

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77609; File No. SR-NASDAQ-2016-054)

April 13, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Nasdaq Rule 7018(a)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 12, 2016, The NASDAQ Stock Market LLC (“Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange’s transaction fees at Rule 7018(a) to add a new credit tier available to a member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaq.cchwallstreet.com>, 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 Exchange 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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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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.

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's transaction fees at Rule 7018(a) to add a new credit tier available to a member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity. The new credit tier will be available for transactions in securities of all three Tapes<sup>3</sup> and accordingly the new credit tier is being added to Rules 7018(a)(1), (2), and (3), which provide the fees and credits for execution and routing of orders in Nasdaq-Listed securities, New York Stock Exchange ("NYSE")-listed securities, and securities not listed on Nasdaq or NYSE, respectively.

The Exchange is proposing to provide a \$0.0030 per share executed credit to a member that has shares of liquidity provided in all securities during the month representing more than 0.20% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs. The member must also qualify for the additional \$0.05 per contract rebate under Note c(3) of Nasdaq Options Market ("NOM") Rules Chapter XV Section 2(1).<sup>4</sup> The criteria to receive the additional \$0.05 per contract rebate under NOM Chapter XV Section 2(1) Note c(3) requires a NOM Participant to (i) add Customer, Professional, Firm, Non-NOM Market Maker

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<sup>3</sup> Tape C securities are those that are listed on the Exchange, Tape A securities are those that are listed on NYSE, and Tape B securities are those that are listed on exchanges other than Nasdaq or NYSE.

<sup>4</sup> The Exchange notes that rebate and criteria required to receive the rebate under NOM Chapter XV Section 2(1) Note c(3) is being amended consistent with the description herein effective as of the date of this proposed rule change to Rule 7018(a).

and/or Broker-Dealer<sup>5</sup> liquidity in Penny Pilot Options and/or Non- Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV per day in a month; (ii) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options above 0.15% of total industry customer equity and ETF option ADV contracts per day in a month; and (iii) execute greater than 0.04% of Consolidated Volume via Market-on-Close<sup>6</sup> and Limit-on-Close<sup>7</sup> (“MOC/LOC”) volume within the NASDAQ Stock

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<sup>5</sup> NOM Chapter XV provides the following defined terms:

The term “Customer” or (“C”) applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Chapter I, Section 1(a)(48)).

The term “NOM Market Maker” or (“M”) is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

The term “Non-NOM Market Maker” or (“O”) is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

The term “Firm” or (“F”) applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

The term “Professional” or (“P”) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

The term “Broker-Dealer” or (“B”) applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

<sup>6</sup> A “Market On Close Order” is an Order Type entered without a price that may be executed only during the Nasdaq Closing Cross. Subject to the qualifications provided below, MOC Orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:50 p.m. ET. Between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET, an MOC Order can be cancelled and/or modified only if the Participant requests that Nasdaq correct a legitimate error in the Order (e.g., Side, Size, Symbol, or Price, or

Market Closing Cross<sup>8</sup> within a month. Thus, to qualify under the new proposed credit tiers under Rule 7018(a), an Exchange member must also be a NOM Participant and meet the NOM rebate criteria described above, in addition to the more than 0.20% of Consolidated Volume requirement of the proposed credit tiers.

Under Rule 7018(a), the Exchange currently offers credits based on both Consolidated Volume as well as participation on NOM. For example, the Exchange provides a \$0.00295 per share executed credit under Rules 7018(a)(1) – (3) if a member adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 1.15% or more of total industry ADV in the customer clearing range for Equity and ETF option contracts per day in a month on NOM. Other credits under Rules 7018(a)(1) – (3) do not require participation on NOM. For example, the Exchange provides a \$0.0030 per share executed credit under Rules 7018(a)(1) – (3) if a member has shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent [sic] more than 0.75% of Consolidated Volume during the month and member provides a daily average of at least 5 Million shares of non-displayed liquidity.

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duplication of an Order). MOC Orders cannot be cancelled or modified at or after 3:55 p.m. ET for any reason. An MOC Order shall execute only at the price determined by the Nasdaq Closing Cross. See Rule 4702(b)(11).

<sup>7</sup> A “Limit On Close Order” is an Order Type entered with a price that may be executed only in the Nasdaq Closing Cross, and only if the price determined by the Nasdaq Closing Cross is equal to or better than the price at which the LOC Order was entered. Subject to the qualifications provided below, LOC Orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:50 p.m. ET. Between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET, an LOC Order can be cancelled but not modified, and only if the Participant requests that Nasdaq correct a legitimate error in the Order (e.g., Side, Size, Symbol, or Price, or duplication of an Order). See Rule 4702(b)(12).

<sup>8</sup> See Rule 4754.

As noted above, the Exchange is also requiring a member to have MOC/LOC order volume in excess of 0.04% of Consolidated Volume under the new credit tier, thereby requiring a member to provide a significant level of MOC/LOC liquidity in the closing cross, which benefits all market participants. The Exchange does not currently have a credit tier under Rules 7018(a)(1) – (3) provided for displayed quotes/orders that requires a member to have a certain level of MOC/LOC order volume in the closing cross; however, the Exchange does currently provide a credit based on participation in the opening and closing crosses. Specifically, under Rules 7018(a)(1) – (3), the Exchange provides a \$0.0028 per share executed credit for displayed quotes/orders if a member has shares of liquidity provided in the Opening and Closing Crosses, excluding MOC, LOC, Market-on- Open, Limit-on-Open, Good-til-Cancelled, and Immediate-or-Cancel orders, through one or more of its Nasdaq Market Center MPIDs that represent [sic] more than 0.01% of Consolidated Volume during the month. The new MOC/LOC requirement of the proposed credit tier will allow a member to qualify based, in part, on participation in the closing cross in MOC and LOC orders.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</sup> 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 the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that the proposed \$0.0030 per share executed credit is reasonable because it is consistent with other credits that the Exchange provides to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity. As a general principle, the Exchange chooses to offer credits to members in return for market improving behavior.

Under Rule 7018(a), the various credits the Exchange provides for displayed quotes/orders require members to significantly contribute to market quality by providing certain levels of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs, and volume on NOM. The proposed credit will be provided to members that not only contribute to the Exchange by providing more than 0.20% of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs during the month, including MOC/LOC orders representing 0.04% of Consolidated Volume, but members must also provide significant levels of liquidity in both Penny Pilot and Non-Penny Pilot Options on NOM.

The Exchange notes that the proposed credit is consistent with other credits that it provides for displayed quotes/orders under the rule, which range from \$0.0015 per share executed to \$0.00305 per share executed and which apply progressively more stringent requirements in return for higher per share executed credits. Accordingly, the \$0.0030 per share executed credit is reasonable.

The proposed \$0.0030 per share executed credit is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same credit to all similarly situated members. Thus, if a member meets the requirements, it will receive the credit unless it qualifies for a higher credit. Moreover, as discussed above, some credit tiers require participation on

NOM while others do not. As such, members will continue to have opportunities to qualify for similar credits based on market participation not tied to NOM.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange 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, the Exchange 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. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed new credit provided to a member for execution of securities of each of the three Tapes do [sic] not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The proposed changes are designed to reward market-improving behavior by providing a new credit tier based on various measures of such behavior, which may encourage other market venues to provide similar credits to improve their market quality. Thus, the Exchange does not believe that the proposed changes will impose any burden on competition, but may rather promote competition.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange 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

No written comments were either solicited or 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.<sup>11</sup>

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).



- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2016-054 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-2016-054. 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, 100 F Street, NE, Washington, DC 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 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-2016-054, 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.<sup>12</sup>

Robert W. Errett  
Deputy Secretary

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<sup>12</sup> 17 CFR 200.30-3(a)(12).