SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72810; File No. SR-NASDAQ-2014-078)

August 11, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Qualified Market Maker Incentive Program under Rule 7014, and the Schedule of Fees and Rebates under 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 August 1, 2014, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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 is proposing to make changes to the Qualified Market Maker ("QMM") Incentive Program under Rule 7014, and the schedule of fees and rebates for execution and routing of orders under Rule 7018. NASDAQ will begin assessing the fees effective August 1, 2014.

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 and discussed any comments it received on the

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

proposed rule change. The text of those 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 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 proposing to amend a fee under Rule 7014(e) assessed members participating in the QMM Incentive Program, and is proposing several changes to the schedule of fees and credits applicable to execution and routing of orders under Rule 7018, all of which are described in detail below.

QMM Incentive Program

A QMM is a member that makes a significant contribution to market quality by providing liquidity at the national best bid and offer ("NBBO") in a large number of stocks for a significant portion of the day. In addition, the member must avoid imposing the burdens on NASDAQ and its market participants that may be associated with excessive rates of entry of orders away from the inside and/or order cancellation. The designation reflects the QMM's commitment to provide meaningful and consistent support to market quality and price discovery by extensive quoting at the NBBO in a large number of securities. In return for its contributions, certain financial benefits are provided to a QMM with respect to a particular MPID (a "QMM MPID"), as described under Rule 7014(e). These benefits include a lower rate charged for executions of orders in securities priced at $1 or more per share that access liquidity on the NASDAQ Market Center and that are entered through a QMM MPID.[3] Under Rule 7014(e)(3), the current charge

3 Rule 7014(e)(3) further requires, however, that after the first month in which an MPID becomes a QMM MPID, the QMM's volume of liquidity added, provided, and/or routed through the QMM MPID during the month (as a percentage of Consolidated Volume) is

assessed on a member for removing liquidity in securities priced at $1 or more per share on NASDAQ is $0.0030 per share executed in a NASDAQ-listed security. QMM MPIDs, however, receive a lower charge of $0.0029 per share executed for removing liquidity in securities priced at $1 or more per share listed on exchanges other than NASDAQ. NASDAQ is proposing to increase this charge from $0.0029 to $0.00295. NASDAQ notes that both the current and proposed fees are lower than the rate assessed under the rule for NASDAQ-listed securities. This is reflective of the Exchange's continued desire to provide incentives to attract order flow to the Exchange in securities listed on exchanges other than NASDAQ. The modest increase in the fee is indicative of the success of the lower fee in attracting such order flow.

Amended Fees for Execution and Routing of Securities Listed on Any Domestic Market (Tapes A, B, and C)

NASDAQ is proposing changes to the credits provided to members executing or routing securities listed on any domestic exchange. NASDAQ notes that the eligibility requirements and credits provided by each of the proposed changes hereunder are identical among all three categories of securities (i.e., Tapes A, B, and C). As such, NASDAQ is discussing the proposed changes to the credits provided for activity in each category of security in this section.[4]

NASDAQ is proposing to provide two new credits for providing displayed quotes and orders (other than Supplemental Orders) that provide liquidity. The two new credits are based, at least in part, on a member's activity during the Opening and Closing Crosses. First, NASDAQ is

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not less than 0.05% lower than the volume of liquidity added, provided, and/or routed through such QMM MPID during the first month in which the MPID qualified as a QMM MPID (as a percentage of Consolidated Volume).

4 Notwithstanding that the rule text discussed hereunder is identical for each category of security, the eligibility requirements apply to the individual type of security transacted. Accordingly, a member's activity in each category of security is not aggregated to meet eligibility requirements.

proposing a new credit of $0.00293 per share executed to members with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs ("MPIDs") that represent more than 0.10% of Consolidated Volume during the month, with shares executed in the Opening and Closing Cross that represent more than 0.20% of Consolidated Volume and orders entered through a single MPID that represent more than 0.50% of Consolidated Volume during the month. Second, NASDAQ is proposing to provide a new credit of $0.0028 per share executed to members with shares of liquidity provided in the Opening and Closing Crosses, excluding Market-on-Close, Limit-on-Close, Market-on-Open, Limit-on-Open, Good-til-Cancelled, and Immediate-or-Cancel orders, through one or more of its MPIDs that represent more than 0.01% of Consolidated Volume during the month. NASDAQ notes that the proposed credits incentivize members to provide liquidity in the opening and closing processes in return for receiving benefits and incentives for adding displayed liquidity. Taken together, these two new tiers are designed as incentives to members to provide liquidity at the open, during the trading day, and the close, which improve price discovery for the benefit of all investors. The lower credit allotted to members providing more than 0.01% of Consolidated Volume during the month is reflective of the lower level of improvement to market provided by the qualifying member.

NASDAQ provides credits to members that provide certain levels of midpoint orders per month. The credits range from $0.0005 to $0.0017 per share executed, increasing as the levels of midpoint orders increase and meet the next tier's requirements. NASDAQ is proposing to provide a new credit of $0.0020 per share executed to members that provide non-displayed midpoint orders that provide an average daily volume of 6 million or more shares through midpoint orders during the month. As a consequence, NASDAQ is also proposing to modify the eligibility requirements for the existing $0.0017 credit provided to members that provide non-displayed midpoint order liquidity. Currently, NASDAQ requires a member to provide an average daily volume of 5 million or more shares through midpoint orders during the month. In light of the proposed new $0.0020 credit, NASDAQ is proposing to place a ceiling on the existing $0.0017 credit eligibility requirement of up to an average daily volume of 6 million shares through midpoint orders during the month. Accordingly, a member may qualify for the $0.0017 credit by providing average daily volume of between 5 million and less than 6 million shares through midpoint orders during the month.

Amended Fees for Execution and Routing of Securities Listed on NASDAQ (Tape C)

NASDAQ is proposing to assess a new charge under Rule 7018(a)(1) on members for executing against resting midpoint liquidity. The current default rate for removing liquidity from NASDAQ in NASDAQ-listed securities is $0.0030. NASDAQ is proposing to assess a lower charge of $0.0027 for removing midpoint liquidity. NASDAQ notes that the proposed new fee is identical to fees currently assessed by NASDAQ for such activity in securities listed on NYSE or exchanges other than NASDAQ and NYSE.

Amended Fees for Execution and Routing of Securities Listed on NYSE (Tape A)

NASDAQ is proposing to modify certain fees assessed under Rule 7018(a)(2), which apply to quotes and orders in securities listed on NYSE. NASDAQ assesses a fee of $0.0029 per share executed on members that enter Market-on-Close ("MOC") and/or Limit-on-Close ("LOC") orders executed in the NASDAQ Closing Cross, entered through a single MPID that represent more than 0.06% of Consolidated Volume during the month. NASDAQ originally introduced the discount charge because it believed that members that participate in the NASDAQ Closing Cross to a significant extent through the use of MOC and/or LOC orders are frequently acting on behalf of institutional investor customers.[5] At the time, NASDAQ believed that members may have been giving NASDAQ lower relative priority in their order routing decisions due to its relatively high fees for accessing liquidity, as compared with lower cost exchanges. As a consequence, liquidity providers on NASDAQ may have been receiving larger orders that had already attempted to access liquidity elsewhere, such that the order was more likely to have an impact on the price of the stock. NASDAQ hoped that by lowering the fees for these members they would be encouraged to give greater priority to NASDAQ in their routing decisions, thereby lowering their cost and improving the execution experience of liquidity providers. Moreover, NASDAQ hoped to encourage greater use of its Closing Cross through the reduction in the charge. NASDAQ notes that reduced rate has not materially improved the market in Tape A securities and therefore is proposing to increase the charged assessed from $0.0029 to $0.00295 per share executed.

NASDAQ is also proposing to amend the charge assessed members for DOT or LIST Orders that execute in the NYSE opening process or reopening process. Currently, NASDAQ assesses a charge of $0.0005 per share executed, but limits the charge to $15,000 per month per member. NASDAQ is proposing to eliminate the $15,000 per month per member fee cap, which will allow the Exchange to more closely align the fee to costs incurred by NASDAQ in routing such orders to other venues, which are not capped.

NASDAQ is proposing to adopt a new credit provided to members that qualify under certain requirements of the Market Quality Incentive Programs of Rule 7014. Specifically, NASDAQ will provide a credit of $0.0001 per share executed to a member that either qualifies

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5 Securities Exchange Act Release No. 68421 (December 13, 2012), 77 FR 75232 (December 19, 2012) (SR-NASDAQ-2012-135).

for a credit under Rule 7014(c)(3)[6] or that is designated as a QMM under Rule 7014(d). The credit provided is based on the shares executed through the qualifying MPID under Rules 7014(c)(3) or 7014(d), and is provided in addition to any other credit or rebate for which the member may qualify. NASDAQ notes that the credit will provide additional incentive to members to improve the quality of the market in NYSE-listed securities on NASDAQ.

Amended Fees for Execution and Routing of Securities Listed on Exchanges other than NASDAQ and NYSE (Tape B)

NASDAQ is proposing to modify certain charges assessed and credits provided under Rule 7018(a)(3). Specifically, NASDAQ is proposing to increase the charge assessed members that enter MOC and/or LOC orders executed in the NASDAQ Closing Cross, entered through a single MPID that represent more than 0.06% of Consolidated Volume during the month. Like the charge assessed for such orders in Tape A securities, as discussed above, NASDAQ currently assesses a charge of $0.0029 per share executed. For the same reasons noted above with respect to Tape A securities, NASDAQ is proposing to increase the charge to $0.00295 per share executed in Tape B securities.

Amended Fees for Execution in the Closing and Opening Crosses

Rule 7018(d) sets forth fees assessed for executions received in the Closing Cross. The rule provides a default fee of $0.0002 per share executed assessed for all other quotes and orders not otherwise noted under the rule, and several tiers of fees for MOC and LOC orders executed in the Closing Cross. The Exchange is proposing to increase the default fee from $0.0002 to $0.0003 per share executed in the Closing Cross.

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6 Rule 7014(c)(3) provides the highest credit under the Investor Support Program and, consequently, has the most stringent requirements among the credit tiers of the program.

NASDAQ is also proposing to amend the charges assessed for MOC and LOC orders executed in the Closing Cross. Specifically, under Tier A NASDAQ assesses a fee of $0.00065 per executed share for shares of liquidity provided in all securities through one or more of its MPIDs that represent above 1.40% of Consolidated Volume or MOC/LOC volume above 0.50% of Consolidated Volume. NASDAQ is proposing to increase the Tier A fee to $0.0008 per executed share. Similarly, NASDAQ is proposing to increase the fee assessed under Tier F of the rule. NASDAQ assesses a fee of $0.0014 per executed share for shares of liquidity provided in all securities through one or more of its MPIDs that represent 0.00% to 0.015% of Consolidated Volume. NASDAQ is proposing to increase the fee under Tier F to $0.0015 per executed share.

Rule 7018(e) sets forth fees assessed for quotes and orders executed in the Opening Cross. NASDAQ is proposing to increase fees assessed for shares executed in the Opening Cross. Currently, the default charge assessed for all other quotes and orders executed in the Closing Cross not otherwise noted under the rule is $0.0002 per share executed. NASDAQ is proposing to increase the charge to $0.0003 per share executed.

NASDAQ is also proposing to also increase the charge assessed for Market-on-Open, Limit-on-Open, Good-till-Cancelled, and Immediate-or-Cancel orders executed in the Opening Cross. Currently, NASDAQ assesses a charge of $0.0010 per share executed, which NASDAQ proposes to increase to $0.00015 per share executed.

The proposed increases to the fees assessed for executions in the Closing and Opening Crosses will help the Exchange recapture some of the costs it incurs operating the cross system, while maintaining relatively low fees for the execution of orders in these crosses.

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 Sections 6(b)(4) and 6(b)(5) of the Act,[8] 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 is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the change to the QMM Program is reasonable because it represents a modest increase to an incentive fee, while maintaining a discount to the default rate, which NASDAQ believes will continue to benefit all market participants by encouraging quoting at or near the NBBO in a wide range of securities that are not listed on NASDAQ. As noted, the QMM Program is intended to encourage members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities, thereby benefitting NASDAQ and other investors by committing capital to support the execution of orders. NASDAQ believes that the modest increase in the already discounted fee will not materially affect the quality of the market with respect to securities that are not listed on NASDAQ. As such, NASDAQ believes that modestly increasing the fee is an equitable allocation of a reasonable fee. Moreover, NASDAQ believes that increasing the already discounted fee is not unfairly discriminatory because it continues to apply a lower incentive rate in securities in Tape A and B securities, where the reduced fee has been effective in improving the market in such securities on NASDAQ. By contrast, NASDAQ eliminated a reduced rate in

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7 15 U.S.C. 78f.

8 15 U.S.C. 78f(b)(4) and (5).

NASDAQ-listed securities after observing that the lower fee did not materially increase the quality of the market in those securities.[9] Accordingly, NASDAQ's proposed change is designed to maintain the benefits associated with the QMM program while reducing its cost, thereby making the program sustainable in the longer term.

The proposed new $0.00293 and $0.0028 per share executed credits under Rules 7018(a)(1), (2), and (3) are consistent with a fair allocation of a reasonable fee and not unfairly discriminatory because they provide credits in return for providing meaningful improvement to the market. The credits are reasonable because they are in-line with similar credits provided under the rules noted above for providing other measures of meaningful improvement to the market. The proposed two new credits are equitably allocated because, like other credits under the rules, all members are eligible to receive the credits if they meet the specific eligibility requirements.

Similarly, NASDAQ believes that the proposed new $0.0020 per share executed credit provided for midpoint orders that provide liquidity, and the related modification to the eligibility requirement of the $0.0017 per share executed credit, under Rules 7018(a)(1), (2), and (3) are consistent with an equitable allocation of a reasonable fee and not unfairly discriminatory because they provide credits in return for providing meaningful improvement to the market. The new, higher credit tier is designed to provide members with an opportunity to achieve a higher credit rate in return for providing market improvement through liquidity-providing midpoint orders. NASDAQ does not believe that the addition of the new credit tier is unfairly discriminatory because all members are eligible to achieve the higher credit rate by meeting the eligibility requirement.

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9 Securities Exchange Act Release No. 71530 (February 12, 2014), 79 FR 9553 (February 19, 2014) (SR-NASDAQ-2014-015).

NASDAQ believes that the proposed new fee of $0.0027 per share executed for members that execute against resting midpoint liquidity under Rule 7018(a)(1) is consistent with an equitable allocation of a reasonable fee and not unfairly discriminatory because it assesses a fee on activity that removes liquidity from the market, which is consistent with other fees assessed for removing liquidity from NASDAQ. NASDAQ believes the new fee is reasonable and equitably allocated because it is a lower fee than the default rate assessed for removing liquidity from NASDAQ and is identical to the fees assessed for removal of liquidity in midpoint orders in securities listed on NYSE or exchanges other than NASDAQ or NYSE. NASDAQ does not believe that the addition of the new fee is unfairly discriminatory because the fee eliminates a current distinction made in the rules whereby identical orders in non-NASDAQ-listed securities are assessed a fee whereas NASDAQ-listed orders are not.

NASDAQ believes that the proposed increase in the charge assessed on members with MOC and/or LOC orders in securities listed on NYSE or exchanges other than NASDAQ or NYSE, which are executed in the NASDAQ Closing Cross and entered through a single MPID that represents more than 0.06% of Consolidated Volume during the month is consistent with an equitable allocation of a reasonable fee and not unfairly discriminatory because it is a modest increase in a fee designed to incentivize members to provide greater priority to NASDAQ. As noted, the reduced fee has not been entirely effective at modifying member behavior and, as a consequence, NASDAQ is increasing the fee to offset the cost of offering the incentive. The increased fee will continue to be less than the default rate assessed for orders that execute in the NASDAQ Market Center.

NASDAQ believes that the proposed new $0.0001 per share executed credit in NYSE-listed securities provided to members that either qualify for a credit under Rule 7014(c)(3) or that is designated as a QMM under Rule 7014(d) is consistent with an equitable allocation of a reasonable fee and not unfairly discriminatory because it is designed to provide members with additional incentive to improve market quality. NASDAQ believes that the credit is reasonable because it promotes participation in the Market Quality Incentive Programs, which are designed to improve market quality. Moreover, the Exchange believes that the credit is equitably allocated because any member that meets the requirements of either Rule 7014(c)(3) or 7014(d) will receive the credit for its executions in NYSE-listed securities. NASDAQ believes that the proposed credit is not unfairly discriminatory because it is available to all members that choose to improve market quality in NYSE-listed securities on NASDAQ and the Exchange believes this incentive will increase liquidity in Tape A securities, whereas the Exchange does not believe that such an incentive is needed in Tapes B and C securities at this juncture. NASDAQ must balance its desire to provide certain incentives with the costs the Exchange incurs in providing such incentives, which ultimately affect the ability to sustain them. As a consequence, NASDAQ must choose carefully the credits it provides, so that it promotes activity it deems most important while foregoing offering other credits, which may also improve market quality yet prove too costly.

Lastly, NASDAQ believes that the changes to the fees assessed for participation the Opening and Closing Crosses are consistent with an equitable allocation of a reasonable fee and not unfairly discriminatory. NASDAQ believes that the fees are reasonable because supporting the crosses requires capital investment to maintain a system that facilitates an orderly auction process, and the proposed increases are modest and designed to offset the costs the Exchange incurs in operating the crosses. Moreover, the proposed fees are equitably allocated because they apply a fee on all members that benefit from participation in the Opening and Closing Crosses, and are based on the type of order entered and contribution to market quality. Similarly, the proposed fees are not unfairly discriminatory because they are based on the type of order executed in the crosses and the benefit to market quality that such orders provide. Specifically, NASDAQ believes that the proposal to increase the default charges assessed for executions in the crosses is reasonable, equitably allocated and not unfairly discriminatory because the increased fees are identical in amount and apply to all members that elect to participate in the crosses and receive an execution. Moreover, NASDAQ does not believe that the increased fees will negatively impact participation in the crosses. NASDAQ believes that the proposed increase in fees assessed for MOC and LOC orders executed in the Closing Cross under Tiers A and F is reasonable, equitably allocated and not unfairly discriminatory because in adopting the tiered fees, the Exchange sets the fees to reasonably cover the costs and investments required to operate the Closing Cross. As is the case with all tiered fees, members are able to lower their fees by transacting more volume during the Closing Cross. NASDAQ believes that the proposed increase in the fee assessed for Market-on-Open, Limit-on-Open, Good-till-Cancelled, and Immediate-or-Cancel orders executed in the Opening Cross is reasonable, equitably allocated and not unfairly discriminatory because, like the other increases to the fees assessed members for participation in the crosses, the proposed increase is modest and applies to all members participating in the Opening Cross that enters, and receives execution of, the order types listed by the rule. Like the other proposed fee increases relating to the crosses, this increase will help offset the costs associated with operating the Opening Cross.

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.[10] 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, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees and credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, although the change to the QMM program may limit the benefits of the program in non-NASDAQ-listed securities, the incentive program in question remains in place and is itself reflective of the need for exchanges to offer significant financial incentives to attract order flow. The changes to routing fees and credits do not impose a burden on competition because NASDAQ's routing services are optional and are the subject of competition from other exchanges and broker-dealers that offer routing services, as well as the ability of members to develop their own routing capabilities. The new and increased fees for execution in the NASDAQ crosses are reflective of a need to support and improve NASDAQ systems, which in turn benefit market quality and ultimately, competition. In sum, if the changes proposed herein are unattractive to market participants, it is likely that NASDAQ will lose market share as a result. 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.

[10] 15 U.S.C. 78f(b)(8).

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 change has become effective pursuant to Section 19(b)(3)(A) of the Act,[11] and paragraph (f)[12] of Rule 19b-4, thereunder. 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-2014-078 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2014-078. This file number should be included on the subject line if e-mail is used.

11 15 U.S.C. 78s(b)(3)(A).

12 17 CFR 240.19b-4(f)

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-2014-078, 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.[13]

Kevin M. O'Neill
Deputy Secretary

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[13] 17 CFR 200.30-3(a)(12).