

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64003; File No. SR-NASDAQ-2011-028)

March 2, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Fees for Members Using the NASDAQ Market Center

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 February 22, 2011, The NASDAQ Stock Market LLC (the “Exchange” or “NASDAQ”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. 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 proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on March 1, 2011. The text of the proposed rule change is available at <http://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 proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. NASDAQ 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is amending Rule 7018 to make modifications to its pricing schedule for execution of orders through the NASDAQ Market Center. NASDAQ offers a credit to liquidity providers, with the size of the credit varying based on overall monthly volumes of liquidity provision. Currently, the highest credit is \$0.00295 per share executed for displayed liquidity and \$0.0015 per share executed for non-displayed liquidity. The availability of this credit level is based on volume of liquidity provision during a month, with the required volume adjusted each month in accordance with a sliding scale that takes account of overall market volumes during the month. Specifically, a member qualifies for the highest credit if it has an average daily volume through the NASDAQ Market Center in all securities during the month of: (i) more than 95 million shares of liquidity provided, if average total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities is more than 10 billion shares per day during the month; (ii) more than 85 million shares of liquidity provided, if average total consolidated volume is between 9,000,000,001 and 10 billion shares per day during the month; (iii) more than 75 million shares of liquidity provided, if average total consolidated volume is between 8,000,000,001 and 9 billion shares per day during the month; and (iv) more than 65 million shares of liquidity provided, if average total consolidated volume is 8 billion or fewer shares per day during the month.

Effective March 1, 2011, NASDAQ will modify the conditions for qualifying for this rebate tier by stipulating that a member must achieve the requisite volume levels through a single

market participant identifier (“MPIDs”).³ An MPID is a four-letter code used by a member to categorize its trading activity for a specific purpose. All members have at least one MPID, but a member may request the assignment of additional MPIDs. For example, a member may conduct market making activity through one MPID, while using a second MPID for trading on behalf of institutional customers. In addition, certain members aggregate the trading activity of several firms under their own membership rubric, for the purposes of obtaining more favorable pricing, but will generally acquire a separate MPID for each firm that they aggregate, so as to distinguish the trading activity of one firm from another. NASDAQ has concluded that its most favorable rebate tier should be paid to those firms that do the most to enhance NASDAQ’s market quality through unified management of a high volume of quotes/orders. NASDAQ also wishes to ensure that its fee schedule does not provide excessive encouragement to members to aggregate the activity of several firms (some of whom may not themselves be members of the exchange) for the sole purpose of earning a higher rebate. Thus, a member or a sponsored non-member that is not able to achieve the requisite level of liquidity provision will not be able to meet the threshold by coordinating and consolidating with the trading activity of other firms using multiple MPIDs.

NASDAQ notes, however, that the impact of the change on firms that currently qualify for the most favorable rebate rate but that are not able to achieve the required volume thresholds through a single MPID is mitigated by the fact that qualification for other rebate tiers may continue to be achieved through one or more MPIDs. Notably, members that provide a daily average of more than 35 million shares of liquidity during the month through one or more MPIDs are eligible to receive a rebate of \$0.0029 per share executed for displayed liquidity and \$0.0015 per share executed for non-displayed liquidity (versus the top rebate of \$0.00295 per

³ A member achieving the requisite level through one MPID would be eligible to receive the higher credit with respect to trading activity through its other MPIDs as well.

share executed for displayed liquidity and \$0.0015 per share executed for non-displayed liquidity).

Separately, NASDAQ currently offers a rebate of \$0.0029 per share executed for displayed liquidity and \$0.0015 per share executed for non-displayed in circumstances where a market participant achieves certain specified levels of activity in both the NASDAQ Market Center and the NASDAQ Options Market. Currently, the required levels of monthly activity are an average daily volume of more than 25 million shares of liquidity provided through the NASDAQ Market Center and an average daily volume of more than 200,000 options contracts accessed through the NASDAQ Options Market. NASDAQ has determined that broadening the availability of this tier to encourage and reward active participation in both of its markets has the potential to enhance market quality and will recognize the increase [sic] prevalence of members that are active on both markets. Accordingly, NASDAQ is reducing the required level of activity on the NASDAQ Market Center to an average daily volume of more than 10 million shares of liquidity provided, while setting the required volume of activity on the NASDAQ Options Market at more than 130,000 options contracts accessed or provided through the NASDAQ Options Market.

NASDAQ is also making several non-substantive amendments to Rule 7018 to clarify where required volume levels may continue to be achieved through one or more MPIDs, and is also making several minor formatting changes to the rule text.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Section 6(b)(4) of the Act,⁵ in particular, in that it

⁴ 15 U.S.C. 78f.

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. First, all similarly situated members will be subject to the same fee structure, and access to NASDAQ is offered on fair and non-discriminatory terms. Moreover, NASDAQ believes that it is reasonable and equitable to stipulate that members qualifying for NASDAQ's most favorable liquidity rebate tier must achieve requisite volume thresholds through a single MPID, thereby enhancing market quality through unified management of the member's quotes and orders and discouraging aggregation arrangements that exist solely for pricing reasons. Specifically, liquidity provider rebate tiers exist to enhance market quality by encouraging participants to post large numbers of quotes/orders on a particular venue and thereby allow the exchange to serve a robust price discovery function and absorb larger volumes of incoming orders at a given price. NASDAQ believes that it is reasonable and equitable to offer its highest rebate tier to firms that provide volume through a single MPID, because NASDAQ believes that such firms are most likely to provide consistent liquidity during periods of market stress and to manage their quotes/orders in a coordinated manner that promotes price discovery and market stability.

NASDAQ further believes that it is less equitable to pay a high rebate to a member that aggregates the activity of multiple smaller firms, since the higher rebate is not being paid with respect to the active quote/order management of a particular market maker or active liquidity provider, but rather simply due to the member's willingness to allow other members and sponsored participants to channel low volumes of quote/order activity through another member. Accordingly, NASDAQ believes that the proposal is not unreasonably discriminatory because it is consistent with the overall goals of enhancing market quality that undergird the liquidity

⁵ 15 U.S.C. 78f(b)(4).

provider rebate. Finally, NASDAQ notes that firms no longer eligible for the highest rebate tier would remain eligible for a rebate tier that is identical with respect to non-displayed liquidity and only \$0.00005 per share executed lower with respect to displayed liquidity.

NASDAQ further 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. In particular, because many other trading venues do not stipulate that volume thresholds must be achieved through a single MPID, market participants that currently receive the highest rebate but that will be unable to do so in the future may readily favor competing venues in an effort to receive more favorable pricing.

With respect to its pricing change for members active on both the NASDAQ Market Center and the NASDAQ Options Market, NASDAQ noted in its prior filing to establish a rebate tier focused on such members that the tier is responsive to the convergence of trading in which members simultaneously trade different asset classes within a single strategy.⁶ Thus, to the extent that a member decreases volume in cash equities while trading higher volumes of options, the tier recognizes that the member nevertheless remains an active member of the NASDAQ Stock Market and should remain eligible for pricing discounts that recognize the overall volume of its activity. NASDAQ also notes that cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other. Accordingly, the tier recognizes that activity in the options markets also supports price discovery and liquidity provision in the NASDAQ Market Center.

After over one year of experience with the existing pricing tier, however, NASDAQ has concluded that the level of the activity required to qualify for the tier was not low enough to

⁶ Securities Exchange Act Release No. 59879 (May 6, 2009), 74 FR 22619 (May 13, 2009) (SR-NASDAQ-2009-041).

provide the benefit to an appropriately wide range of members that are active in both the NASDAQ Market Center and the NASDAQ Options Market. Accordingly, NASDAQ has decided to lower the required thresholds so as to make the associated discount more widely available.

NASDAQ further notes, however, that the tier is one of several means of qualifying for the rebate levels associated with the tier, and that the other means do not require any activity on the NASDAQ Options Market. Accordingly, NASDAQ believes that the tier and the proposed change in required levels of activity are not unreasonably discriminatory.

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. 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.⁷ 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

⁷ 15 U.S.C. 78s(b)(3)(a)(ii).

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-2011-028 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-2011-028. 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 the 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-2011-028 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.⁸

Cathy H. Ahn
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).