

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82905; File No. SR-NASDAQ-2018-021)

March 20, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Transaction Fees at Rule 7018 to Charge No Transaction Fee for Execution of Midpoint Extended Life Orders

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 March 9, 2018, The Nasdaq Stock Market LLC (“Nasdaq” or “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 Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange’s transaction fees at Rule 7018 to charge no transaction fee for execution of Midpoint Extended Life Orders. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on March 12, 2018.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 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, 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.

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 to charge no transaction fee for execution of Midpoint Extended Life Orders. On March 7, 2018, the Commission approved the Exchange's proposal to adopt a new Order Type, the Midpoint Extended Life Order.³ The Midpoint Extended Life Order is an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the NBBO and that will not be eligible to execute until the Holding Period of one half of a second has passed after acceptance of the Order by the System. Once a Midpoint Extended Life Order becomes eligible to execute by existing unchanged for the Holding Period, the Order may only execute against other eligible Midpoint Extended Life Orders. The Exchange will begin offer Midpoint Extended Life Orders on March 12, 2018.⁴

Under Rule 7018, the Exchange assesses fees for Orders entered into the Nasdaq System. The fees cover Orders in all three tapes and in securities both priced \$1 and above (Rule

³ See Securities Exchange Act Release No. 82825 (March 7, 2018) (SR-NASDAQ-2017-074) (pending publication in the Federal Register).

⁴ See <http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2018-20>.

7018(a)), and below \$1 (Rule 7018(b)). The Exchange is proposing initially to not charge a transaction fee for execution of Midpoint Extended Life Orders. Allowing transactions to occur at no cost will promote use of the Midpoint Extended Life Order, which will help bring liquidity in Midpoint Extended Life Orders to the Exchange and promote market quality. The Exchange plans to adopt fees for Midpoint Extended Life Orders in the future and will do so through the SEC rulemaking process.⁵ Accordingly, the Exchange is proposing to amend Rule 7018(a)(1) – (3) to note that members executing a Midpoint Extended Life Order will be assessed a charge of \$0.0000 per share executed. The Exchange is amending Rule 7018(b) to note that members executing a Midpoint Extended Life Order will be assessed a charge of 0.0% of the total transaction cost.⁶ The Exchange is also adding rule text to an existing fee under Rule 7018(b) to make it clear that Midpoint Extended Life Orders are excluded from the fee.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that not charging a fee for executions in Midpoint Extended Life Orders is reasonable because the Exchange does not currently charge for transactions in other

⁵ Id.

⁶ Unlike fees for transactions in securities price at \$1 or greater, which are assessed on a per share executed basis, fees for transactions in securities less than \$1 are assessed fees based on a percentage of the total transaction cost.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

Orders under Rule 7018. Specifically, the exchange does not charge a fee for transactions in Orders with a RTFY routing Order Attribute.⁹ Such an Order must meet the definition of Designated Retail Order, which requires, among other things, that the Order not originate from a trading algorithm or any other computerized methodology.¹⁰ Thus, allowing transactions of the RTFY Order Attribute at no cost is designed to promote the Exchange as a venue for retail investor Orders. Likewise, the Exchange is proposing to allow transactions in Midpoint Extended Life Orders at no cost to promote use of such Orders and consequently the quality of the market in Midpoint Extended Life Orders. As discussed extensively in its proposal,¹¹ the Exchange believes that the Midpoint Extended Life Order is consistent with the Act because it is emblematic of a core function of a national securities exchange, namely matching buyers and sellers of securities on a transparent and well-regulated market, and helping these buyers and sellers come together to receive the best execution possible. The Exchange achieves this by permitting Midpoint Extended Life Orders to execute solely against other Midpoint Extended Life Orders at the midpoint of the NBBO in return for providing market-improving behavior in the form of a longer-lived midpoint order. Accordingly, the Exchange believes that allowing transactions of Midpoint Extended Life Orders at no cost is reasonable.

⁹ RTFY is a routing option available for an order that qualifies as a Designated Retail Order under which orders check the System for available shares only if so instructed by the entering firm and are thereafter routed to destinations on the System routing table. If shares remain unexecuted after routing, they are posted to the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. RTFY is designed to allow orders to participate in the opening, reopening and closing process of the primary listing market for a security. See Rule 4758(a)(1)(A)(v)b.

¹⁰ See Rule 7018.

¹¹ See note 3, supra.

The Exchange also believes that not charging a fee for executions in Midpoint Extended Life Order is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated members. The Midpoint Extended Life Order may be used by any market participant that is willing to satisfy the requirements of the Order Type and therefore qualify for the proposed zero fee tiers. Moreover, members not interested in using Midpoint Extended Life Orders will continue to have the ability to enter midpoint Orders in the Nasdaq System, which have both fees and credits associated with their execution.¹² As noted above, the Exchange intends to assess fees for transactions in Midpoint Extended Life Orders in the near future,¹³ once it has had time to assess the nature of the market in Midpoint Extended Life Orders to determine the appropriate fee. Accordingly, the proposed fee does not discriminate in any way.

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

¹² Based on whether the member is removing or adding liquidity. See Rule 7018(a) (b).

¹³ Any fee change will be made by the rule change filing process with the Commission.

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 proposal to assess no fee for executions of Midpoint Extended Life Orders will not place any burden on competition, but rather will help launch the proposed new Order Type by making it attractive to members that seek to execute at the midpoint with like-minded members. To the extent the proposal is successful in promoting liquidity in Midpoint Extended Life Orders, other markets may be incented to provide a competitive response by innovating like the Exchange has done in this instance. To the extent the proposal is not successful in promoting liquidity in Midpoint Extended Life Orders, it would have no meaningful impact on competition as few transactions in Midpoint Extended Life Orders would occur. In sum, if the proposal to assess no fees for executions of Midpoint Extended Life Orders is unattractive to market participants, it is likely that the Exchange will not gain any market share as a result and therefore no competitive impact. 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.¹⁴

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

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2018-021 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-2018-021. 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 office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2018-021, 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.¹⁵

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¹⁵ 17 CFR 200.30-3(a)(12).