they determine whether the plan is in the best interests of each class and the fund. In addition, the plan may be useful to Commission staff in reviewing the fund's compliance with the rule.

The following estimates of average burden hours are made solely for purposes of the Paperwork Reduction Act of 1995 [1] and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Compliance with the information collection requirements of rule 18f–3 is necessary to obtain the benefit of the rule's exemption. Responses to the collection of information requirements will not be kept confidential.

TABLE 1—RULE 18f–3 PRA ESTIMATES

	Internal annual burden	Wage rate [1]	Internal time costs
ESTIMATES FOR RULE 18F–3			
Prepare and approve a written 18f–3 plan [2]	6 hours [3].		
Average number of responses annually per registrant.	0.5 responses [3].		
Total number of hours per registrant per year [4]	3 hours [3]	$484 (in-house attorney) $4,770 (fund board of directors) [6].	$936,056 (in-house attorney). $4,612,590 (board of directors).[7]
Total number of registrants	967 [4].		
Total annual hour burden	2,901 hours [5]		$5,548,646.[8]

Notes:

1. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's *Office Salaries in the Securities Industry 2013.* The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.
2. The Commission estimates that each registrant prepares and approves a rule 18f–3 plan every two years when issuing a new fund fund or class or amending a plan (or that 484 of all 967 registrants prepare and approve a plan each year).
3. This estimate assumes that each response will take 6 hours, requiring 3 hours per registrant per year (0.5 responses per registrant × 6 hours per response = 3 hours per registrant).
4. The Commission estimates that there are approximately 6,733 multiple class funds offered by 967 registrants.
5. 967 registrants × 3 hours = 2,901 hours.
6. The estimate for the cost of board time as a whole is derived from estimates made by the staff regarding typical board size and compensation that is based on information received from fund representatives and publicly available sources. The $4,770 per hour estimate for a fund board of directors was last adjusted for inflation through 2019, and assumes an average of 9 board members per board.
7. This estimate assumes that two-thirds (1,934) of the internal hours are spent by in-house attorneys to prepare the plan (1,934 hours × $484 estimated hourly rate = $936,056 per year) and that one-third (967) are spent by the fund's board of directors to approve the plan (967 hours × $4,770 per hour = $4,612,590).
8. $936,056 + $4,612,590 = $5,548,646.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by January 22, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 16, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25724 Filed 11–20–23; 8:45 am]

BILLING CODE 8011–01–P

[1] 44 U.S.C. 3501 *et seq.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98934; File No. SR–NASDAQ–2023–044]

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

November 15, 2023.

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 November 1, 2023, 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 LLC (''NOM'') Pricing Schedule at Options 7, Section 2.

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.

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

[2] 17 CFR 240.19b–4.

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) (setting forth fees and rebates for execution of contract on NOM) and Section 2(3) (setting forth fees for routing contracts to markets other than NOM). Each change will be described below.

Options 7, Section 2(1)

Fees To Remove Liquidity in Non-Penny Symbols

As set forth in Options 7, Section 2(1), the Exchange currently charges NOM Market Makers,[3] Non-NOM Market Makers,[4] Firms,[5] and Broker-Dealers [6] a $1.10 per contract fee for removing liquidity in Non-Penny Symbols. The Exchange now proposes to increase this fee to $1.25 per contract.

Note 8 Incentive

Today, the Exchange provides Customers [7] with tiered rebates for adding liquidity in Penny Symbols that are $0.20 (Tier 1), $0.25 (Tier 2), $0.43 (Tier 3), $0.44 (Tier 4), $0.45 (Tier 5), and $0.48 (Tier 6). These rebates are paid based on the highest volume tier that the Customer achieves in a given month.[8]

Today, the Exchange also links the tiered Penny Symbol Customer 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 NOM Participants to subsidize their costs of providing routing services to route orders to NOM. To qualify for MARS, NOM Participants must have System Eligibility.[9] In addition, NOM Participants that have System Eligibility, and have routed and executed the requisite number of Eligible Contracts [10] daily in a month (''Average Daily Volume'' or ''ADV'') that add liquidity on NOM are entitled to the tiered MARS Payments set forth in Section 2(4), depending on the highest ADV tier achieved.[11]

In particular, the Exchange currently links the tiered Penny Symbol Customer rebate to add liquidity program in Penny Symbols and MARS, each as described above, through note 8 of Options 7, Section 2(1) where NOM Participants that qualify for any MARS Payment Tier in 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 1–5, 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 Tier 6 (''Note 8 Incentive''). As such, NOM Participants may earn Customer Rebates to Add Liquidity in Penny Symbols up to $0.25 in Tier 1, $0.30 in Tier 2, $0.48 in Tier 3, $0.49 in Tier 4, $0.50 in Tier 5, and $0.52 in Tier 6, provided they meet the qualifications in note 8.

The Note 8 Incentive was intended to attract additional order flow to NOM by way of encouraging participation in both the tiered Customer add liquidity rebate program and in MARS. The Exchange, however, has observed that this rebate program has not accomplished its objective and therefore proposes to eliminate this program in note 8 of Options 7, Section 2(1).

Note 9 Incentive

Today, pursuant to note 9 of Options 7, Section 2(1), NOM Participants that transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 3.00% or more of Consolidated Volume in the same month on The Nasdaq Stock Market receive a $0.50 per contract Rebate to Add Liquidity in Penny Symbols as Customer, a $0.48 per contract rebate as Professional,[12] a $1.00 per contract Rebate to Add Liquidity in Non-Penny Symbols as Customer, and a $0.90 per contract Rebate to Add liquidity in Non-Penny Symbols as Professional (''Note 9 Incentive''). Participants that qualify for the Note 9 Incentive are not be eligible for any other rebates in Tiers 1–6 or other rebate incentives on NOM for Customer and Professional order flow in Options 7, Section 2(1).

The Exchange now proposes to increase $1.00 Customer Rebate to Add Liquidity in Non-Penny Symbols to $1.10. The Exchange is increasing the rebate amount without changing the

[3] 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.

[4] The term ''Non-NOM Market Maker'' or (''O'') is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

[5] The term ''Firm'' or (''F'') applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

[6] The term ''Broker-Dealer'' or (''B'') applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[7] 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)).

[8] *See* Options 7, Section 2(1), note 1.

[9] 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.

[10] 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.

[11] 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.

[12] 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.

qualifications in the Note 9 Incentive so that NOM Participants can bring the same amount of volume as they do today on The Nasdaq Stock Market to receive larger rebate in Customer Add Liquidity volume in Non-Penny Symbols.[13] Overall, the Exchange believes that the increased rebate will bring greater volume to both The Nasdaq Stock Market and NOM, to the benefit of all market participants.

Note 10 Incentive

Today, pursuant to note 10 of Options 7, Section 2(1), NOM Participants that (a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 1.20% of total industry customer equity and ETF option ADV contracts per day in a month, (b) execute greater than 0.04% of Consolidated Volume (''CV'') via Market-on-Close/Limit-on-Close (''MOC/LOC'') volume within The Nasdaq Stock Market Closing Cross within a month, and (c) add greater than 1.5 million shares per day of non-displayed volume within The Nasdaq Stock Market within a month receive a $0.55 per contract Rebate to Add Liquidity in Penny Symbols as Customer, a $0.48 per contract Rebate to Add Liquidity in Penny Symbols as Professional, and a $1.05 per contract Rebate to Add Liquidity in Non-Penny Symbols as Customer, and a $0.90 per contract Rebate to Add Liquidity in Non-Penny Symbols as Professional (''Note 10 Incentive''). Participants that qualify for the Note 10 Incentive are not be eligible for any other rebates in Tiers 1–6 or other rebate incentives on NOM for Customer and Professional order flow in Options 7, Section 2(1).

The Exchange now proposes to amend the NOM volume threshold in part (a) of the Note 10 Incentive by increasing 1.20% to 1.50% of total industry customer equity and ETF option ADV contracts per day in a month. The Exchange also proposes to increase the $1.05 Customer Rebate to Add Liquidity in Non-Penny Symbols to $1.15. No other changes are being proposed to the rebates and qualifications in the Note 10 Incentive. As amended, the Note 10 Incentive will provide: ''NOM Participants that (a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer 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, (b) execute greater than 0.04% of Consolidated Volume (''CV'') via Market-on-Close/Limit-on-Close (''MOC/LOC'') volume within The Nasdaq Stock Market Closing Cross within a month, and (c) add greater than 1.5 million shares per day of non-displayed volume within The Nasdaq Stock Market within a month will receive a $0.55 per contract Rebate to Add Liquidity in Penny Symbols as Customer, a $0.48 per contract Rebate to Add Liquidity in Penny Symbols as Professional, and a $1.15 per contract Rebate to Add Liquidity in Non-Penny Symbols as Customer, and a $0.90 per contract Rebate to Add Liquidity in Non-Penny Symbols as Professional. Participants that qualify for this rebate would not be eligible for any other rebates in Tiers 1–6 or other rebate incentives on NOM for Customer and Professional order flow in Options 7, Section 2(1).''

Options 7, Section 2(3)

As set forth in Options 7, Section 2(3), the Exchange currently assesses a Non-Customer routing fee of $0.99 per contract to any options exchange. The Exchange also assesses a Customer routing fee of $0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange other than the Exchange's affiliates, Nasdaq BX, Inc. (''BX'') and Nasdaq Phlx LLC (''Phlx''). If the away market (other than BX and Phlx) pays a rebate, this Customer routing fee is $0.13 per contract instead. When routing to BX and Phlx, the Exchange currently assesses a Customer routing fee of $0.13 per contract in addition to the actual transaction fee assessed.

At this time, the Exchange proposes to assess a Non-Customer an increased routing fee to route to any options exchange of $1.20 per contract. The Exchange also proposes to assess a Customer a routing fee of $0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange. With this change, the Exchange would no longer assess the lower routing of $0.13 per contract, in addition to the actual transaction fee assessed, when routing to BX and Phlx. The Exchange would continue to assess a $0.13 per contract routing fee if the away market pays a rebate, including BX and Phlx. The purpose of the proposed routing fees is to recoup costs incurred by the Exchange when routing orders to other options exchanges on behalf of NOM Participants. In determining its proposed routing fees, the Exchange took into account transaction fees assessed by other options exchanges, the Exchange's projected clearing costs, and the projected administrative, regulatory, and technical costs associated with routing orders to other options exchanges. The Exchange will continue to use its affiliated broker-dealer, Nasdaq Execution Services, to route orders to other options exchanges. Routing services offered by the Exchange are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. Also, the Exchange notes that NOM Participants may elect to mark their orders as ''Do-Not-Route'' to avoid any routing fees.[14] The Exchange believes that the proposed routing fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges. Also, the Exchange's proposal would uniformly assess the same Customer routing fees, regardless of the away venue, of $0.23 per contract, in addition to the actual transaction fee assessed, or $0.13 per contract of the away market pays a rebate.

Technical Amendment

The Exchange proposes a technical amendment in note 11 of Options 7, Section 2(1). Note 11 currently provides that NOM Participants that qualify for the Tier 5 NOM Market Maker Rebate to Add Liquidity in Penny Symbols and add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.50% of total industry customer equity and ETF option ADV contracts per day in a month, will receive a $0.46 contract rebate to add liquidity in Penny Symbols as Market Maker in lieu of the Tier 5 rebate (''Note 11 Incentive''). The Tier 5 NOM Market Maker Rebate to Add Liquidity in Penny Symbol currently has two alternative routes in ''a'' and ''b'' to qualify for the Tier 5 rebate, but when the Exchange adopted the Note 11 Incentive, the intent was to provide the Note 11 Incentive for NOM participants that qualified pursuant to route ''b'' in Tier 5.[15] The Exchange subsequently adopted an alternative

[13] Any NOM Participant may trade equities on The Nasdaq Stock Market because they are already approved members. Although a NOM Participant may potentially incur additional labor and/or costs to establish connectivity to The Nasdaq Stock Market, there are no additional membership fees for NOM Participants that want to transact on The Nasdaq Stock Market.

[14] *See* Options 3, Section 7(c).

[15] *See* Securities Exchange Act Release No. 87276 (October 10, 2019), 84 FR 55644 (October 17, 2019) (SR–NASDAQ–2019–084). At the time of adopting the Note 11 Incentive, only route ''b'' was available to qualify for Tier 5.

route ''a'' to qualify for the Tier 5 NOM Market Maker Rebate to Add Liquidity in Penny Symbols, but did not update the Note 11 Incentive to specify which route applied.[16] The Exchange therefore proposes to clarify that the Note 11 Incentive is available for NOM Participants that qualify for the Tier 5(b) NOM Market Maker Rebate to Add Liquidity in Penny Symbols. The proposed change will align the rule text with the original intent of the incentive.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[18] 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 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'. . . .'' [19]

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.'' [20]

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 seventeen options venues 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.

Options 7, Section 2(1)

The Exchange believes that the proposed changes to the fees and rebates in Options 7, Section 2(1) are reasonable in several ways. The Exchange believes that it is reasonable to increase the Fees to Remove Liquidity in Non-Penny Symbols for NOM Market Makers, Non-NOM Market Makers, Firms, and Broker-Dealers from $1.10 to $1.25 because the proposed Non-Penny Symbol fee increases will be balanced by the Non-Penny Symbol rebate increases for Customers, which are intended to improve overall market quality on the Exchange by incentivizing market participants to bring additional order flow and, in turn, provide more trading opportunities to the benefit of all market participants. As discussed above, the Exchange is proposing to increase the Non-Penny Symbol Customer Rebate to Add Liquidity in the Note 9 Incentive from $1.00 to $1.10 per contract without amending the current volume qualifications in note 9 so that NOM Participants can bring the same amount of volume as they do today on The Nasdaq Stock Market to receive larger rebate in Customer Add Liquidity volume in Non-Penny Symbols.[21] The Exchange believes that the increased rebate as set forth in the Note 9 Incentive will incentivize market participants to send additional order flow to both The Nasdaq Stock Market and NOM, which will in turn benefit all market participants on the equities and options markets from the opportunity to interact with such order flow.

As discussed above, the Exchange is also proposing to increase the Non-Penny Symbol Customer Rebate to Add Liquidity in the Note 10 Incentive from $1.05 to $1.15 per contract if the NOM Participant meets the qualifications in note 10, including the increased NOM volume threshold that requires NOM Participants to add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 1.50% (increased from above 1.20%) of total industry customer equity and ETF option ADV contracts per day in a month.[22] While the NOM volume threshold in the Note 10 Incentive will be increased under this proposal, the Exchange believes that the proposed increase is commensurate with the corresponding increase in the Non-Penny Symbol Customer Rebate to Add Liquidity in the Note 10 Incentive as described above. To the extent NOM Participants add greater liquidity on NOM to meet the proposed volume threshold to receive the larger rebate, the Exchange believes that its proposal will benefit all market participants who will be able to interact with the additional liquidity. The proposed changes to the Note 10 Incentive are designed as a means to improve overall market quality by providing NOM Participants with a larger incentive to increase their provision of liquidity on the Exchange's equity and options markets.[23] The Exchange believes that its proposal will continue to encourage NOM Participants to send order flow to both the options and equity markets to receive the Note 10 Incentive.

The Exchange also believes that the proposed changes to the fees and rebates in Options 7, Section 2(1) as described above are equitable and not unfairly discriminatory because they will apply uniformly to all similarly situated participants. As it relates to the Non-Penny Symbol fee increases, the Exchange will apply the increase to NOM Market Makers, Non-NOM Market Makers, Firms, and Broker-Dealers while Customers and Professionals will

[16] *See* Securities Exchange Act Release No. 98721 (October 11, 2023), 88 FR 71616 (October 17, 2023) (SR–NASDAQ–2023–040).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4) and (5).

[19] *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)).

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

[21] *See supra* note 13.

[22] The NOM Participant will also continue to be required to meet the following volume qualifications (in addition to the proposed NOM volume threshold) to receive the $1.15 Non-Penny Symbol Customer Rebate to Add Liquidity in the Note 10 Incentive: execute greater than 0.04% of Consolidated Volume (''CV'') via Market-on-Close/ Limit-on-Close (''MOC/LOC'') volume within The Nasdaq Stock Market Closing Cross within a month, AND add greater than 1.5 million shares per day of non-displayed volume within The Nasdaq Stock Market within a month.

[23] *See supra* note 22.

continue to be uniformly assessed at a lower rate. The Exchange also notes that the Note 9 Incentive and the Note 10 Incentive, each as modified under this proposal, are available to only Customers and Professionals. The Exchange has historically provided more favorable pricing to both Customers and Professionals throughout its Pricing Schedule. Furthermore, both Customer and Professional liquidity offer benefits to the market that ultimately benefit all market participants. 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. With respect to Professionals, the Exchange believes that continuing to encourage NOM Participants to bring Professional order flow to NOM creates competition among options exchanges because the more favorable pricing may cause market participants to select NOM as a venue to send Professional order flow.

The Exchange believes that its proposal to eliminate the Note 8 Incentive is reasonable because this rebate program has not been successful in accomplishing its objective of incentivizing NOM Participants to send order flow and add liquidity on the Exchange by fortifying participation in the MARs program and the tiered Penny Symbol Customer Rebate to Add Liquidity program. The proposed elimination of the Note 8 Incentive will streamline the Exchange's Pricing Schedule. The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall objectives to increase order flow and liquidity on NOM. The Exchange also believes that eliminating the Note 8 Incentive is equitable and not unfairly discriminatory because the incentive will be eliminated in its entirety and would no longer be available to any NOM Participants.

Options 7, Section 2(3)

The Exchange's proposal to assess a Non-Customer an increased routing fee of $1.20 to route to another options exchange, and a Customer a routing fee of $0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange [24] is reasonable because the proposed routing fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges. In determining its proposed routing fees, the Exchange took into account transaction fees assessed by other options exchanges, the Exchange's projected clearing costs, and the projected administrative, regulatory, and technical costs associated with routing orders to other options exchanges. Routing services offered by the Exchange are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. Also, the Exchange notes that market participants may elect to mark their orders as ''Do-Not-Route'' to avoid any routing fees.[25]

The Exchange's proposal to assess a Non-Customer an increased routing fee of $1.20 to route to another options exchange is equitable and not unfairly discriminatory as all Non-Customers would be assessed a uniform routing fee. Additionally, the Exchange's proposal to assess a Customer a routing fee of $0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange is equitable and not unfairly discriminatory as all Customers will be uniformly assessed the same routing fee, regardless of the destination market. Customers will continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances market quality on the Exchange by providing more trading opportunities, which benefits all market participants. Finally, the Exchange notes that market participants may elect to market orders as Do-Not-Route to avoid any routing fees.

Technical Amendment

The Exchange believes that its proposal to clarify that the Note 11 Incentive is available for NOM Participants that qualify for the Tier 5(b) NOM Market Maker Rebate to Add Liquidity in Penny Symbols is reasonable because the proposal will align the rule text with the original intent of the Note 11 Incentive and avoid any potential confusion about the application of the Exchange's Pricing Schedule. The Exchange also believes that its proposal is equitable and not unfairly discriminatory because it will apply uniformly to all similarly situated market participants. Continuing to apply the Note 11 Incentive to only NOM Market Makers is equitable and not unfairly discriminatory in light of their obligations on NOM (*e.g.,* continuous quoting obligations).

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 believe that its proposal will place any category of market participant at a competitive disadvantage. While some aspects of the proposal apply directly to certain market participants as described above (*e.g.,* increased Non-Penny Symbol Customer Rebates to Add Liquidity), Exchange believes that the changes, taken together, will ultimately fortify and encourage activity on the Exchange. As discussed above, all market participants will benefit from any increase in market activity that the proposal effectuates.

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. 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.

[24] With the proposed changes, the Exchange would no longer assess the lower routing fee of $0.13 per contract, in addition to the actual transaction fee assessed, when routing to BX and Phlx.

[25] *See* Options 3, Section 7(c).

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.[26]

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 (*https://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2023–044 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–2023–044. 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 (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2023–044 and should be submitted on or before December 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25656 Filed 11–20–23; 8:45 am]

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[26] 15 U.S.C. 78s(b)(3)(A)(ii).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98944; File No. SR–NYSEARCA–2023–63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the Grayscale Ethereum Futures Trust (ETH) ETF Under NYSE Arca Rule 8.200–E, Commentary .02 (Trust Issued Receipts)

November 15, 2023.

On September 19, 2023, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Grayscale Ethereum Futures Trust (ETH) ETF under NYSE Arca Rule 8.200–E, Commentary .02 (Trust Issued Receipts). The proposed rule change was published for comment in the **Federal Register** on October 3, 2023.[3]

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 17, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates January 1, 2024, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEARCA–2023–63).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25659 Filed 11–20–23; 8:45 am]

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98567 (Sept. 27, 2023), 88 FR 68171. The Commission has received no comments on the proposal.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98947; File No. SR–NYSEARCA–2023–58]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the Hashdex Bitcoin Futures ETF Under NYSE Arca Rule 8.500–E (Trust Units)

November 15, 2023.

On September 22, 2023, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Hashdex Bitcoin Futures ETF under NYSE Arca Rule 8.500–E (Trust Units). The proposed rule change was published for

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

[2] 17 CFR 240.19b–4.