

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68847; File No. SR-NASDAQ-2013-016)

February 6, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change for the Purpose of Amending Rule 7014(g)

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 January 30, 2013, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 7014(g). The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com>, at the Exchange’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, the Exchange 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is amending Rule 7014(g), which establishes a pricing incentive program for members designated as Qualified Market Makers ("QMM") under the terms of the rule. Under the QMM program, which was adopted in November 2012 on a six-month pilot basis,³ a member may be designated as a QMM with respect to one or more of its MPIDs if:

- the member is not assessed any "Excess Order Fee" under Rule 7018 during the month;⁴ and
- through such MPID the member quotes at the NBBO at least 25% of the time during regular market hours⁵ in an average of at least 1,000 securities during the month.⁶

³ Securities Exchange Act Release No. 68209 (November 9, 2012), 77 FR 69519 (November 19, 2012).

⁴ Rule 7018(m). NASDAQ recently introduced an Excess Order Fee, aimed at reducing inefficient order entry practices of certain market participants that place excessive burdens on the systems of NASDAQ and its members and that may negatively impact the usefulness and life cycle cost of market data. In general, the determination of whether to impose the fee on a particular MPID is made by calculating the ratio between (i) entered orders, weighted by the distance of the order from the NBBO, and (ii) orders that execute in whole or in part. The fee is imposed on MPIDs that have an "Order Entry Ratio" of more than 100.

⁵ Defined as 9:30 a.m. through 4:00 p.m., or such shorter period as may be designated by NASDAQ on a day when the securities markets close early (such as the day after Thanksgiving).

⁶ A member MPID is considered to be quoting at the NBBO if it has a displayed order at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, NASDAQ will determine the number of securities in which the member satisfied the 25% NBBO requirement. To qualify for QMM designation, the MPID must meet the requirement for an average of 1,000 securities per day over the course of the month. Thus, if a member MPID satisfied the 25% NBBO requirement in 900 securities for half the days in the month, and satisfied the requirement for 1,100 securities for the other days in the month, it would meet the requirement for an average of 1,000 securities.

The proposed rule change addresses a circumstance in which a member seeking to be designated as a QMM terminates the use of one MPID and simultaneously commences use of another MPID during the course of a month. In that circumstance, NASDAQ believes that it is reasonable to allow the member to aggregate activity on the two MPIDs, essentially treating them like a single MPID, for the purpose of determining eligibility. By codifying this interpretation, the proposed rule change will enhance the transparency of the rule.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and with Section 6(b)(5) of the Act⁸ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. NASDAQ believes that the adoption of a clear policy with respect to the interpretation of Rule 7014(g) will promote members' understanding of the parameters of the rule and the efficiency of its administration.

NASDAQ further believes that the proposed rule change is consistent with Sections 6(b)(4) and (b)(5) of the Act,⁹ in that it is consistent with an 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 is not unreasonably discriminatory. The

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(4).

addition of rule language stipulating the permissibility of aggregating two MPIDs when use of one is terminated during the course of the month establishes a standard that is clear and easy to administer. The provision is equitable and not unreasonably discriminatory because all members seeking to terminate the use of an MPID during the course of a month are subject to the same commonsense parameters, which do not unfairly penalize a member for transitioning order entry activity from one MPID to another, and because the standard is consistent with the overall goal of the QMM program to encourage members to improve market quality by quoting extensively at or near the inside.

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. The change will adopt a clear and commonsense standard for members that wish to qualify for the QMM program but that terminate the use of one MPID and commence the use of another MPID during the course of the month. NASDAQ believes that in fact this change will promote competition and further the pro-competitive goals of encouraging members to improve market quality by quoting extensively at or near the inside, as it insures that a member that transitions MPIDs is not barred from participating in the program during the month of transition. Moreover, NASDAQ notes that because the market for order execution and routing is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. Accordingly, 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6)(iii) thereunder.¹³

The Exchange has asked the Commission to waive the 30-day operative delay.¹⁴ The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow a member that terminates one MPID and simultaneously commences use of another MPID during the course of a month to aggregate activity on the two MPIDs to determine eligibility for the QMM program during the month of

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

transition without delay. Accordingly, the Commission designates the proposal operative upon filing.¹⁵

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-2013-016 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-2013-016. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

¹⁵ For purposes only of accelerating the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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, D.C. 20549 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 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-2013-016 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.¹⁶

Kevin M. O'Neill
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).