sifma
Invested in America

January 30, 2015

Via Electronic Mail (rule-comments@sec.gov)

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. SR-NASDAQ-2014-128: Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NASDAQ Rules 7014 and 7018

Dear Mr. Fields:

The Securities Industry and Financial Markets Association ("SIFMA")[1] submits this letter to comment on the above-referenced proposal by the NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") with the Securities and Exchange Commission ("Commission"). Under the proposal, NASDAQ will reduce its fees assessed for accessing liquidity and the credits provided for adding liquidity for a pre-selected set of 14 securities. The fee reduction will apply only to transactions in those securities on NASDAQ. NASDAQ is presenting the proposed pricing change as an important "market structure experiment" that will:

> Generate much needed data about the impact of access fees on the level of off-exchange trading and, potentially, on price discovery, trading costs, displayed liquidity and execution quality as well. NASDAQ further believes that a data driven, empirically-based review of the impacts of fees and rebates on market quality is the sound and prudent method to drive the equity markets to the right conclusion.[2]

For many years, SIFMA and its members have been vocal advocates and thought leaders on equity market structure issues. The U.S. equity markets are the deepest, most liquid and most efficient in the world, with investors enjoying extraordinarily low transaction costs, narrow spreads, and fast execution speeds. Nevertheless, SIFMA believes there are aspects of market structure that could be enhanced through steps designed to decrease unnecessary market

---

[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] *See* Securities Exchange Act Release No. 73967 (December 30, 2014), 80 FR 594 (January 6, 2015).

complexity, increase transparency of market information, and promote fairness in access. To sharpen the focus on these important issues, SIFMA's Board of Directors convened a broad-based task force in 2014 of members from across the country and across the industry, including retail and institutional dealers and asset managers, to develop a series of tangible and actionable market structure reforms. Through this task force, SIFMA has developed more than a dozen specific recommendations for addressing equity market structure.[3]

SIFMA's Equity Market Structure Recommendations identified that high access fees on the national security exchanges have become an outsized element of transaction costs, distort price discovery, and contribute to unnecessary market complexity.[4] In this regard, SIFMA recommended that the Commission reduce the access fee cap under Rule 610 of Regulation NMS to no more than five cents per hundred shares, so that the fee cap reduction would be applicable to all exchanges and a consistent set of securities across venues. SIFMA believes that lowering access fees in this way would significantly reduce the market distortions and unnecessary complexity that access fees have caused.[5]

SIFMA supports the underlying concept of NASDAQ's proposal, which is consistent with our recommendation to reduce access fees. However, we believe NASDAQ's proposal will not contribute meaningful data to any larger market structure questions at hand. In particular, the proposal's limited scope and application cannot act as a substitute for a market-wide access fee reduction that would change the dynamics of access fees and rebates across the entire market. For the proposal to accurately measure the structural impact of reduced access fees, the proposal should be carried out across all exchanges and with a larger sampling of symbols.

In our view, NASDAQ's proposal presents two conflicting premises. As we noted, the proposal will apply to one exchange and, further, to a small group of securities. At the same time, however, NASDAQ states that a goal of the proposal is to generate data about broader structural issues such as the impact of access fees on the level of off-exchange trading and on price discovery, trading costs, displayed liquidity and execution quality.

The fact is that decisions about posting and removing liquidity will continue to be influenced by a multitude of factors such as fill rates, speed, quoted size and regulatory

---

[3] *See* SIFMA Equity Market Structure Recommendations (July 10, 2014), available at http://www.sifma.org/workarea/downloadasset.aspx?id=8589949840

[4] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Mary Jo White, Chair, Commission dated October, 24, 2014 ("SIFMA Equity Market Structure Recommendations SEC Letter").

[5] For example, market participants regularly implement complex order routing strategies, consistent with best execution, that divide, route and re-route orders and parts of orders, when possible, to market centers that enable them to avoid paying excessive access fees. In practice, this often results in orders being executed in alternative trading systems or other off-exchange venues solely to avoid the exchanges' access fees. With spreads and commissions having shrunk to pennies or less, fixed access fees stand out as oversized costs that market participants reasonably seek to avoid. *See* SIFMA Equity Market Structure Recommendations SEC Letter at 4.

requirements, all in addition to access fees. As such, any changes in market practices or market quality cannot be narrowly attributed to a single factor, such as one exchange's fee change.

For example, orders in the 14 selected securities remain subject to the Order Protection Rule,[6] which generally requires marketable orders to be routed to the automated market displaying the best available quotations (i.e. "protected quotes"). If an exchange other than NASDAQ is displaying a quotation with a better price, a market participant will be required to first route to that venue, regardless of the difference in access fees. This regulatory requirement could skew the results of the pilot in terms of the effect of reduced access fees on on-exchange trading.

In addition, the level of access fees is a relevant factor only for those firms that do the work to account for the change in pricing. The limited scope of the proposal could have a follow-on effect on the amount and validity of data generated because not all brokers have the ability to make routing decisions on a symbol-by-symbol basis. An access fee reduction involving only 14 securities is unlikely to warrant dedication of resources for the systems changes and the associated implementation costs that would be required to adjust routing logic to account for the reduced access fees at NASDAQ.

To be clear, SIFMA supports efforts by NASDAQ and other venues to experiment with different fee structures. However, we do not believe that the limited fee change proposed in this filing should either suggest that it will – or be expected to – provide persuasive data regarding the important market structure questions that are referenced.[7] This is particularly important, as SIFMA is concerned that NASDAQ's proposal – as currently constructed – could be used to attempt to establish meaningful insight about what might result from a market wide fee cap reduction, which, in our view, is not a reasonable expectation.

[6] Rule 611 of Regulation NMS

[7] Separately, we do not agree with NASDAQ's claims that non-displayed liquidity on an exchange contributes more to price discover than non-displayed liquidity on an off-exchange venue. We expect there will be other opportunities to debate this very important policy question. At this time, however, NASDAQ's claims are not critical to the overall concept of reducing access fees, which we support.

* * *

Thank you for your consideration of our comments. If you have any questions or require further information, please contact me at [redacted] [redacted], or Timothy Cummings at [redacted]

Sincerely,

Theodore R. Lazo
Managing Director and
Associate General Counsel

cc: The Honorable Mary Jo White, Chair
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Michael S. Piwowar, Commissioner
The Honorable Kara M. Stein, Commissioner

Stephen Luparello, Director, Division of Trading and Markets
David S. Shillman, Associate Director, Division of Trading and Markets
Gregg Berman, Associate Director, Office of Analytics and Research