SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77662; File No. SR-NASDAQ-2016-051)

April 20, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Nasdaq Rule 7014

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 April 4, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 changes to amend Nasdaq Rule 7014 to remove the Investor Support Program ("ISP"), to add the Small Cap Incentive Program ("SCIP"), and to amend both the Qualified Market Maker ("QMM") Program and the National Best Bid or Offer ("NBBO") Program.

The changes are being filed for immediate effectiveness and will become operative April 1, 2016.

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.

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

2 17 C.F.R. 240.19b-4.

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 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

The purpose of the proposed rule change is to amend Nasdaq Rule 7014 by removing the ISP, adding the SCIP, as well as amending both the QMM Program and the NBBO Program.

ISP

The Exchange proposes to eliminate the ISP from Nasdaq Rule 7014(a). The purpose of the ISP was to enable Nasdaq members to earn a monthly ISP credit for providing additional liquidity to Nasdaq and increasing the Nasdaq-traded volume of what are generally considered to be retail and institutional investor orders in exchange-traded securities ("targeted liquidity"). However, the Exchange has determined that the ISP no longer serves its intended purpose and that members are availing themselves of other programs. Specifically, changes to the QMM Program have in many circumstances made the ISP rebates obsolete.

The Exchange also proposes to amend Nasdaq Rule 7014 to remove ISP references throughout the rule.

SCIP

The Exchange proposes to add the SCIP as Nasdaq Rule 7014(a). The SCIP will be for Nasdaq market markers ("Nasdaq Market Makers")[3] registered in Nasdaq-listed companies with a market capitalization ("cap") of less than $100 million. The Exchange will update the Nasdaq-listed company symbols list[4] every six months via an Equity Trader Alert. The initial list is being created using data culled from the end of January 2016. However, the Exchange may remove symbols for companies that are delisted, halted for an extended period of time or for other listing-related matters at any time.

Nasdaq Market Makers registered in a SCIP symbol will receive an additional displayed liquidity rebate of $0.0005 per share executed for executions at or above $1.00 ("SCIP Rebate") if their percent of time at the NBBO is above 50% for the month ("NBBO Test"). The SCIP Rebate will be in addition to all other applicable displayed rebates.

For shares executed below $1.00, Nasdaq Market Makers will be subject to the following rates: (i) the rebate to add liquidity will be 0.10% (10 basis points) of the total dollar volume; and (ii) the fee to remove liquidity will be 0.25% (25 basis points) of the total dollar volume.

There will be no fee for quotes and orders executed in the Nasdaq Opening or Closing Cross (collectively, the "Nasdaq Crosses"), or any other cross (e.g., trading halt, limit up-limit down) for Nasdaq Market Makers that meet the NBBO Test in SCIP symbols. Market-on-close and limit-on-close orders executed in the Nasdaq Closing Cross and market-on-open, limit-on-open, good-till-cancelled, and immediate-or-cancel orders executed in the Nasdaq Opening Cross are not eligible for the SCIP Rebate. These orders are considered "passive" orders in the Nasdaq Crosses or orders that are swept into the Nasdaq Crosses. All other orders are orders specifically

3 See Nasdaq Rule 4612.

4 See http://www.nasdaqtrader.com/Trader.aspx?id=SCIPPilot.

designated to become active or execute in the cross and will receive the SCIP Rebate if they otherwise so qualify.

Impact of SCIP on the Tick Pilot

The SCIP will take effect on April 1, just prior to the April 4 effectiveness of the data collection phase of the Tick Pilot.[5] Nasdaq believes that the SCIP is fully consistent with both the effective operation and the important policy objectives of the Tick Pilot. Nasdaq actively supports the SEC's goal of studying the impact of nickel trading increments on the trading of small capitalization securities, including those that will benefit from the SCIP proposed here.

The SCIP will not disrupt researchers' ability to study the impact of nickel trading on small capitalization stocks. There are well-established statistical techniques that allow researchers to control for changes in conditions unrelated to the variable of interest, i.e., changes in trading conditions unrelated to nickel trading increments. Statisticians use control variables and modeling techniques to control particularities and idiosyncrasies that are inherent to all observed data that stem from conditions exogenous to the variable of interest (nickel increments).

Apart from the SCIP, researchers will be required to control for macro events such as changes in interest rates, the imposition of a financial transaction tax, or a decrease in the taxation rate of capital gains. Researchers will also use these techniques to contend with changes in market conditions like high volatility and increased trading volumes driven by unpredictable isolated events or continuing conditions. Changes in Exchange pricing programs are no different

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5 On May 6, 2015, the Commission issued an order approving a Plan to Implement a Tick Size Pilot Program ("Plan"), as modified by the Commission, to be implemented within one year after the date of publication of the order for a two-year Pilot Period (the "Tick Pilot"). See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015). The start of the data collection is determined by the terms of the Plan.

from the changed conditions that economists normally expect to encounter in any study period, and future Tick Pilot researchers can deal with them effectively.

In fact, the Tick Pilot study might be negatively impacted by attempts to hold trading conditions constant throughout the data collection phase. If the goal of the study is to understand the effect of nickel increments, it is important that the pilot occur under real world conditions. Holding prices constant would actually create artificial conditions rather than real world ones. Researchers will be required to take into account a wide variety of changes, price changes are no different. Conversely, maintaining artificial conditions throughout the study period would skew later research results, rendering them inapposite for application to the real world conditions that will be restored after the study period ends. Finally, Nasdaq notes that the impact of the SCIP should also be negligible because it is going in before the start of the Tick Pilot data collection period, so it will have no statistical impact.

QMM Program

Currently, under the QMM Program for a member to be designated as a QMM it must quote at the NBBO at least 25% of the time during regular market hours in an average of at least 1,000 securities per day during the month on a single market participant identifier ("MPID"). The Exchange proposes to modify this requirement to allow for the aggregation of all of a member's MPIDs to determine the number of securities for purposes of the 25% NBBO requirement.

Specifically, a firm currently must on a single MPID quote 1,000 distinct securities. The Exchange is proposing to allow each MPID a firm uses to count towards the 1,000 securities requirement. For example, if a member has four MPIDs and each MPID quotes in a single security at the NBBO for 30% of the time during regular market hours this will count as four of the required 1,000 securities. However, if a member has two MPIDs and one MPID quotes in a security at the NBBO for 15% of the time during regular market hours and the other MPID quotes in the same security for 20% of the time during regular market hours, that member would not be considered to have met the 25% NBBO requirement and neither security would count towards the 1,000 securities requirement.[6]

NBBO Program

The Exchange proposes to increase the NBBO Program credit in Nasdaq Rule 7014(g) from the $0.0002 to $0.0004 per share executed. This credit applies to New York Stock Exchange LLC ("NYSE") - listed securities and in securities listed on exchanges other than Nasdaq and NYSE.

Definitions and Certifications

The Exchange also proposes to remove most of the definitions included under Nasdaq Rule 7014(h) and the Nasdaq Rule 7014(i) certification[7] because they are no longer applicable.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[9] 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 its facilities which the Exchange operates or

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6 Aggregation of MPIDs is used frequently by Nasdaq and other exchanges to assess whether a firm has, in its entirety, satisfied a volume-based threshold. See Nasdaq Rule 7018(a) and (d)(2); see also Preface to Phlx Pricing Schedule (Common Ownership Aggregation).

7 Specifically, Nasdaq proposes to delete the definitions in Nasdaq Rule 7014(h)(1) – (4), 7014(h)(6), and 7014(h)(8), as well as the certification in Nasdaq Rule 7014(i).

8 15 U.S.C. 78f(b).

9 15 U.S.C. 78f(b)(4) and (5).

controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[10]

Likewise, in NetCoalition v. Securities and Exchange Commission[11] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[12] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."[13]

Further, "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for

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10 Securities Exchange Act Release No. 34-51808 (June 9, 2005) ("Regulation NMS Adopting Release").

11 NetCoalition v. SEC 615 F.3d 525 (D.C. Cir. 2010).

12 Id. at 534-535.

13 Id. at 537.

granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[14]

ISP

The Exchange believes that the proposed rule change to eliminate the ISP is reasonable because Nasdaq has determined that this program, which was intended to enable Nasdaq members to earn a monthly fee credit for providing targeted liquidity, no longer serves its intended purpose and that members can instead avail themselves of other potentially higher rebates such as those available in connection with the QMM Program.

The Exchange also believes that the elimination of the ISP is equitable and not unfairly discriminatory because its elimination will apply uniformly and it will no longer be available for any market participants. Furthermore, no members currently receive credits under the ISP so no members will be impacted by its elimination.

Also, the Exchange believes that eliminating references to the ISP throughout Nasdaq Rule 7014 is reasonable because it will lessen market participant confusion regarding the elimination of the ISP.

SCIP

The SCIP is intended to encourage Nasdaq Market Makers to improve market quality for Nasdaq-listed companies with market caps of under $100 million. Nasdaq believes that this program will benefit market participants and the market quality of the individual securities in the program.

The proposed rule change is to add the SCIP as Nasdaq Rule 7014(a). Specifically, the SCIP will provide for an additional $0.0005 per share executed credit if a Nasdaq Market Maker

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[14] Id. at 539 (quoting ArcaBook Order, 73 FR at 74782-74783).

satisfies the NBBO Test (as described previously). The SCIP Rebate will be in addition to all other applicable displayed rebates. Nasdaq believes that this credit is reasonable because the SCIP Rebate is material enough to incentivize market maker behavior to improve the markets in these securities. The Exchange also believes that the proposed credit is reasonable because it will serve as an effective incentive to Nasdaq Market Makers to provide more liquidity and align the program with improving the NBBO. Increasing such liquidity is reflective of the Exchange's desire to improve liquidity in Nasdaq small cap stocks.

The Exchange believes that the above proposed rule change is equitable and not unfairly discriminatory because the SCIP will apply uniformly to all similarly situated members. Nasdaq Market Members that elect to satisfy the NBBO Test will receive the SCIP Rebate. This credit is available to all members that are registered market makers on an equal basis and provides an additional credit for activity that improves the Exchange's market quality in small cap Nasdaq-listed symbols through increased activity at the NBBO. In this regard, the SCIP encourages higher levels of liquidity provision into the price discovery process and is consistent with the overall goals of enhancing market quality.

The SCIP also provides for a credit to Nasdaq Market Makers that add liquidity of 0.10% of the total dollar value for shares executed below $1.00, as well as a fee for Nasdaq Market Makers that add liquidity of 0.25% of the total dollar value for shares executed below $1.00. The Exchange believes that this credit and fee are reasonable because taken as a whole they should incentivize market maker behavior to improve the markets in these securities.

The Exchange believes that the proposed rule change above is equitable and not unfairly discriminatory because the Exchange will apply the same credit and fee uniformly and for all similarly situated members. Specifically, the above credit and fee are applicable to all Nasdaq

Market Makers on an equal basis and the Exchange believes that, taken together, will overall encourage activity that improves the Exchange's market quality in small cap Nasdaq-listed symbols through increased activity at the NBBO. The credit is available to all members on an equal basis and provides an additional credit for activity that improves the Exchange's market quality through increased activity at the NBBO, while the fee will be applied uniformly for all Nasdaq Market Makers that elect to remove liquidity in shares executed under $1.00.

Additionally, Nasdaq believes it is reasonable that there will be no fee for all quotes and orders executed in the Nasdaq Crosses, or any other cross for Nasdaq Market Makers that meet the NBBO Test in SCIP symbols, because it is reflective of the Exchange's desire to provide further incentive to members to quote and execute orders in crosses that meet the NBBO Test in SCIP symbols. This is also reflective of the Exchange's goal to improve market quality through the use of reduced fees, as well as of the Exchange's efforts to incentivize market participants to improve market quality.

The Exchange believes that the above proposed rule change, as described above, is equitable and not unfairly discriminatory because the Exchange will uniformly assess no fee across all similarly situated members.

Additionally, Nasdaq believes that it is reasonable that all quotes and orders exclude market-on-close and limit-on-close orders executed in the Nasdaq Closing Cross and market-on-open, limit-on-open, good-till-cancelled, and immediate-or-cancel orders executed in the Nasdaq Opening Cross because these orders are considered "passive" orders in the Nasdaq Crosses (i.e., orders that were swept into the Nasdaq Crosses). All other orders are orders specifically designated to become active or execute in the cross.

The Exchange also believes that this proposed rule change is equitable and not unfairly discriminatory because the exclusion of these quotes and passive orders from the Nasdaq Opening Cross and the Nasdaq Closing Cross, as specified above, will be applied uniformly across all similarly situated members.

The overall effect of the SCIP will be to encourage higher levels of liquidity provision into the price discovery process and is consistent with the overall goals of enhancing market quality.

QMM Program

Nasdaq believes that the proposed rule change to modify the QMM Program requirement to allow for the aggregation of all of a member's MPIDs to determine the number of securities for purposes of the 25% NBBO requirement is reasonable because it may increase the number of potential members than can qualify under the program. This, in turn, will improve Nasdaq market quality by rewarding members that provide significant market-improving order flow with a rebate.

The Exchange also believes the proposed rule change is equitable and not unfairly discriminatory because the easier to achieve amended qualification criteria for the QMM Program will apply uniformly to all similarly situated members and members that meet the qualification criteria will be eligible for the QMM rebate.

NBBO Program

The Exchange also believes that the proposed rule change to increase the NBBO Program credit in Nasdaq Rule 7014(g) from the $0.0002 to $0.0004 per share executed and which applies to NYSE - listed securities and in securities listed on exchanges other than Nasdaq and NYSE is reasonable because the increase to the credit although modest, is likely to incentivize more NBBO setting on Nasdaq and thus improve price formation on the Exchange.

The Exchange also believes the proposed rule change is equitable and not unfairly discriminatory because it is available to all members that qualify for this NBBO Program rebate.

Definitions and Certifications

The Exchange also believes that the proposed rule change to remove most of the definitions included under Nasdaq Rule 7014(h) and the Nasdaq Rule 7014(i) certification[15] are reasonable since they are no longer applicable. Keeping them in the rule book would only serve to potentially increase confusion for market participants.

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

Nasdaq does not believe that the proposed rule change will result in a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[16] 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 credit opportunities available at other venues to be more favorable.

In such an environment, the Exchange 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, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

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15 See note 7 above.

16 15 U.S.C. 78f(b)(8).

In this instance, the amendments to Nasdaq Rule 7014, which include the elimination of the ISP, the addition of the SCIP, as well as amendments to both the QMM Program and the NBBO Program, do not impose a burden on competition because the Exchange's execution services are voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The Exchange believes that the competition among exchanges and other venues will help to drive price formation and overall execution quality higher for investors.

Rather than placing a burden on competition, the proposed changes to the programs included under Nasdaq Rule 7014, including to certain of the fees and rebates contained therein, are reflective of the fierce competition among market venues to attract order flow to the benefit of all market participants. Overall, the proposed changes to the incentive programs under Rule 7014 are designed to improve their effectiveness in achieving their stated purposes. If any of the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result.

In sum, if the rule change proposed herein is 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 change 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 change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[17]. At any time within 60 days of the filing of the proposed rule change, the Commission

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

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-2016-051 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2016-051. 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-2016-051, 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.[18]

Robert W. Errett
Deputy Secretary

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[18] 17 C.F.R. 200.30-3(a)(12).