

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65878; File No. SR-NASDAQ-2011-165)

December 2, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify NASDAQ's Transaction Execution Fee and Credit Schedule in Rule 7018

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 November 30, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") 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 the Substance of the Proposed Rule Change

The Exchange is proposing to modify NASDAQ's transaction execution fee and credit schedule in Rule 7018. NASDAQ proposes to implement the proposed rule change on December 1, 2011. The text of the proposed rule change is available on the Exchange's website at <http://nasdaq.cchwallstreet.com/Filings>, 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 self-regulatory organization 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 those statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

places specified in Item III [sic] below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts 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 its fee and credit schedule for transaction executions in Rule 7018(a).³ First, NASDAQ is expanding the criteria under which a member may qualify for its highest liquidity provider credit tier (\$0.00295 per share executed for displayed quotes/orders and \$0.0015 per share executed for non-displayed quotes/orders). Currently, a member qualifies for this rebate tier if either (i) the shares of liquidity provided in all securities through one of its Market Participant Identifiers (“MPIDs”) represent more than 0.90% of the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities (“Consolidated Volume”)⁴ during the month; or (ii) the member provides shares of liquidity in all securities during the month representing more than 1.0% of Consolidated Volume during the month through one or more of its NASDAQ Market Center MPIDs, and the member has an average daily volume during the month of more than 200,000 contracts of liquidity accessed or provided through one or more of its Nasdaq Options Market MPIDs. Under the proposed change, a member may also qualify for this rebate tier if (i) it is a registered market maker, through a single MPID, in at least 7,000 securities, (ii) the shares of liquidity provided in all securities through one of its MPIDs represent more than 0.75% of Consolidated Volume, and (iii) the shares of liquidity provided in all securities through one or

³ Rule 7018(a) applies to executions at \$1 or more per share.

⁴ In addition to the substantive changes that it is proposing, NASDAQ is also (i) adopting the defined term “Consolidated Volume” and introducing it where appropriate throughout Rule 7018, and (ii) making minor clarifying edits to the text of Rule 7018(a)(3).

more of its MPIDs represent more than 0.90% of Consolidated Volume. The proposal is designed to incentivize members to act as market makers in a large number of stocks and provide significant liquidity through NASDAQ, with the majority of the provided liquidity focused through a single MPID (likely the MPID through which the member is registered as a market maker). By providing financial incentives to market makers, NASDAQ hopes to improve its market quality for all market participants.

Second, NASDAQ is introducing a liquidity provider rebate tier for members that provide an average daily volume of 3 million shares or more of liquidity through quotes/orders that are not displayed. Although NASDAQ believes that transparent markets should be encouraged wherever possible, it allows members to provide non-displayed liquidity to offer an alternative to trading venues that are entirely dark. For members qualifying for this tier, the rebate for non-displayed quotes/orders will be \$0.0015 per share executed, and the rebate for displayed quotes/orders will be \$0.0020 per share executed (unless the member qualifies for a higher rebate due to other characteristics of its trading volume).⁵

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Section 6(b)(4) of the Act,⁷ in particular, in that it

⁵ The \$0.0015 per share rebate for non-displayed quotes/orders is the same as the rebate for non-displayed quotes/orders offered to members qualifying for certain more favorable rebate tiers, and higher than the base rebate for non-displayed quotes/orders of \$0.0010 per share executed. The rebate of \$0.0020 per share executed for displayed quotes/orders is the same as the base rebate for displayed quotes/orders. In limited circumstances, a member qualifying for the new tier might also qualify for a tier that has a more favorable rebate for displayed quotes/orders but a less favorable rebate for non-displayed quotes/orders. In that case, the member qualifying for both tiers would receive the higher rebate for both types of quotes/orders.

⁶ 15 U.S.C. 78f.

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. All similarly situated members are subject to the same fee structure, and access to NASDAQ is offered on fair and non-discriminatory terms.

The proposed rebate tier for members that make markets in significant numbers of stocks is reasonable because it will result in a fee reduction for members that qualify for the tier, but will not increase the costs borne by other members or limit the availability of other, pre-existing rebate tiers. Moreover, the proposed program is consistent with an equitable allocation of fees because it allocates a higher rebate to members that make significant contributions to NASDAQ market quality by making markets in a large number of stocks and that contribute to price discovery by providing high volumes of liquidity. NASDAQ believes that the program may encourage market makers to become active in more stocks and provide more liquidity, thereby benefitting other market participants that may be able to trade larger volumes of stocks without affecting the price of those stocks.

The addition of a new, volume-based pricing tier for provision of non-displayed liquidity will provide members with an additional means to obtain a favorable rate of \$0.0015 per share executed for non-displayed liquidity, in addition to the volume-based tiers already in effect. By offering a rebate tier focused on non-displayed liquidity, NASDAQ hopes to attract more liquidity to its market that might otherwise be traded in “dark pool” alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that the tier is reasonable because it will provide a fee reduction for members that qualify for the tier, but will not increase the costs borne by other members or limit the

⁷ 15 U.S.C. 78f(b)(4).

availability of other, pre-existing rebate tiers. Moreover, the proposed tier is consistent with an equitable allocation of fees because it is designed to reward members that contribute to market quality by providing liquidity. Although the rebate in question is focused on non-displayed liquidity, NASDAQ believes that the incentive may nevertheless contribute to its market quality by attracting orders that might otherwise be posted in dark pools. Although non-displayed orders contribute less to price discovery than displayed orders, they nevertheless provide liquidity to support the execution of incoming orders. Accordingly, NASDAQ believes that the proposal is a reasonable and equitable means of attracting further liquidity to the market, which has the potential to benefit all market participants.

Finally, NASDAQ 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. In such an environment, NASDAQ 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. NASDAQ believes that the proposed rule change reflects this competitive environment because it will increase the conditions under which higher liquidity provider rebates may be paid to active market participants, without altering any of the market's existing rebate tiers.

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. Because the market for order execution is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for

the proposed rule change, NASDAQ 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.

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 Act.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. 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-2011-165 on the subject line.

⁸ 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-2011-165. 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, 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-2011-165, 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

Kevin M. O'Neill
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).