

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77355; File No. SR-NASDAQ-2016-031)

March 11, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Fees under Rule 7018(a)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 29, 2016, The NASDAQ Stock Market LLC (“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 Rule 7018(a), concerning the fees and credits provided for the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at \$1 or more that it trades. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on March 1, 2016.

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaq.cchwallstreet.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 Rule 7018(a), concerning the fees and credits provided for the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at \$1 or more that it trades. The Exchange is proposing to: (i) increase a credit provided to a member for displayed quotes/orders that provide liquidity; (ii) modify the criteria required to receive a credit; and (iii) eliminate the fees and credits provided for execution of Orders in Select Symbols, as described further below.

First Change

The Exchange is proposing to increase a credit that it provides to members for displayed liquidity under Rule 7018(a). Currently, the Exchange provides a credit of \$0.0030 per share executed to a member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity if the member has (i) shares of liquidity provided in all securities during the month representing at least 0.15% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) Adds [sic] NOM Market Maker liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 0.90% or more of total industry ADV in the customer clearing range for Equity and ETF option contracts per day in a month on the Nasdaq Options Market. The Exchange provides the credit

with the same criteria to securities of all three Tapes<sup>3</sup> under Rule 7018(a)(1) – (3).

The Exchange is proposing to increase the credit provided from \$0.0030 per share executed to \$0.00305 per share executed applicable to securities of all three Tapes. The Exchange believes that increasing the credit will provide members with a greater incentive to increase their provision of liquidity on both the Exchange and the Nasdaq Options Market.

#### Second Change

The Exchange is proposing to modify the criteria required to receive a credit for providing non-displayed orders (other than Supplemental Orders) that provide liquidity. Currently, the Exchange provides a credit of \$0.0005 per share executed for other non-displayed orders if the member provides an average daily volume of 1 million or more shares per day through midpoint orders or other non-displayed orders during the month in Tape C securities.

Similarly, the Exchange provides a credit of \$0.0010 per share executed for other<sup>4</sup> non-displayed orders if the member provides an average daily volume of 1 million or more shares per day through midpoint orders or other non-displayed orders during the month in Tape A and B securities.

The Exchange is proposing to modify the qualification criteria for each of the credit tiers under Rule 7018(a)(1) – (3) to now require that a member provide 0.03% or more of Consolidated Volume<sup>5</sup> during the month through midpoint orders or other non-displayed orders

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<sup>3</sup> Tape C securities are those that are listed on the Exchange, Tape A securities are those that are listed on NYSE, and Tape B securities are those that are listed on exchanges other than Nasdaq or NYSE.

<sup>4</sup> The Exchange also provides credits for non-displayed mid-point orders that provide liquidity under the rule.

<sup>5</sup> Consolidated Volume is the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading

in lieu of the current requirement that the member have an average daily volume of 1 million or more shares per day through midpoint orders or other non-displayed orders during the month.

The Exchange believes that the new criteria will more closely tie the amount [sic] midpoint orders and other non-displayed orders required to receive the credit with the overall market conditions in any given month.

The Exchange is also proposing to eliminate the credit it provides for all other non-displayed orders (other than Supplemental Orders) that provide liquidity in Tape A and B securities, which do not otherwise qualify for the higher tier discussed above. Currently, the Exchange provides a credit of \$0.0005 per share executed for other non-displayed orders in Tape A and B securities that provide liquidity. The Exchange does not provide a credit and does not assess a fee for such orders in Tape C securities. The Exchange is proposing to harmonize the credit tiers for Tape A and B securities with [sic] credit tier for Tape C securities by eliminating the \$0.0005 per share executed credit and not assessing a fee or credit for such orders.

### Third Change

The Exchange is proposing to eliminate the credit provided for certain “select symbols” under Rule 7018(a)(4). Under the current rule, [sic] members receiving less than a \$0.0029 per share executed credit in [sic] pursuant to Rule 7018(a)(1) – (3) for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity for the securities listed under the rule, the Exchange will provide a credit of \$0.0029 per share executed instead of the lower credit to these members for those securities. Currently, the credit provided by the rule applies to the following securities, by ticker symbol: EEM, EWJ, GDX, IWM, NUGT, SPY,

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activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member’s trading activity. See Rule 7018(a).

UWTI, VXX, XIV, and XLF. The Exchange did not observe an appreciable improvement in market quality in the select symbols on the Exchange, which was its goal in adopting the credit.<sup>6</sup> As a consequence, the Exchange is proposing to eliminate the credit [sic]

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act<sup>8</sup> 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 or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

### First Change

The Exchange believes that the proposed increase to the credit it provides to members for displayed liquidity is reasonable because it is designed to further incentivize members to improve the market through the provision of shares of liquidity in all securities during the month, consistent with its efforts to draw additional order flow to the Exchange to improve market quality for all market participants. If effective, the Exchange believes that the increased incentive will improve overall market quality on both the Exchange and NOM. The Exchange believes that the proposed increased credit is an equitable allocation and is not unfairly discriminatory because the Exchange will provide the credit to all members that qualify for it under the rule.

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<sup>6</sup> See Securities Exchange Act Release No. 73967 [sic] (October 29, 2015), 80 FR 68377 (November 4, 2015) (SR-NASDAQ-2015-126).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

## Second Change

The Exchange believes that modifying the criteria required to receive the credit for providing non-displayed orders (other than Supplemental Orders) that provide liquidity is reasonable because the proposed change will more closely align the level of liquidity provided by the members in comparison to the market as a whole.

Specifically, the Exchange is tying the requirement to Consolidated Volume provided during the month through midpoint orders or other non-displayed orders in lieu of the current requirement that the member have an average daily volume of 1 million or more shares per day through midpoint orders or other non-displayed orders during the month.

The Exchange believes that the new criteria may potentially make achieving the credit more difficult to the extent Consolidated Volume is high in a given month and will likely represent a stricter criterion upon adoption. The Exchange believes it is a better metric to apply to measure a member's participation through midpoint orders or other non-displayed orders during the month in contrast to a static criteria average daily volume. The Exchange believes that the proposed modification of the criteria is equitably allocated [sic] and not unfairly discriminatory because the amended credit criteria applies uniformly to securities across all Tapes and all members that elect to meet the criteria of the credit tier will receive the credit.

The Exchange believes reducing the credit it provides for all other non-displayed orders (other than Supplemental Orders) that provide liquidity in Tape A and B securities that do not otherwise qualify for the higher tier is reasonable because the Exchange must periodically assess the effectiveness of the incentives it provides in the form of reduced fees and credits and, in certain cases, change or eliminate those fees and credits once they are no longer needed. By doing so, the Exchange is able to deploy incentives in other areas that the Exchange determines

are in need of market improvement. The Exchange notes that it currently does not provide any credit for such orders in Tape C securities.

The Exchange believes that the proposed elimination of the credits is equitably allocated and not unfairly discriminatory because all members will neither receive a credit nor be assessed a fee under the tier, regardless of the listing venue of the security.

### Third Change

The Exchange believes that eliminating the credit provided to members for transactions in “select symbols” under Rule 7018(a) is reasonable because the Exchange did not observe an appreciable improvement in market quality in the select symbols which, as explained, was the Exchange’s goal in adopting the credit.

As noted above, the Exchange must periodically assess the effectiveness of the incentives it provides in the form of reduced fees and credits and, in the case of ineffective incentives, eliminate the incentive so that the Exchange may apply its resources to other, possibly more effective, incentives.

The Exchange believes that elimination of the credit is equitably allocated and not unfairly discriminatory because it will apply to all members equally. In this regard, the credit was available to any member that met the criteria and in the absence of the credit, members may now qualify for other, albeit lower, credits under Rule 7018(a).

### 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 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 and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed changes to the credits available to member firms for execution of securities of the three Tapes do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues.

The proposed changes to the credits provided to members are reflective of a robust and competitive securities market, where trading venues must provide incentives to participants in the form of credits to attract order flow and adjust those incentives to make them more competitive or to allow the Exchange to provide other market-improving incentives elsewhere.

Moreover, trading venues are free to adjust their fees and credits in response to any changes that the Exchange makes to its fees and credits. If any of the changes proposed herein are [sic] 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 [sic]

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.<sup>9</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

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

#### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2016-031 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-2016-031. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2016-031 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Lynn M. Powalski  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).