

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64453; File No. SR-NASDAQ-2011-062)

May 10, 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 April 29, 2011, The NASDAQ Stock Market LLC (“NASDAQ”) filed with the Securities and Exchange Commission (“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 the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ has designated this change to be operative on May 2, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is amending Rule 7018 to make modifications to its pricing schedule for execution of quotes/orders through the NASDAQ Market Center of securities priced at \$1 or more. Under the pricing schedule, NASDAQ offers a credit to liquidity providers, with the size of the credit varying based on a range of parameters specified in the fee schedule. The lowest liquidity provider rebate is \$0.0020 per share executed for displayed quotes/orders and \$0.0010 per share executed for non-displayed quotes/orders. Under the proposed change, NASDAQ will modify the parameters under which members may qualify for higher liquidity provider rebates. In general, the changes will broaden the circumstances under which members may qualify for a higher rebate, although in some circumstances the changes may reduce a particular member's rebate.

First, NASDAQ is simplifying the method of determining whether a member qualifies for its highest rebate tier of \$0.0015 per share executed for non-displayed quotes/orders and \$0.00295 per share executed for displayed quotes/orders. Currently, a member's eligibility for this tier is based on its achieving certain levels of liquidity provision that vary depending on overall trading volumes during the month. Thus, 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. The liquidity must be provided through a single market participant identifier (“MPID”) of the member. Under this approach, depending on the volume during a month, a member may be required to provide liquidity that represents varying percentages of the total consolidated volume in order to achieve the tier. In order to adopt a requirement that is consistent from month to month, NASDAQ is modifying the requirement so that it is directly tied to a member’s percentage of total consolidated volume during the month, with any member providing liquidity through a single MPID that represents more than 0.90% of the total becoming eligible for the rebate tier. NASDAQ believes that this change will make the amount of liquidity provision required to achieve the highest rebate tier more predictable and less prone to month-to-month changes than under the current approach. For example, under the current approach, in a month with 9 billion shares of average total consolidated volume per day, a member would be required to provide a daily average of 75 million shares of liquidity, or approximately 0.83% of the total, while in a month with slightly over 9 billion shares of average total consolidated volume per day, the requirement would rise to 85 million shares of liquidity, or about 0.94% of the total. Under the changed approach, the member would be required to provide 0.90% of the total, regardless of the volume during that

month. The change will ensure that a member providing that level of liquidity will consistently receive the highest rebate, whereas a member providing that level of liquidity under the current schedule might receive the highest rebate in some months but not in others as overall market volumes fluctuated. For example, during the first three months of 2011, as well as the month of April 2011,³ average daily trading volumes were 8.158 billion, 7.804 billion, 7.870 billion, and 6.970 billion shares, respectively. Thus, a member seeking to receive this rebate tier during January 2011 was required to provide a daily average of more than 75 million shares of liquidity per day during January 2011, and a daily average of more than 65 million shares during each of February, March, and April. However, in each of these months, the required volumes represented 0.919%, 0.833%, 0.826%, and 0.933%, respectively, of the total. Thus, a member providing the new required threshold of 0.90% would have received the highest rebate in only two of the four months under the current approach. Moreover, to the extent that trading volumes remain at or near April 2011 levels, the new approach will make it consistently easier for members to reach the volume levels required for the highest tier.

Second, NASDAQ currently offers a rebate tier of \$0.0015 per share executed for quotes/orders that are not displayed and \$0.0029 per share executed for quotes/orders that are displayed to members providing a daily average of more than 35 million shares of liquidity during the month, through one or more of its MPIDs. This tier is currently not tied to overall market volumes, and therefore may be more difficult for a member to achieve in a low volume month. NASDAQ is modifying the tier to make it available to a member providing liquidity through one or more of its MPIDs that represents more than

³ Based on volume data through April 26, 2011.

0.45% of total consolidated trading volume. As a result, the required threshold will be lowered for any month with an average trading volume lower than 7,777,777,778 shares per day, but raised for months with higher trading volumes. To the extent that trading volumes remain at or near April 2011 levels, the new approach will make it consistently easier for members to reach the volume levels required for the highest tier.

Third, in order to retain a favorable rebate tier for members that provide a specified minimum level of liquidity without regard to overall market trading volumes, NASDAQ is also introducing a new rebate tier for members that provide a daily average of more than 25 million shares of liquidity during a month, through one or more MPIDs. Such members will receive a credit of \$0.0010 per share executed for non-displayed quotes/orders, and \$0.0027 per share executed for displayed quotes/orders. In addition, NASDAQ is retaining a tier for members providing a daily average of more than 20 million share of liquidity, under which it pays a rebate of \$0.0010 per share executed for non-displayed liquidity and \$0.0025 per share executed for displayed liquidity.⁴ These rebate tiers would be expected to benefit members whose order flow does not rise during high volume months, but that nevertheless provide the specified levels of liquidity, thereby contributing to the depth and market quality of the NASDAQ book.

Fourth, NASDAQ currently provides a rebate tier for members that provide specified quantities of liquidity in general and with respect to stocks listed on venues

⁴ NASDAQ is making non-substantive changes to the text that describes this rebate tier, however. Specifically, the text had contained references to levels of liquidity provision with respect to stocks listed on venues other than NASDAQ and the New York Stock Exchange that were needed to distinguish the requirements of the tier from the requirements of another similarly worded tier. Because the requirements of the other tier are being modified, the distinguishing language is being deleted.

other than NASDAQ and the New York Stock Exchange (“Tape B stocks”) in particular. Currently, the rebate is available to members that provide a daily average of more than 20 million shares of liquidity during the month, including a daily average of more than 8 million shares of liquidity in Tape B stocks. Such members receive a rebate of \$0.0015 per share executed for non-displayed quotes/orders and a rebate of \$0.0029 per share executed for displayed quotes/orders. As with several other tiers, NASDAQ is modifying the tier requirements to specify percentages of total consolidated volume rather than share volumes. Specifically, a member will be eligible for this rebate tier if it provides liquidity through one or more MPIDs that represents more than 0.30% of total consolidated volume, and shares of liquidity in Tape B stocks that represent more than 0.10% of total consolidated volume. As a result, the required threshold for overall liquidity provided will be lowered in a month with average daily trading volumes below 6,666,666,667 shares, while the required threshold for Tape B liquidity would be lowered in a month with average daily trading volumes below 8 billion shares.

Fifth, NASDAQ is introducing new liquidity provider rebate tiers that focus on the extent to which a member accesses liquidity as well as its level of liquidity provision. Because members accessing high levels of liquidity contribute to the quality of the NASDAQ market through the payment of fees and by encouraging members that post liquidity to post orders that seek to interact with incoming orders, NASDAQ believes that it is appropriate to offer an enhanced liquidity provider rebate to such members. Specifically, if a member accesses shares of liquidity through one or more of its MPIDs that represent more than 0.65% of total consolidated volume, and also provides a daily average of at least 2 million shares of liquidity through one or more MPIDs, NASDAQ

will pay a rebate of \$0.0015 per share executed for the member's non-displayed quotes/orders, and \$0.0029 per share executed for its displayed quotes/orders. Similarly, if a member accesses shares of liquidity through one or more of its MPIDs that represent more than 0.45% of total consolidated volume, and also provides a daily average of at least 2 million shares of liquidity through one or more MPIDs, NASDAQ will pay a rebate of \$0.0010 per share executed for the member's non-displayed quotes/orders, and \$0.0025 per share executed for its displayed quotes/orders.

Finally, with respect to liquidity provider rebate tiers focused on members active in both the NASDAQ Stock Market and the NASDAQ Options Market, NASDAQ is modifying its existing tiers and adding a new tier. Currently, a member that provides a daily average of more than 10 million shares of liquidity in the NASDAQ Stock Market, and trades a daily average of more than 130,000 contracts in the NASDAQ Options Market is eligible to receive a rebate of \$0.0015 per share executed for its non-displayed quotes/orders and \$0.0029 per share executed for its displayed quotes/orders. NASDAQ is reducing the required daily average number of options contracts to 115,000, while modifying the liquidity provision threshold to require shares of liquidity representing more than 0.15% of total consolidated volume. The required volume of liquidity provision would thereby be reduced in any month with an average daily volume of less than 6,666,666,667 shares.

Similarly, a member that currently provides shares representing 1.0% or more of the total consolidated volume in the NASDAQ Stock Market, and trades a daily average of more than 300,000 contracts in the NASDAQ Options Market, is eligible to receive a rebate of \$0.0015 per share executed for its non-displayed quotes/orders and \$0.00295

per share executed for its displayed quotes/orders. NASDAQ is reducing the liquidity provision threshold to require shares of liquidity representing more than 0.90% of total consolidated volume.⁵

Under the new tier for members active in both markets, a member will be eligible to receive \$0.0010 per share executed with respect to non-displayed quotes/orders and \$0.0025 per share executed with respect to displayed quotes/orders if it provides shares of liquidity representing more than 0.10% of the total consolidated volume for the month, and also trades an average daily volume of more than 115,000 contracts on the NASDAQ Options Market during the month.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Section 6(b)(4) of the Act,⁷ 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. All similarly situated members are subject to the same fee structure, and access to NASDAQ is offered on fair and non-discriminatory terms.

⁵ NASDAQ is also deleting the word “average” from the provision since it is superfluous: a member providing a given percentage of the average total consolidated volume on each day during the month would provide the same percentage of the total consolidated volume for the entire month. NASDAQ is also amending Rule 7018(j) to stipulate that any trading day on which the market is not open for the entire trading day (such as the day after Thanksgiving) will be excluded from the calculation of total consolidated volume as well as average daily volume.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

The filing introduces many changes with respect to the liquidity provider rebates paid by NASDAQ, but NASDAQ believes that the overall effect of the changes will be to make it easier for members to receive higher rebates, particularly in months with lower trading volumes, thereby reducing prices for those members that were previously unable to qualify for an enhanced rebate but that are able to do so under the revised pricing schedule. All of the proposed rebate tiers are based upon a member's level of activity in the NASDAQ Stock Market and/or NASDAQ Options Market.

With respect to the replacement of share thresholds with percentage thresholds for certain of NASDAQ's existing rebate tiers,⁸ NASDAQ believes that the change is reasonable, because it will result in more predictability from month to month with respect to the levels of liquidity provision required to receive the applicable rebate levels. Although the changes will make it easier to achieve applicable rebate tiers in some months and more difficult in other months, depending on overall market volumes, NASDAQ believes that the levels of activity required to achieve higher tiers are generally consistent with existing requirements for these tiers. Moreover, like existing rebate tiers tied to volume levels, as in effect at NASDAQ and other markets, the proposed rebate tiers are equitable and non-discriminatory because they are open to all members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher volumes.

Similarly, the proposed new rebate tier for members providing an average daily volume of more than 25 million shares of liquidity will provide members with greater

⁸ Specifically, the tiers for members providing more than 0.90% of total consolidated volume, for members providing more than 0.45% of total consolidated volume, and for members providing more than 0.30% of total consolidated volume, including 0.10% in Tape B stocks.

opportunities to receive a higher rebate. Accordingly, it is reasonable because it will reduce fees for members providing more than 25 million, but fewer than 35 million shares of liquidity per day, and is non-discriminatory and equitable because it is open to all members on an equal basis and provides discounts that are reasonably related to the value to an exchange's market quality associated with volumes.

The new rebate tiers for members that access high volumes of liquidity and provide a daily average of at least 2 million shares of liquidity are reasonable because they will reduce fees for members that qualify for the tiers. Moreover, NASDAQ believes that they are non-discriminatory and equitable because they are open to all members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher volumes. Although many rebate tiers focus on levels of liquidity provision, NASDAQ believes that is also reasonable and equitable to reduce fees for members that access high volumes of liquidity, because the presence of such members' order flow in turn attracts members that seek to post quotes/orders to interact with incoming order flow.

With respect to pricing changes for members active on both the NASDAQ Market Center and the NASDAQ Options Market, NASDAQ has noted in its prior filings with regard to existing rebate tiers focused on such members that the tiers are responsive to the convergence of trading in which members simultaneously trade different asset classes within a single strategy.⁹ NASDAQ also notes that cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other.

⁹ Securities Exchange Act Release No. 64003 (March 2, 2011), 76 FR 12784 (March 8, 2011) (SR-NASDAQ-2011-028); Securities Exchange Act Release No. 59879 (May 6, 2009), 74 FR 22619 (May 13, 2009) (SR-NASDAQ-2009-041).

Accordingly, pricing incentives that encourage market participant activity in both markets recognize that activity in the options markets also supports price discovery and liquidity provision in the NASDAQ Market Center. Moreover, NASDAQ believes that these changes are reasonable because they will make it easier for members active in both markets to qualify for an enhanced rebate, and are also non-discriminatory and equitable. They are open to all members, but are not the exclusive means by which members may qualify for the associated rebate levels. Accordingly, members are not required to trade in the NASDAQ Options Market in order to receive the applicable rebates.

Finally, NASDAQ 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 such an environment, NASDAQ 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. NASDAQ believes that the proposed rule change reflects this competitive environment because it will broaden the conditions under which members may qualify for higher liquidity provider rebates.

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. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, 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.¹⁰ 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 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-2011-062 on the subject line.

¹⁰ 15 U.S.C. 78s(b)(3)(a)(ii).

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-2011-062. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of NASDAQ. 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-2011-062, 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.¹¹

Cathy H. Ahn
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).