

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64050; File No. SR-NASDAQ-2011-034)

March 8, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Enhance the Investor Support Program

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 28, 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 changes to the fee provisions of Rule 7014 (Investor Support Program) to increase the rebate for adding targeted liquidity within the Investor Support Program. The Exchange also proposes to amend a typographical error.

NASDAQ has designated this fee change proposal effective and operative upon filing.

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.

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, 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 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

The Exchange is proposing changes to the fee provisions of Rule 7014 to increase the rebate for adding targeted liquidity within the Investor Support Program. The Exchange also proposes to amend a typographical error.

The Exchange established an Investor Support Program (“ISP”) that enables NASDAQ members to earn a monthly fee 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”).³ The goal of the ISP is to incentivize members to provide such targeted liquidity to the NASDAQ Market

³ For a detailed description of the Investor Support Program, see Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010)(NASDAQ-2010-141)(notice of filing and immediate effectiveness)(the “ISP Filing”). See also Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010)(NASDAQ-2010-153)(notice of filing and immediate effectiveness); 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011)(NASDAQ-2010-154)(notice of filing and immediate effectiveness); and 63891 (February 11, 2011), 76 FR 9384 (February 17, 2011)(NASDAQ-2011-022)(notice of filing and immediate effectiveness).

Center.⁴ The Exchange noted in the ISP Filing that maintaining and increasing the proportion of orders in exchange-listed securities executed on a registered exchange (rather than relying on any of the available off-exchange execution methods) would help raise investors' confidence in the fairness of their transactions and would benefit all investors by deepening NASDAQ's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange now proposes an adjustment to the Investor Support Program, in the form of an increase in the rebate for the ISP for members that exceed the Baseline Participation Ratio⁵ by at least 0.86%. The primary objective in making this adjustment is to further incentivize

⁴ The Commission has recently expressed its concern that a significant percentage of the orders of individual investors are executed at over the counter ("OTC") markets, that is, at off-exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, "Concept Release"). In the Concept Release, the Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. The Commission published the Concept Release to invite public comment on a wide range of market structure issues, including high frequency trading and un-displayed, or "dark," liquidity. See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) ("Schapiro Speech," available on the Commission website)(comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

⁵ The term "Participation Ratio" is defined as: for a given member in a given month, the ratio of (i) the number of shares of liquidity provided in orders entered by the member through any of its Nasdaq ports and executed in the Nasdaq Market Center during such month to (ii) the Consolidated Volume. Rule 7014 (d)(4). The term "Consolidated Volume" is defined as: for a given member in a given month, the consolidated volume of shares of System Securities in executed orders reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during such month. Rule 7014(d)(6).

members to provide targeted liquidity to the Exchange by increasing the rebate for those that bring even larger amounts of liquidity to NASDAQ.

The ISP generally compares a member's Participation Ratio for the current month to the same member's Participation Ratio in August 2010 (known as the "Baseline Participation Ratio"). This ratio is determined by measuring the number of shares in liquidity-providing orders entered by the member (through any NASDAQ port) and executed on NASDAQ and dividing this number by the consolidated (across all trading venues) share volume of System Securities⁶ traded in the given month.⁷ To determine the amount of the ISP credit pursuant to the program, pursuant to sub-section (b), NASDAQ would multiply \$0.0003 or \$0.0004 by the lower of: the number of shares of displayed liquidity provided in orders entered by the member thorough its ISP-designated ports and executed in the NASDAQ Market Center during the given month; or the amount of Added Liquidity⁸ for the given month, which is compared to the member's Baseline Participation Ratio. The Exchange proposes to increase the tiered rebate to a rate of \$0.0005 for members that bring a greater amount of targeted liquidity.

⁶ The term "System Securities" is defined as: all securities listed on NASDAQ and all securities subject to the Consolidated Tape Association Plan and the Consolidated Quotation Plan. Rule 4751(b).

⁷ See Rule 7014(d)(2) and (d)(4).

⁸ The term "Added Liquidity" is defined as: for a given member in a given month, the number of shares calculated by (i) subtracting from such member's Participation Ratio for that month the member's Baseline Participation Ratio, and then (ii) multiplying the resulting difference by the average daily consolidated volume of shares of System Securities in executed orders reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during such month; provided that if the result is a negative number, the Added Liquidity amount shall be deemed zero. Rule 7014(d)(1).

Specifically, the Exchange proposes to clarify subsection (b) to state that, subject to the conditions set forth in subsection (c),⁹ in addition to the current tiered rebate rates of \$0.0003 or \$0.0004, the rebate rate may also be \$0.0005. The Exchange adds proposed sub-section (c)(3) to indicate that the \$0.0005 rebate rate is available to those members that bring in an even greater amount of liquidity by exceeding the Baseline Participation Ratio by at least 0.86%. Thus, to qualify for the \$0.0005 rebate rate, a member would essentially have to bring twice as much targeted liquidity to the Exchange (in the form of Added Liquidity relative to the Baseline Participation Ratio) as the member would need to bring to the Exchange to qualify for the next-lower \$0.0004 rebate rate.¹⁰

The Exchange believes that the increased rebate rate should encourage members to strive to bring even more retail and institutional orders in exchange-traded securities to the Exchange. The Exchange notes that the rebate concept remains the same after this filing: the more added liquidity a member brings to the Exchange, the higher the member's potential rebate rate may be within the parameters of Rule 7014.

⁹ Subsection (c)(1) states that a member shall not be entitled to receive any ISP credit pursuant to (b) for a given month if any of the following applies: (A) the member's ISP Execution Ratio for the month in question is 10 or above; or (B) the average daily number of shares of liquidity provided in orders entered by the member through its ISP-designated ports and executed in the Nasdaq Market Center during the month is below 10 million, provided that in calculating such average, Nasdaq will exclude days when it is open for less than the entire regular trading day.

¹⁰ Subsections (c)(2) and (c)(3) as amended state: (2) A member shall not be entitled to receive an ISP credit pursuant to section (b) of this Rule at the \$0.0004 rate if for a given month the member does not exceed its Baseline Participation Ratio by at least 0.43%. (3) A member shall not be entitled to receive an ISP credit pursuant to section (b) of this Rule at the \$0.0005 rate if for a given month the member does not exceed its Baseline Participation Ratio by at least 0.86%.

The ISP is designed to operate on a monthly cycle, both from the perspective of targeted flow brought to the Exchange and ISP rebates to members that brought such flow. Since its inception,¹¹ the ISP fee program has been, and continues to be, non-discriminatory, reasonable, and effective in attracting targeted liquidity to the NASDAQ Market Center. The primary objective in making the proposed adjustment is to encourage members to bring larger amounts of targeted liquidity to the Exchange by increasing the rebate for such liquidity. The Exchange believes that its proposal is decidedly non-discriminatory because it does not favor or distinguish any group of ISP participants while promoting the clear goal of the ISP.

In terms of housekeeping changes, the Exchange proposes to correct a typographical error in subsection (c)(2) of Rule 7014. On February 2, 2011, the Exchange filed an immediately effective fee proposal regarding the Investor Support Program. By this fee filing, the Exchange stated in subsection (b) of Rule 7014 that, subject to the conditions set forth in section (c) of Rule 7014 the ISP rebate rate may be \$0.0004 (as discussed herein); and stated in sub-section (c)(2) that the additional tiered rebate rate would be available to those members that bring in an even greater amount of liquidity by exceeding the Baseline Participation Ratio by at least 0.43% (the “\$0.0004 filing”).¹²

In the \$0.0004 filing, the Exchange correctly stated, four times in the body of its filing, that the new additional rebate rate was \$0.0004. The Exchange likewise correctly stated in the rule text, as reflected in subsection (b) of Rule 7014, that the additional rebate rate was \$0.0004. However, in the second reference to the additional rebate rate in the rule text at subsection (c)(2)

¹¹ See Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010)(NASDAQ-2010-141) (notice of filing and immediate effectiveness).

¹² See Securities Exchange Act Release No. 63891 (February 11, 2011) (NASDAQ-2011-022) (notice of filing and immediate effectiveness).

of the \$0.0004 filing, the Exchange made a typographical error by adding an extra zero to the rebate rate of \$0.0004 (e.g. \$.00004).

The Exchange believes that it is clear from the \$0.0004 filing that the Exchange intended to add an additional tiered rebate rate of \$0.0004. The Exchange now corrects this typographical error by removing the extraneous zero so that the rebate rate in subsection (c)(2) is reflected as \$0.0004, in conformity with subsection (b) of Rule 7014.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹³ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹⁴ 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 it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

The Investor Support Program encourages members to add targeted liquidity that is executed in the NASDAQ Market Center. The primary objective in making this enhancement to the Investor Support Program is to add an even greater amount of targeted liquidity to the Exchange. The rule change proposal, like the ISP, is “not designed to permit unfair discrimination”¹⁵ but, rather, is intended to promote submission of liquidity-providing orders to NASDAQ, which would benefit all NASDAQ members and all investors. Likewise, the

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

¹⁵ See Section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5).

proposal, like the ISP, is consistent with the Act’s requirement “for the equitable allocation of reasonable dues, fees, and other charges.”¹⁶ As explained in the immediately preceding paragraphs, the proposal enhances the goal of the ISP. Members who choose to significantly increase the volume of ISP-eligible liquidity-providing orders that they submit to NASDAQ would be benefitting all investors, and therefore an additional credit, as contemplated in the proposed enhanced program, is equitable. Finally, NASDAQ notes that the intense competition among several national securities exchanges and numerous OTC venues effectively guarantees that fees and credits for the execution of trades in NMS securities remain equitable and are not unfairly discriminatory.¹⁷

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.

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.¹⁸ 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

¹⁶ See Section 6(b)(4) of the Act, 15 U.S.C. 78f(b)(4).

¹⁷ See, e.g., Concept Release (discusses the various venues where trades are executed).

¹⁸ 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-2011-034 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-2011-034. 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-2011-034 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.¹⁹

Cathy H. Ahn
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).