

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91735; File No. SR–NASDAQ–2021–026]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Effective Date of the Temporary Amendments Concerning Exchange Rule 1210 From April 30, 2021, to June 30, 2021

April 30, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on April 21, 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 and II, 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 extend the expiration date of the temporary amendments initially set forth in SR–NASDAQ–2020–73 and subsequently extended in SR–NASDAQ–2020–091 (collectively, the “Temporary Qualification Examination Relief Filings”) from April 30, 2021 to June 30, 2021. The Exchange does not anticipate providing any further extensions to the temporary amendments identified in this proposed rule change beyond June 30, 2021.³

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 Exchange proposes to extend the expiration date of the temporary amendments initially set forth in the Temporary Qualification Examination Relief Filings from April 30, 2021 to June 30, 2021. This proposed rule change is based on a filing recently submitted by the Financial Industry Regulatory Authority, Inc. (“FINRA”)⁴ and is intended to harmonize the Exchange’s registration rules with those of FINRA so as to promote uniform standards across the securities industry.

In response to the COVID–19 global pandemic, last year FINRA began providing temporary relief by way of frequently asked questions (“FAQs”)⁵ to address disruptions to the administration of FINRA qualification examinations caused by the pandemic that have significantly limited the ability of individuals to sit for examinations due to Prometric test center capacity issues.⁶

FINRA published the first FAQ on March 20, 2020, providing that individuals who were designated to function as principals under FINRA Rule 1210.04⁷ prior to February 2, 2020, would be given until May 31, 2020, to

⁴ See Exchange Act Release No. 91506 (April 8, 2021), 86 FR 19671 (April 14, 2021) (SR–FINRA–2021–005) (“FINRA Filing”). See also Exchange Act Release Nos. 89732 (September 1, 2020), 85 FR 55535 (September 8, 2020) (SR–FINRA–2020–026); 90617 (December 9, 2020), 85 FR 81258 (December 15, 2020) (SR–FINRA–2020–043). The Exchange notes that the FINRA Filing also provides temporarily relief to individuals registered with FINRA as Operations Professionals under FINRA Rule 1220. The Exchange does not have a registration category for Operations Professionals and therefore, the Exchange is not proposing to adopt that aspect of the FINRA Filing.

⁵ See <https://www.finra.org/rules-guidance/key-topics/covid-19/faq#qe>.

⁶ At the outset of the COVID–19 pandemic, all FINRA qualification examinations were administered at test centers operated by Prometric. Based on the health and welfare concerns resulting from COVID–19, in March 2020 Prometric closed alal of its test centers in the United States and Canada and began to slowly reopen some of them at limited capacity in May 2020. Currently, Prometric has resumed testing in many of its United States and Canada test centers, at either full or limited occupancy, based on local and government mandates.

⁷ Exchange Rule 1210.04 is the corresponding rule to FINRA Rule 1210.04.

pass the appropriate principal qualification examination.⁸ FINRA revised the FAQ to extend the expiration of the temporary relief to pass the appropriate principal examination initially until June 30, 2020, and then until August 31, 2020.

On October 29, 2020, the Exchange filed with the Commission a proposed rule change for immediate effectiveness to adopt temporary Supplementary Material .13 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under Exchange Rule 1210 of General 4 (Registration Requirements).⁹ Pursuant to this rule filing, individuals who were designated prior to September 3, 2020, to function as a principal under Exchange Rule 1210.04 had until December 31, 2020, to pass the appropriate qualification examination. The Exchange thereafter filed SR–NASDAQ–2020–091 to extend the expiration date of the temporary amendments set forth in SR–NASDAQ–2020–076 from December 31, 2020, to April 30, 2021.¹⁰

As mentioned in the Temporary Qualification Examination Relief Filings, the Exchange and FINRA began providing, and then extended, temporary relief to address the interruptions in the administration of FINRA qualification examinations at Prometric test centers and the limited ability of individuals to sit for the examinations caused by the COVID–19 pandemic.¹¹ The Exchange also noted in the Temporary Qualification Examination Relief Filings that the pandemic could result in members potentially experiencing significant disruptions to their normal business operations that may be exacerbated by being unable to keep principal positions filled. Specifically, the limitation of in-person activities and staff absenteeism as a result of the health and welfare concerns stemming from COVID–19 could result in members having

⁸ FINRA Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a Limited Period) allows a member firm to designate certain individuals to function in a principal capacity for 120 calendar days before having to pass an appropriate principal qualification examination. Exchange Rule 1210.04 provides the same allowance to members.

⁹ See Exchange Act Release No. 90359 (November 5, 2020), 85 FR 71979 (November 12, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2020–073).

¹⁰ See Exchange Act Release No. 90780 (December 22, 2020), 85 FR 86600 (December 30, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2020–091).

¹¹ Information about the continued impact of COVID–19 on FINRA-administered examinations is available at <https://www.finra.org/rules-guidance/key-topics/covid-19/exams>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ If due to unforeseen circumstances a further extension is necessary, the Exchange will submit a separate rule filing to further extend the temporary amendments.

difficulty finding other qualified individuals to transition into those roles or requiring them to reallocate employee time and resources away from other critical responsibilities at the member firm.

While there are signs of improvement, the COVID-19 conditions necessitating the temporary relief persist and the Exchange has determined that there is a continued need for this temporary relief beyond April 30, 2021. Although Prometric has resumed testing in many of its U.S. test centers, Prometric's safety practices mean that currently not all test centers are open, some of the open test centers are at limited capacity, and some open test centers are delivering only certain examinations that have been deemed essential by the local government.¹² In addition, while certain states have started to ease COVID-19 restrictions on businesses and social activities, public health officials continue to emphasize the importance for individuals to keep taking numerous steps to protect themselves and help slow the spread of the disease.¹³

Although the COVID-19 conditions necessitating the temporary relief persist, the Exchange believes that an extension of the relief is necessary only until June 30, 2021, because FINRA recently expanded the availability of online examinations. Prior to this expansion, the ongoing effects of the pandemic made it impracticable for members to ensure that the individuals who they had designated to function in a principal capacity, as set forth in Exchange Rule 1210.04, could successfully sit for and pass an appropriate qualification examination within the 120-calendar day period required under the rule.¹⁴ Specifically, if the individual wanted to take a qualifying examination, they were required to accept the health risks associated with taking an in-person examination because the examination was not available online. On February 24, 2021, however, FINRA adopted an interim accommodation request process to allow candidates to take additional FINRA examinations online, including the General Securities Principal ("Series 24") examination.¹⁵ Because the qualifying examination has been made

available online only recently, the Exchange and FINRA are concerned that individuals who have been designated to function in a principal capacity may not have sufficient time to schedule, study for, and take the examination before April 30, 2021, the date the temporary amendments are set to expire. Therefore, the Exchange is proposing to extend the expiration date of the temporary amendments set forth in the Temporary Qualification Examination Relief Filings until June 30, 2021. The proposed rule change would apply only to those individuals who have been designated to function as a principal prior to March 3, 2021. As noted above, the Exchange does not anticipate providing any further extensions to the temporary amendments and any individuals designated to function as a principal on or after March 3, 2021, will need to successfully pass an appropriate qualification examination within 120 days.

The Exchange believes that this proposed continued extension of time is tailored to address the needs and constraints on a member's operations during the COVID-19 pandemic, without significantly compromising critical investor protection. The proposed extension of time will help to minimize the impact of COVID-19 on members by providing continued flexibility so that members can ensure that principal positions remain filled. The potential risks from the proposed extension of the 120-day period are mitigated by a member's continued requirement to supervise the activities of these designated individuals and ensure compliance with federal securities laws and regulations, as well as Exchange rules.

The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁷ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market

system, and, in general to protect investors and the public interest.

The proposed rule change is intended to minimize the impact of COVID-19 on member operations by further extending the 120-day period certain individuals may function as a principal without having successfully passed an appropriate qualification examination under Exchange Rule 1210.04 until June 30, 2021. The proposed rule change does not relieve members from maintaining, under the circumstances, a reasonably designed system to supervise the activities of their associated persons to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules that directly serve investor protection. In a time when faced with unique challenges resulting from the COVID-19 pandemic, the Exchange believes that the proposed rule change is a sensible accommodation that will continue to afford members the ability to ensure that critical positions are filled and client services maintained, while continuing to serve and promote the protection of investors and the public interest in this unique environment.

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. As set forth in the Temporary Qualification Examination Relief Filings, the proposed rule change is intended solely to extend temporary relief necessitated by the continued impacts of the COVID-19 outbreak and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change is necessary to temporarily rebalance the attendant benefits and costs of the obligations under Exchange Rule 1210 in response to the impacts of the COVID-19 pandemic that would otherwise result if the temporary amendments were to expire on April 30, 2021.¹⁸

¹² Information from Prometric about its safety practices and the impact of COVID-19 on its operations is available at <https://www.prometric.com/corona-virus-update>. See also *supra* note 11.

¹³ See, e.g., Centers for Disease Control and Prevention, How to Protect Yourself & Others, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

¹⁴ See *supra* note 11.

¹⁵ *Id.*

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ In SR-FINRA-2020-026, FINRA provides an abbreviated economic impact assessment maintaining that changes are necessary to temporarily rebalance the attendant benefits and costs of the obligations under FINRA Rule 1210 in response to the impacts of the COVID-19 pandemic that is equally applicable to the changes the Exchange proposes. See Exchange Act Release No. 89732 (September 1, 2020), 85 FR 55537 (September 8, 2020) (SR-FINRA-2020-026). The Exchange accordingly incorporates FINRA's abbreviated economic impact assessment by reference.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. As noted above, the Exchange stated that the conditions necessitating the temporary relief continue to exist and the proposed extension of time will help minimize the impact of the COVID-19 outbreak on members' operations by allowing them to keep principal positions filled and minimizing disruptions to client services and other critical responsibilities. Despite signs of improvement, the Exchange further stated that the ongoing extenuating circumstances of the COVID-19 pandemic make it impractical to ensure that individuals designated to act in these capacities are able to take and pass the appropriate qualification examination during the 120-calendar day period required under the rules.

The Exchange observed that, following a nationwide closure of all test centers earlier in the year, some test centers have re-opened, but are operating at limited capacity or are only delivering certain examinations that have been deemed essential by the local

government.²¹ However, on February 24, 2021, FINRA began providing the General Securities Principal (Series 24) examination online through an interim accommodation request process.²² Prior to this change, if individuals wanted to take these qualifying examinations, they were required to accept the health risks associated with taking an in-person examination. Even with the expansion of online qualifications examinations, the Exchange stated that extending the expiration date of the relief set forth in SR-NASDAQ-2020-091 until June 30, 2021 is still needed. The Exchange stated that this temporary relief will provide flexibility to allow individuals who have been designated to function in a principal sufficient time to schedule, study for and take the applicable examination before the temporary relief expires. Notably, the Exchange stated that it does not anticipate providing any further extensions to the temporary amendments and that any individuals designated to function as a principal on or after March 3, 2021 will need to successfully pass an appropriate qualification examination within 120 days.

For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.²³ Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.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 necessary or appropriate in the public interest, for the protection of investors, or 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.

²¹ See *supra* notes 11 and 12. The Exchange states that Prometric has also had to close some reopened test centers due to incidents of COVID-19 cases.

²² See *supra* note 11 (including the February 24, 2021 announcement of the interim accommodation process for candidates to take certain examinations, including the General Securities Principal (Series 24) Examination, online.)

²³ As noted above by the Exchange, this proposal is an extension of temporary relief provided in SR-NASDAQ-2020-073 and SR-NASDAQ-2020-091 where the Exchange also requested and the Commission granted a waiver of the 30-day operative delay. See SR-NASDAQ-2020-073, 85 FR at 71981-82 and SR-NASDAQ-2020-091, 85 FR at 86602.

²⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2021-026 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-2021-026. 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 such 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-2021-026 and should be submitted on or before May 27, 2021.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91733; File No. SR-ICC-2021-013]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC End-of-Day Price Discovery Policies and Procedures

April 30, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 23, 2021, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to make changes to ICC’s End-of-Day Price Discovery Policies and Procedures (“Pricing Policy”). These revisions do not require any changes to the ICC Clearing Rules (the “Rules”).

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICC proposes to revise the Pricing Policy, which sets out ICC’s end-of-day (“EOD”) price discovery process that provides prices for cleared contracts using submissions made by Clearing Participants (“CPs”). ICC believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed amendments are described in detail as follows.

ICC proposes updates related to firm trade obligations and other clarifications. Under the Pricing Policy, to encourage CPs to provide the best possible EOD submissions, ICC selects a subset of the potential trades generated and designates them as firm trades, which CPs are entered into as cleared transactions. ICC selects specific dates on which it can require CPs to execute firm trades (“firm trade days”). For each firm trade day, ICC specifies the instruments that may become firm trade eligible, subject to certain specified criteria. Amended Section 2.4.1 incorporates additional criteria that must be met for the generation of firm trades, referred to as the trade price deviation constraint (the “constraint”). The proposed changes reference the constraint throughout Section 2.4.1, specifically in subsections (a), (b), and (c), and describe the constraint in subsection (d). Under the constraint, ICC avoids creating a high number of trades around its EOD levels by not designating potential trades as firm trades if the magnitude of the hypothetical profit/loss is smaller in magnitude than the absolute value of the difference between the EOD level and either the bid price or offer price. ICC would only designate a potential trade as a firm trade if the trade level fell outside the EOD level plus/minus one half the EOD bid-offer width (“BOW”) for the given instrument. Such constraint would not apply when the potential firm trade is formed by crossing two outlying submission trades.

With respect to credit default index swaptions (“Index Options”), ICC proposes additional language on the designation of a potential trade as a firm trade, subject to the CP open interest and ICC open interest requirements in amended Subsection 2.4.1.c. Similar

requirements are currently incorporated in the Pricing Policy for indices and single names. Under the CP open interest requirement, for ICC to designate a potential trade as a firm trade, both parties must have cleared open interest, as of the designated times, in one or more Index Option instrument sharing the same underlying index instrument, expiration date, strike convention, exercise style and transaction type. Under the ICC open interest requirement, ICC only designates a potential trade in a given Index Option instrument as a firm trade if ICC has cleared open interest in that instrument.

ICC proposes additional clarifications to the Pricing Policy. In Section 2.2.2, ICC proposes to abbreviate a term. ICC proposes revisions to Section 2.6 to more clearly set out the circumstances under which a CP may participate in the EOD price discovery process on behalf of another CP. The amendments specify that a CP may allow an affiliated CP to participate in the EOD price discovery process on its behalf. In Section 3, ICC proposes to memorialize that the Pricing Policy is subject to review by the Risk Committee and review and approval by the Board at least annually.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act³ and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad-22.⁴ In particular, Section 17A(b)(3)(F) of the Act⁵ requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest. ICC believes that the proposed amendments promote its ability to maintain the effectiveness and integrity of its EOD price discovery process. Under the proposed constraint, ICC avoids creating a high number of trades around its EOD levels by not designating potential trades as firm trades if the magnitude of the hypothetical profit/loss is smaller in magnitude than the absolute value of the difference between the EOD level and either the bid price or offer price. The purpose of EOD firm trades is to maintain the robustness of the

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78q-1.

⁴ 17 CFR 240.17Ad-22.

⁵ 15 U.S.C. 78q-1(b)(3)(F).