

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63678; File No. SR-NASDAQ-2010-166)

January 7, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Pricing for NASDAQ Members Using the NASDAQ Market Center

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 December 30, 2010, The NASDAQ Stock Market LLC (“NASDAQ”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. 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 the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on January 3, 2011.

The text of the proposed rule change is available at <http://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 and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. NASDAQ 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

NASDAQ is amending Rule 7018 to encourage members to provide liquidity directly to NASDAQ that previously had been provided via a sponsored access relationship. Direct liquidity provision is beneficial to NASDAQ and to the marketplace generally. Direct liquidity provision improves NASDAQ's market surveillance by providing a clear view of a member's market activity, rather than a view of that activity under the aegis of the sponsored access provider. Direct liquidity provision also enables NASDAQ to offer rebates more equitably, based upon each member's unique liquidity provision rather than compensating the effort required to aggregate order flow.

To encourage the direct provision of liquidity, NASDAQ is adding subsection Rule 7018(k). This subsection applies in the first month in which a member begins providing liquidity to NASDAQ directly that previously had been provided to NASDAQ via a sponsored access relationship. In that month, the rebates for that member under Rule 7018 shall be based upon the average daily volume of liquidity provided by the sponsored access provider. Under this calculation, the member will receive the same rebate for sending orders directly to NASDAQ that that member would have paid had it remained in a sponsored access relationship. Because NASDAQ's liquidity provider rebates vary based upon volume of liquidity provided, absent this

formulation, members might receive lower rebates by virtue of switching mid-month from sponsored access to direct provision of liquidity.³

For example, assume that Member ABCD provides liquidity to NASDAQ via a sponsored access relationship with Member 1234. Member 1234 provides average daily liquidity of 60 million shares of which 20 million shares is provided by Member ABCD. Member ABCD switches on the 20th trading day of January - a month with 25 trading days – from providing liquidity via Member 1234 to providing liquidity directly to NASDAQ. Member ABCD continues to provide 20 million shares of liquidity directly to NASDAQ for the final five trading days of January. Member 1234 continues to provide 40 million shares of liquidity to NASDAQ for the final five trading days of January, having lost 20 million shares per day due to Member ABCD's changed behavior.

Under current Rule 7018, if Member ABCD continues to provide liquidity via Member 1234 for the entire month of January, it receives rebates of \$0.0029 per share of liquidity provided based on Member 1234 providing 60 million shares of liquidity per day. If Member ABCD switches on the 20th trading day of the month to providing liquidity directly to NASDAQ, it will receive rebates for the final five trading days at a rate of \$0.0020 per share based on 4 million shares per day (20 million x 5 actual trading days ÷ 25 trading days in the month). Member 1234 has the ability to calculate the rebates for Member ABCD at less favorable rates as well because Member ABCD has lowered the average daily liquidity provided by Member 1234. This has the effect of de-valuing the liquidity provided by Member ABCD for the periods of time both before and after it switches from sponsored access to direct liquidity provision. This

³ See NASDAQ Rule 7018(a). NASDAQ's fees for accessing liquidity are fixed; they do not vary with volume and thus are not impacted by this proposal.

discourages Member ABCD from providing liquidity directly to NASDAQ for any partial month period.

Under new Rule 7018(k), NASDAQ will calculate the rebate for Member ABCD as follows. For the first 20 trading days, Member ABCD will be credited with all of the liquidity that Member 1234 provides to NASDAQ – 60 million shares. For the final five trading days of the month, Member ABCD will continue to be credited with the liquidity provided by member 1234 – 40 million shares – rather than the liquidity provided directly by member ABCD – 20 million shares. Thus, both Member ABCD and Member 1234 will receive rebates of \$0.0029 based upon average daily liquidity provided of 56 million shares per day (60 million shares per day X 20 days + 40 million shares per day X five days ÷ 25 days).⁴

NASDAQ believes that this provides an appropriate incentive for members to switch from sponsored access relationships to direct liquidity provision, while also fairly valuing the liquidity provided by all members. It is appropriate for NASDAQ to share with members the substantial benefit that NASDAQ enjoys when it receives liquidity directly from members. As stated above, this benefit is both monetary and regulatory. At the same time, there is no cost to sponsored access providers that, under new subsection 7018(k), continue to enjoy the benefit of their successful efforts to aggregate liquidity.

This option will be available to members only once and only for the final five trading days of a month. The five-day period is designed to allow members an operating transition from sponsored access to direct liquidity provision. To make that transition, members must re-

⁴ This is one example of how new Rule 7018(k) will operate. The actual rebates provided to members will vary depending upon the liquidity provided by their sponsored access provider and by the member itself. In all cases, the rebates for all members will be calculated using the rebates duly filed with the Commission and set forth in NASDAQ's online manual.

program systems and test their interaction with NASDAQ systems. Members are reluctant to make this transition on the first day of a trading month because errors could reduce monthly liquidity provision and lead to lower rebates. NASDAQ considered offering this benefit for a longer period of time but concluded, after assessing multiple factors, that a five-day transition period is adequate for operational continuity. NASDAQ believes members should make this transition only once and that it is appropriate to compensate them for making this transition only once.

It shall be the obligation of the member to notify NASDAQ prior to invoking Rule 7018(k) in a form specified by NASDAQ. This will enable NASDAQ to monitor and measure the liquidity provision that is transferred from a sponsored access relationship directly to NASDAQ.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Section 6(b)(4) of the Act,⁶ 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.

As stated above, the impact of the price changes upon the rebates received by a particular market participant will depend upon a number of variables, including the specifics of the market participant's sponsored access relationship, its propensity to add or remove liquidity, the duration of the transition period, and other factors.

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

Additionally, the proposed allocation of fees is fair and reasonable in that it furthers NASDAQ's legitimate goal of encouraging members to provide liquidity directly to NASDAQ. There is a meaningful regulatory and economic benefit to NASDAQ when a firm provides liquidity directly as opposed to providing it via sponsored access. It is equitable and fair for NASDAQ to share that benefit with the member and to encourage that behavior. NASDAQ's proposal is narrowly tailored to the goal of encouraging direct liquidity provision, and it imposes no penalty on any firm for not opting to invoke new Rule 7018(k).

NASDAQ notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem rebate levels at a particular venue to be excessive. Additionally, members can choose to remain in sponsored access relationships rather than voluntarily choose to send order flow directly to NASDAQ. Accordingly, if particular market participants object to the proposed fee changes, they can avoid receiving the rebates implicated by this filing. NASDAQ believes that its fees continue to be reasonable and equitably allocated to members on the basis of whether they opt to direct orders to NASDAQ.

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 Act⁷ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁸ 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.

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-2010-166 on the subject line.

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-2010-166. 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

⁷ 15 U.S.C. 78s(b)(3)(a)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

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 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 offices 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-2010-166, 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.⁹

Elizabeth M. Murphy
Secretary

⁹ 17 CFR 200.30-3(a)(12).