

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63270; File No. SR-NASDAQ-2010-141)

November 8, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add New Rule 7014 to Enable NASDAQ Members to Qualify for a Monthly Fee Credit

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 October 26, 2010, The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (the “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

NASDAQ proposes to add new Rule 7014 (Investor Support Program) to enable NASDAQ members to qualify for a monthly fee credit.

The text of the proposed rule change is available at nasdaq.cchwallstreet.com, at NASDAQ’s principal office, 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, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below. NASDAQ has

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is adding new Rule 7014 to establish an Investor Support Program (“ISP”), which would enable NASDAQ members to earn a monthly fee credit for providing additional liquidity to NASDAQ and increasing the NASDAQ-traded volume of what are generally considered to be retail and institutional investor orders in exchange-traded securities.³ The goal of the ISP is to incentivize members to provide such targeted liquidity to the Nasdaq Market Center.⁴ Maintaining and increasing the proportion of orders in exchange-listed securities executed on a registered exchange (rather than relying on any of the available off-exchange execution methods)⁵ would help raise investors’ confidence in the fairness of their transactions

³ The liquidity would, as discussed below, emanate from members that have a low order to execution ratio.

⁴ The Commission has recently expressed its concern that a significant percentage of the orders of individual investors are executed at over the counter (“OTC”) markets, that is, at off-exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, “Concept Release”). See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (“Schapiro Speech,” available on the Commission website) (comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors).

⁵ In the January 2010 Concept Release, the Commission noted that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume. See Concept Release, Figure 6. In her September 2010 speech, Chairman Schapiro referenced that figure and the fact that it continued to grow: “today, nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public. The percentage executed by these dark, non-public markets is increasing nearly every month.” Schapiro Speech.

and would benefit all investors by deepening NASDAQ's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.⁶

The first step for a NASDAQ member wishing to participate in the ISP is to designate one or more of its NASDAQ ports for ISP use.⁷ Orders entered through ISP-designated ports will be used for ISP credit calculations.

Subsection (b) of Rule 7014 describes how the ISP credit will be calculated. The ISP credit formula provides for a monthly credit of 3 cents per 100 shares of displayed liquidity provided through an ISP-designated port to the extent that such liquidity results in an increase (compared with August 2010) in the overall level of liquidity that the member provides to NASDAQ measured as a proportion of the consolidated share volume traded by all market participants across all trading venues. To this end, a member's "Baseline Participation Ratio" is determined by measuring the number of shares in liquidity-providing orders entered by the member (through any NASDAQ port) and executed on NASDAQ and dividing this number by the consolidated (across all trading venues) share volume of System Securities⁸ traded in August

⁶ The Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. The Commission published the Concept Release to invite public comment on a wide range of market structure issues, including high frequency trading and un-displayed, or "dark," liquidity. See Concept Release. Moreover, Chairman Schapiro identified "two concerns that go to the core of our equity market structure: First, whether the quality of price discovery has declined, and second, whether these changes in our market structure could undermine the fair and level playing field essential to investor protection, capital formation and vibrant capital markets generally." Schapiro Speech.

⁷ Subsequent to initial port designation, a member may add or remove designated ports for ISP use no later than the first trading day of the month when the desired change is to become effective.

⁸ The term "System Securities" is defined as all securities listed on NASDAQ and all securities subject to the Consolidated Tape Association Plan and the Consolidated Quotation Plan. Rule 4751(b).

2010.⁹ To determine whether a member added liquidity to NASDAQ in a given month, NASDAQ would perform the same calculation on a monthly basis for the then-current month and compare the resulting ratio to the Baseline Participation Ratio. If the member's then-current month's ratio is higher than the Baseline Participation Ratio, then the member's "Added Liquidity" for that month would be calculated by multiplying the difference between the two ratios by such month's consolidated average daily share volume of System Securities traded across all venues (if the result is a negative number, then Added Liquidity would be deemed zero).¹⁰ To determine the amount of the ISP credit, NASDAQ would multiply \$0.0003 by the lower of: (1) the number of shares of displayed liquidity provided in orders entered by the member through its ISP-designated ports and executed in the Nasdaq Market Center during the given month, or (2) the amount of Added Liquidity for the given month. Any ISP credit issued pursuant to Rule 7014 will be in addition to (and will not replace) any other credit or rebate for which a member may qualify.

Subsection (c) contains requirements designed to limit ISP credit eligibility to targeted orders. This is accomplished by establishing a maximum ratio (set at 10) of (i) liquidity-providing orders placed from all of given member's ISP-designated ports to (ii) liquidity-providing orders placed from such member's ISP-designated ports and actually executed (at least partially) in the Nasdaq Market Center. If in a given month this ratio is 10 or higher for a given member (usually because the member cancelled a large portion of the orders placed), then the member would not receive ISP credit for that month. In calculating the ratio, NASDAQ will

⁹ See Proposed Rule 7014(d)(2).

¹⁰ See Proposed Rule 7014(d)(1).

exclude pegged, odd-lot and System Hours and Market Hours Immediate-or-Cancel orders,¹¹ and will not double-count in the event of multiple partial executions of a single order.

The rule sets 10 million shares daily on average as the minimum qualifying volume of shares in executed liquidity-providing orders entered from a member's ISP-designated ports. This is done to attract firms with substantive amounts of retail and institutional order flow that may provide such targeted liquidity to NASDAQ. If, in a given month, this daily average is lower than 10 million shares, the member would not qualify for ISP credit. It is expected that both the execution ratio and the volume minimum would serve to encourage members to enter orders that are likely to be executed.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹² in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹³ 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 NASDAQ operates or controls, and 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, in general, to protect investors and the public interest. The rule change establishes a program that enables NASDAQ members to earn a monthly fee credit for increasing the NASDAQ-traded volume of what are generally retail and institutional investor orders in exchange-traded securities. The goal of the program is to encourage members to enter such orders in the Nasdaq Market Center.

¹¹ See Nasdaq Rule 4751(f)(4), (g)(3) and (h)(1) and (5).

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(4) and (5).

While the program distinguishes among orders, such distinctions “are not designed to permit unfair discrimination”¹⁴ but, rather, are intended to promote submission of liquidity-providing orders to NASDAQ, which would benefit all NASDAQ members and all investors. Maintaining and increasing the proportion of retail and institutional orders in exchange-listed securities executed on a registered national securities exchange (rather than relying on any of the available off-exchange execution methods) would help raise investors’ confidence in the fairness of their transactions and would benefit all investors by deepening NASDAQ’s liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Furthermore, setting a minimum monthly volume of eligible ISP orders as a condition for any fee credit eligibility (and therefore establishing a minimum threshold amount for any monthly credit) is not designed to discriminate unfairly, but rather to attract targeted retail and institutional investor liquidity. Likewise, the program is consistent with the Act’s requirement “for the equitable allocation of reasonable dues, fees, and other charges.”¹⁵ As explained in the immediately preceding paragraphs, members who choose to increase the volume of ISP-eligible liquidity-providing orders that they submit to NASDAQ would be benefitting all investors, and therefore an additional credit, as contemplated in the proposed program, is equitable.

Finally, NASDAQ notes that the intense competition among several national securities exchanges and numerous OTC venues effectively guarantees that fees and credits for the execution of trades in NMS securities remain equitable and are not unfairly discriminatory.¹⁶

¹⁴ See Section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5).

¹⁵ See Section 6(b)(4) of the Act, 15 U.S.C. 78f(b)(4).

¹⁶ See, e.g., Concept Release (discusses the various venues where trades are executed).

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor 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 Act¹⁷. 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.

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. Please include File Number SR-NASDAQ-2010-141 on the subject line.

¹⁷ 15 U.S.C. 78s(b)(3)(a)(ii).

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2010-141. This file number should be included on the subject line if e-mail 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,¹⁸ 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, 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

¹⁸ The text of the proposed rule change is available on the Commission's website at <http://www.sec.gov/rules/sro.shtml>.

make available publicly. All submissions should refer to File Number SR-NASDAQ-2010-141 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.¹⁹

Florence E. Harmon
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).