

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73648; File No. SR-NASDAQ-2014-108)

November 19, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify NASDAQ Rule 7018 Fees

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 November 12, 2014, The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“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 to modify NASDAQ Rule 7018 fees assessed for execution and routing securities listed on NASDAQ, the New York Stock Exchange (“NYSE”) and on exchanges other than NASDAQ and NYSE.

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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

NASDAQ is proposing to amend NASDAQ Rule 7018(1), (2) and (3) to modify fees assessed for execution and routing securities listed on NASDAQ (“Tape C”), NYSE (“Tape A”) and on exchanges other than NASDAQ and the NYSE (“Tape B”), respectively, (together, the “Tapes”) as well as the opening and closing crosses (“Opening and Closing Crosses”) in NASDAQ Rule 7018(d) and (e).

The Exchange is proposing across all of the tapes (the “Tapes”) an increase to the fee for a firm that executes against resting midpoint liquidity from \$0.0027 per share executed to \$0.0030 per share executed. NASDAQ is seeking to harmonize the remove rate for orders whether or not they execute against the midpoint so that the remove rate for orders is certain before the order is entered. Therefore, the Exchange is proposing to increase the charge from \$0.0027 to \$0.0030 per share executed across all the tapes.

NASDAQ is also proposing to eliminate across all of the tapes the current \$0.00293 per share executed rebate for a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.10% of Consolidated Volume during the month, with shares executed in the Opening and Closing Cross that represent more than 0.20% of Consolidated Volume and orders entered through a single Nasdaq Market Center MPID that represent more than 0.50% of Consolidated Volume during the month. NASDAQ believes that the elimination of this rebate is warranted since it has failed to increase liquidity in Tape A, B or C securities or to provide members with additional incentive to improve market quality.

The Exchange is also proposing to modify and add new rebates across all of the tapes. Specifically, NASDAQ is proposing to expand and modify the credit for non-displayed orders (other than Supplemental Orders) that provide liquidity. The rebate will now include a \$0.0025 per share executed for midpoint orders. It will be offered provided that the member adds an average daily volume of 5 million or more shares through midpoint orders during the month and either adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 1.40% or more of national customer volume in multiply-listed equity and exchange-traded fund (“ETF”) options classes in a month as pursuant to Chapter XV, Section 2 of the Nasdaq Options Market (“NOM”) rules or adds 8 million shares of non-displayed liquidity (excluding retail price improvement orders). NASDAQ believes that this proposed credit will incentivize members to post more liquidity at the midpoint, which should improve price discovery for the benefit of investors.

NASDAQ also proposes to also modify this rebate for Tape C securities only. Specifically, the credit of \$0.0014 per share executed tier for midpoint orders if the member provides an average daily volume of less than 5 million shares through midpoint orders during the month is proposed to be modified by decreasing it to \$0.0010 per share executed. The Exchange believes that is no longer necessary to pay a higher rebate for adding liquidity in Tape C.

The Exchange is also proposing to modify across all of the tapes the existing credit for displayed Designated Retail Orders. The existing rebate of \$0.0033 per share will remain, but the rebate will increase slightly to \$0.0034 per share executed if the member adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 1.40% or more of national customer volume in multiply-listed equity and ETF options classes in a month as pursuant to Chapter XV, Section 2 of the NOM rules. The Exchange believes that increasing the rebate will attract additional retail order flow.

NASDAQ also is proposing to modify an existing fee for Tape A and Tape B securities. The proposed fee cap of \$5,000 per month pertains to both a DOT or LIST Order that executes in the NYSE opening or re-opening process combined with a LIST Order that executes in the NYSEArca and NYSEAmex opening or re-opening process if a member adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.40% or more of national customer volume in multiply-listed equity and ETF options classes in a month as pursuant to Chapter XV, Section 2 of the NOM Rules. The Exchange believes that this will encourage firms that route options customer order flow and equity order flow that would qualify as retail to send more order flow to both NOM and NASDAQ. Additionally, NASDAQ is proposing to combine for Tape B securities the LIST order that executes in an exchange's re-opening process with the language noted above regarding the LIST order that executes in an exchange's opening process. Aside from simplifying the rule language by combining it for a LIST order that executes in the opening or re-opening process, this also serves to reduce and harmonize the fee for a LIST order that executes in an exchange's re-opening process from \$0.001 to \$0.0005 per share executed in the NYSEArca re-opening process.

NASDAQ Rules 7018(d) and (e) set forth fees assessed for executions received in the Opening and Closing Crosses. The rule provides a fee of \$0.0003 per share executed assessed for all other quotes and orders not otherwise noted under the rules. The Exchange is proposing to increase the fee from \$0.0003 to \$0.0004 per share executed in the Opening and Closing Crosses. The proposed increases to the fees assessed for executions in the Closing and Opening Crosses will help the Exchange recapture some of the costs it incurs operating the cross system, while maintaining very low fees for the execution of orders in these crosses.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,³ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁴ 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 is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

NASDAQ believes that the increase across all of the tapes to the fee for a member that executes against resting midpoint liquidity from \$0.0027 per share executed to \$0.0030 per share executed is reasonable, equitably allocated and not unfairly discriminatory and will harmonize the remove rate for orders whether or not they execute against the midpoint so that the remove rate for orders is certain before the order is entered. The Exchange believes the increase is reasonable because the rate is consistent with the standard remove rate and members receive significant price improvement when accessing midpoint liquidity. The fee increase is equitably allocated and not unfairly discriminatory because the increase is being uniformly assessed across all of the tapes on all members that execute against resting midpoint liquidity. Further, the Exchange believes that the reduced remove rate for receiving a midpoint execution is no longer necessary because the reduction did not result in a meaningful change in midpoint activity.

The Exchange believes that the elimination across all of the tapes of the current \$0.00293 per share executed rebate for a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.10% of Consolidated

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(4) and (5).

Volume during the month, with shares executed in the Opening and Closing Cross that represent more than 0.20% of Consolidated Volume and orders entered through a single Nasdaq Market Center MPID that represent more than 0.50% of Consolidated Volume during the month is consistent with an equitable allocation of a reasonable fee and not unfairly discriminatory. Specifically, the Exchange believes it is equitable and not unfairly discriminatory because this tier is being eliminated for all members and across all tapes so no members are being disadvantaged. Additionally, only one member qualified for the rebate in October and removing the rebate will impact their total rebates received by less than 1%.

NASDAQ believes that the change across all tapes to the credit for non-displayed orders (other than Supplemental Orders) that provide liquidity is reasonable, equitably allocated and not unfairly discriminatory. The new tier for the rebate of \$0.0025 per share executed for midpoint orders when the member adds an average daily volume of 5 million or more shares through midpoint orders during the month and either adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 1.40% or more of national customer volume in multiply-listed equity and ETF options classes in a month as pursuant to Chapter XV, Section 2 of the NOM rules or adds 8 million shares of non-displayed liquidity (excluding retail price improvement orders) is equitably allocated and not unfairly discriminatory because it treats all members uniformly since it is available to all members and across all tapes. The Exchange believes that the proposed change is reasonable because it does not unfairly burden competition, but rather it will promote competition among member organizations to provide more meaningful non-displayed liquidity, specifically midpoint liquidity, on the Exchange to the benefit of investors and other members.

NASDAQ also proposes to modify the credit for non-displayed orders (other than Supplemental Orders) in one additional way for Tape C securities only. Specifically, the credit of \$0.0014 per share executed tier for midpoint orders if the member provides an average daily volume of less than 5 million shares through midpoint orders during the month is proposed to be modified by decreasing it to \$0.0010 per share executed. The Exchange believes that this rebate modification applicable to Tape C securities only is reasonable, equitably allocated and not unfairly discriminatory. NASDAQ believes that the proposed decrease to the rebate is reasonable because it remains a higher rebate than the rebates provided to other non-displayed liquidity in Tape C securities and, thus, still incentivizes members to add midpoint liquidity over other forms of non-displayed liquidity in Tape C and represents only a modest decrease from the current rebate level. NASDAQ believes that the proposed credit is equitably allocated and not unfairly discriminatory because the rebate for this tier is available and applies uniformly to members that are eligible that provide such liquidity with regard to Tape C securities. Additionally, all members have incentives available and equal opportunity to earn higher rebates for adding more liquidity.

NASDAQ believes that the modification of the existing rebate for Designated Retail Orders is consistent with an equitable allocation of a reasonable fee and not unfairly discriminatory. The existing rebate of \$0.0033 per share will remain, but the rebate will increase slightly to \$0.0034 per share executed if the member adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 1.40% or more of national customer volume in multiply-listed equity and ETF options classes in a month as pursuant to Chapter XV, Section 2 of the NOM rules. The Exchange believes that the increase to the rebate under certain circumstances is reasonable because it is intended to incentivize liquidity for Designated Retail

Orders and thereby improve overall liquidity in the marketplace. The modified rebate is equitably allocated and not unfairly discriminatory because it is available to all members that satisfy the criteria, regardless of the exchange upon which it is executed. The Exchange notes that rebates linked to options volume is not novel and that the Exchange has other tiers available for members based on options volume.⁵

The Exchange also believes that the modification to another existing fee that is for Tape A and Tape B securities is reasonable, equitably allocated and not unfairly discriminatory. Specifically, the fee is [sic] and relates to both a DOT or LIST Order that executes in the NYSE opening or re-opening process, and is combined with a LIST Order that executes in the NYSEArca and NYSEAmex opening or re-opening process for purposes of a cap of \$0.0005 per share executed not to exceed \$5,000 per month. This applies if a member adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.40% or more of national customer volume in multiply-listed equity and ETF options classes in a month as pursuant to Chapter XV, Section 2 of the NOM Rules. The Exchange believes that the cap on total charges is reasonable because it provides additional incentives for members to utilize the Exchange router to access liquidity at away markets, as well as provide additional incentives to add options liquidity to receive this routing benefit. This cap is also equitably allocated and not unfairly discriminatory because all members have an equal opportunity to receive this incentive should they choose to avail themselves of this benefit. As noted above, incentives and benefits that combine options and equities volume is [sic] not novel.

NASDAQ also believes that, in connection with the rebate above, combining for Tape B securities the LIST order that executes in an exchange's re-opening process with the LIST order

⁵ See Exchange Rule 7018.

that executes in an exchange's opening process, as well as reducing the fee from \$0.001 to \$0.0005 per share executed in the NYSEArca re-opening process is reasonable, equitably allocated and not unfairly discriminatory. Specifically, the Exchange believes that reducing the fee for the NYSEArca re-opening process is reasonable because it incentivizes members to utilize the Exchange router to access liquidity at away markets. Additionally, this fee reduction is equitably allocated and not unfairly discriminatory because the reduced fee harmonizes the fee for a LIST order that executes in an exchange's re-opening process and applies to all members.

Lastly, NASDAQ believes that the changes to the fees assessed for participation the Opening and Closing Crosses are consistent with an equitable allocation of a reasonable fee and not unfairly discriminatory. Specifically, the Exchange is proposing to increase the fee from \$0.0003 to \$0.0004 per share executed in the Opening and Closing Crosses. The Exchange believes that the fees are reasonable because supporting the crosses requires capital investment to maintain a system that facilitates an orderly auction process, and the proposed increases are designed to offset the costs the Exchange incurs in operating the crosses. Moreover, the proposed fees are equitably allocated because they apply a fee on all members that benefit from participation in the Opening and Closing Crosses, and are based on the type of order entered and contribution to market quality. Similarly, the proposed fees are not unfairly discriminatory because they are based on the type of order executed in the crosses and the benefit to market quality that such orders provide. NASDAQ believes that the proposal to increase the charges assessed for executions in the crosses is reasonable, equitably allocated and not unfairly discriminatory because the increased fees are identical in amount and apply to all members that elect to participate in the crosses and receive an execution. Moreover, NASDAQ does not believe that the increased fees will negatively impact

participation in the crosses as current rates assessed for the open and closing cross continue to be materially less than the standard fee for accessing liquidity.

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

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.⁶ 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, or rebate opportunities available at other venues to be more favorable. 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. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, the changes to routing fees and credits do not impose a burden on competition because NASDAQ's routing services are optional and are the subject of competition from other exchanges and broker-dealers that offer routing services, as well as the ability of members to develop their own routing capabilities. The slightly increased fees for execution in the NASDAQ crosses are reflective of a need to support and improve NASDAQ systems, which in turn benefit market quality and ultimately, competition. In sum, if the changes proposed herein are unattractive to market participants, it is likely that NASDAQ will lose market share as a result.

⁶ 15 U.S.C. 78f(b)(8).

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 change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁷. 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.

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-2014-108 on the subject line.

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2014-108. 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; 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-2014-108 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

Kevin M. O'Neill
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).