier 4	Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month.
Tier 5	Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month and transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.40% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market.
Tier 6	Participant: (a)(1) Adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.95% of total industry customer equity and ETF option ADV contracts per day in a month, (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 30,000 or more contracts per day in a month must be removing liquidity, and (3) adds Firm, Broker-Dealer and Non-NOM Market Maker liquidity in Non-Penny Symbols of 10,000 or more contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.50% of total industry customer equity and ETF option ADV contracts per day in a month, and (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 15,000 or more contracts per day in a month must be removing liquidity.

As set forth above, the Exchange currently offers two different paths in (a) and (b) for Participants to achieve the Tier 3 Market Maker rebate. The Exchange now proposes to amend the Tier 3 qualifications in (b) as follows: [14]

Participant . . . (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.07% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month, (2) transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.70% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market, (3) transacts in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.10% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, and (4) executes greater than 0.01% of CV via Market-on- Close/Limit-on-Close (''MOC/LOC'') volume within The Nasdaq Stock Market Closing Cross in the same month.

The proposal adds an options component and lowers two of the existing equity components, namely by decreasing the percentage requirement that Market Makers transact in all securities through one or more of its Nasdaq Market Center MPIDs from 0.80% to 0.70% and decreasing the percentage requirement that Market Makers transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs from 0.15% to 0.10%.[15] By lowering the percentage thresholds, the Exchange intends to render the Tier 3 rebate more readily accessible to Market Makers. If more Market Makers find that this rebate is accessible to them, then more will seek to qualify for it by adding liquidity on The Nasdaq Stock Market. Together with the proposed options component, which is designed to incentivize Market Makers to add liquidity on NOM, the Exchange believes that its proposal will improve the quality of the Exchange's equity and options markets, to the benefit of all market participants.

Technical Amendments

The Exchange proposes to correct two rule citations to the MARS Payment Tiers in Section (6).[16] The Exchange recently renumbered this section to Section 2(4) and did not update these citations.[17]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[19] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges

Symbols will also be increased to $0.43 and $0.44, respectively.

[12] This rebate is $0.40 per contract in the following symbols: AAPL, SPY, QQQ, IWM, and VXX. *See* Options 7, Section 2(1), note 4.

[13] *Id.*

[14] The Exchange will also correct a punctuation error in Tier 3.

[15] All NOM Participants are required to be members of The Nasdaq Stock Market pursuant to General 3 (Membership and Access).

[16] Specifically, notes 6 and 8 in Options 7, Section 2(1).

[17] *See* Securities Exchange Act Release No. 91677 (April 26, 2021), 86 FR 22989 (April 30, 2021) (SR–NASDAQ–2021–021).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(4) and (5).

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 Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options 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'. . . .''[20]

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.''[21]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. 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.

Customer and Professional Rebate To Add Liquidity in Penny Symbols

The Exchange believes that the proposed changes to the Customer and Professional Rebates to Add Liquidity in Penny Symbols described above are reasonably designed to attract additional liquidity to the Exchange. The Exchange believes it is reasonable to increase the Tier 3 and Tier 4 Customer and Professional rebates because Participants will be encouraged to submit additional order flow to reach for the higher rebates.[22] The Exchange believes that the proposed higher rebates will incentivize substantial liquidity adding activity on the Exchange, and that any increased activity and growth that may result from this proposal will improve the overall quality of the market, to the benefit of all market participants.

The Exchange believes that the proposed alternative method to qualify for the higher Tier 3 Customer and Professional Rebate to Add Liquidity in Penny Symbols is reasonable because it will create an additional opportunity for Participants to earn the Tier 3 rebate by incentivizing Participants to add greater liquidity on NOM. Specifically, the Exchange is proposing to require that the Participant add Customer and/or Professional liquidity in Penny and/or Non-Penny Symbols of 0.15% to less than 0.20% of total industry customer and ETF option ADV contracts per day in a month and qualify for MARS in order to receive the proposed $0.43 per contract Tier 3 rebate. The Exchange believes that this will encourage liquidity adding activity in Customer and Professional orders to earn the Tier 3 rebate. The proposal will also incentivize Participants to qualify for the MARS program, which is designed to attract higher volumes of electronic equity and ETF options volume to the Exchange. As discussed above, to qualify for MARS, Participants must have System Eligibility, which has various requirements for Participants to maintain their routing systems, including the requirement that NOM be one of the top three default destination exchanges on the Participant's routing system for execution. If more Participants seek to qualify for MARS, the proposal will bring higher volumes of orders to NOM, which will enhance market quality by offering greater price discovery and increased opportunities to trade, to the benefit of all Participants. The Exchange also notes that the proposed alternative route to achieve the Tier 3 Customer and Professional rebate is similar to an existing method for achieving the Tier 6 Customer and Professional rebate except the proposal will have lower volume requirements, which will be commensurate with the lower Tier 3 rebate provided. In particular, one of the ways to earn the Tier 6 rebate ($0.48 per contract) currently requires the Participant to add (1) Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.20% or more of total industry customer equity and ETF option ADV contracts per day in a month, and (2) add liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualify for MARS. As discussed above, the proposed alternative route to earn the Tier 3 rebate ($0.43 with the proposed changes) will require the Participant to add (1) Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.15% to less than 0.20% of total industry customer equity and ETF option ADV contracts per day in a month, and (2) qualify for MARS.

The Exchange also believes that the proposed changes in note 8 to increase the supplemental rebates offered to Participants that qualify for any MARS Payment Tier in Section 2(4) in addition to qualifying for Penny Symbol Customer Rebates to Add Liquidity in Tiers 2–5 from $0.04 to $0.05 per contract will further encourage Participants to send higher volumes of electronic equity and ETF options to NOM for execution to receive this additional incentive. In particular, to receive the increased supplemental rebates, Participants will need to have System Eligibility and execute the requisite number of Eligible Contracts ADV to qualify for any of the MARS Payment Tiers in Section 2(4). If more Participants seek to qualify for MARS Payments Tiers by sending and executing more Eligible Contracts on NOM to earn the increased supplemental rebates for Penny Symbol Customer rebate tiers 2–5, then market

[20] *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)).

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

[22] Participants are required to add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month to earn the proposed Tier 3 Customer and Professional rebate, and above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month to earn the proposed Tier 4 Customer and Professional rebate. These qualifications are not being amended with this proposal, although the Exchange will add an alternative route to earn the proposed Tier 3 rebate, as discussed above.

quality will improve and the Exchange will become more attractive to existing and prospective market participants. The Exchange also believes that the proposed changes in note 8 will improve market quality by incentivizing Participants to submit additional qualifying volume that adds liquidity to earn the Penny Symbol Customer Rebates to Add Liquidity in Tiers 2–5, and therefore become eligible for the additional note 8 incentives, provided that they also qualify for any MARS Payment Tier.

The Exchange also believes that the proposed changes to the Customer and Professional Rebates to Add Liquidity in Penny Symbols discussed above are equitable and not unfairly discriminatory because the Exchange will uniformly apply the changes to all qualifying Participants. All Participants may qualify for MARS provided they have requisite System Eligibility. Furthermore, the Exchange believes it is equitable and not unfairly discriminatory to pay the proposed rebates to eligible Customer and Professional liquidity adding orders (*i.e.,* the proposed Tier 3 and Tier 4 rebates, and the proposed Tier 3 alternative route) or to eligible Customer liquidity adding orders (*i.e.,* the proposed note 8 incentive changes). Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that incentivizing Professional liquidity is similarly beneficial, as the proposed changes may cause market participants to select NOM as a venue to send Professional order flow, increasing competition among the exchanges. As with Customer liquidity, the Exchange believes that increased Professional order flow should benefit other market participants.

Market Maker Rebate To Add Liquidity in Penny Symbols

The Exchange believes that its proposal to amend the qualifications for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols is reasonably designed to incentivize Market Makers to increase their liquidity adding activity on the Exchange's equity and options markets. By lowering the percentage thresholds for the equity components in the manner described above, the Exchange intends to render the Tier 3 rebate more readily accessible to Market Makers. If more Market Makers find that this rebate is accessible to them, then more will seek to qualify for it by adding liquidity on The Nasdaq Stock Market. Together with the proposed options component, which is designed to encourage Market Makers to add liquidity on NOM, the Exchange believes that its proposal will improve the quality of the Exchange's equity and options markets, to the benefit of all market participants.

The Exchange also believes that the proposed changes to the qualifications for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols is equitable and not unfairly discriminatory because the Exchange will pay the Tier 3 rebate uniformly to any qualifying Market Maker. Market Makers add value through continuous quoting and the commitment of capital.[23] Because Market Makers have these obligations to the market and regulatory requirements that normally do not apply to other market participants, the Exchange believes that offering the rebate to only Market Makers is equitable and not unfairly discriminatory in light of their obligations. Finally, encouraging Market Makers to add greater liquidity benefits all market participants, both on NOM and The Nasdaq Stock Market, in the quality of order interaction.

Technical Amendments

The Exchange believes that the proposed updates to the rule citations for MARS Payment Tiers are reasonable, equitable, and not unfairly discriminatory as these amendments will bring greater clarity to the Rulebook.

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.

In terms of intra-market competition, the Exchange does not that its proposals will place any category of market participant at a competitive disadvantage. As discussed above, while the Exchange's proposals provide incentives for certain order flow and activity on the Exchange (*i.e.,* Customer and Professional liquidity adding activity in Penny Symbols and Market Maker Rebate liquidity adding activity in Penny Symbols), the proposed changes are ultimately aimed at attracting greater liquidity to the Exchange, which benefits all market participants in the quality of order interaction.

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 fees to remain competitive with other 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 Exchange's proposed changes to the Customer and Professional Rebates to Add Liquidity in Penny Symbols and the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols are pro-competitive in that the Exchange intends for the changes to increase liquidity addition and activity on the Exchange, thereby rendering the Exchange a more attractive and vibrant venue to existing and prospective 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 Participants or competing exchanges 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.[24]

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

[23] *See* Options 2, Sections 4 and 5.

[24] 15 U.S.C. 78s(b)(3)(A)(ii).

Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2021–069 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number *SR–NASDAQ–2021–069.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–NASDAQ–2021–069* and should be submitted on or before October 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–20214 Filed 9–17–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92981; File No. SR–NYSEAMER–2021–38]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete the Order Audit Trail System Rules in the Rule 7400 Series

September 14, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 7, 2021, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 to delete the Order Audit Trail System (''OATS'') rules in the Rule 7400 Series as these Rules provide for the collection of information that is duplicative of the data collection requirements of the CAT. Further, the Financial Industry Regulatory Authority (''FINRA'') has determined to eliminate its OATS rules. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 613 of Regulation NMS requires national securities exchanges and FINRA to create, implement, and maintain a consolidated audit trail to capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,[4] and approved by the Commission, as modified, on November 15, 2016.[5]

On August 14, 2020, FINRA filed with the Commission a proposed rule change to delete the OATS rules once Industry Members are effectively reporting to the CAT (the ''OATS Retirement Filing'').[6] On October 29, 2020, FINRA filed Amendment No. 1 to the proposed rule change (''Amendment No. 1'') and a response to the comments that were submitted on the original filing (''Response to Comments'').[7] On November 30, 2020, the Commission approved the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.[8] On June 17, 2021, FINRA filed a proposed rule change setting forth the basis for its determination that the accuracy and reliability of the CAT meet the standards approved by the Commission

---

[25] 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. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

[5] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''Order Approving the National Market System Plan Governing the Consolidated Audit Trail) (''Approval Order'').

[6] *See* Securities Exchange Act Release No. 89679 (August 26, 2020), 85 FR 54461 (September 1, 2020) (Notice of Filing of File No. SR–FINRA–2020–024).

[7] *See* Letter from Lisa C. Horrigan, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated October 29, 2020.

[8] *See* Securities Exchange Act Release No. 90535 (November 30, 2020), 85 FR 78395 (December 4, 2020) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of SR–FINRA–2020–024).