

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77378; File No. SR-NASDAQ-2016-037)

March 16, 2016

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(a)

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 7, 2016, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange’s transaction fees at Rules 7018(a)(2) and (3) to provide a new credit to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity in Tape A and B securities.

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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Rule 7018(a)(2) and (3), concerning the fees and credits provided for the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at \$1 or more that it trades. The Exchange is proposing to provide a new credit to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity in Tape³ A and B securities in addition to other credits provided under Rules 7018(a)(2) and (3) for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders).

Currently under Rules 7018(a)(2) and (3), the Exchange provides credits ranging from \$0.0020 per share executed to \$0.00305 per share executed to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) if they qualify by meeting the requirements of the various credit tiers under the rules.

The Exchange is proposing to provide a new \$0.0001 per share executed credit that would be provided to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) in Tape A and B securities if they have shares of liquidity provided in

³ There are three categories, or "Tapes" of securities, which are based on listing venue. Tape A securities are those that are listed on NYSE, Tape B securities are those that are listed on exchanges other than Nasdaq or NYSE, and Tape C securities are those that are listed on the Exchange.

all securities during the month representing at least 0.2% of Consolidated Volume⁴ during the month, through one or more of its Nasdaq Market Center MPIDs.

As noted, this rebate will be provided in addition to other displayed liquidity credits that a member qualifies for under Rules 7018(a)(2) and (3), and will also be provided in addition to any rebates that a member qualifies for under the ISP, NBBO, and QMM programs under Rule 7014. The proposed rebate, however, will not be additive to LMM rebates under Rule 7014 or Designated Retail Order credits under Rule 7018.

The Exchange is implementing the proposed credit on March 7, 2016, at which time any member that qualifies will begin to receive the credit. The measurement period for the Consolidated Volume required to qualify for the new credit will initially be calculated based on such volume provided from March 7, 2016 through March 31, 2016, and then monthly thereafter. For example, 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 would qualify for a \$0.0025 per share executed credit under Rule 7018(a). If the member provides 0.21% of Consolidated Volume from March 7, 2016 through March 31, 2016 it would qualify for the new \$0.0001 additional per share executed credit. The member's credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) in Tape A and B securities from March 1, 2016 through March 4, 2016 would be \$0.0025 per share executed, and from March 7, 2016 through March 31, 2016 would be \$0.0026 per share

⁴ Consolidated Volume is the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. See Rule 7018(a).

executed (\$0.0025 credit + \$0.0001 credit). If a member did not provide 0.2% of Consolidated Volume from March 7, 2016 through March 31, 2016 the member would not qualify for the additional \$0.0001 credit. This is true regardless of the percent of Consolidated Volume provided for the whole month of March.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act⁶ 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 the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed new credit is reasonable because it may provide incentive to members to increase the level of liquidity provided to the Exchange, which will in turn benefit all market participants. Providing credits for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) rewards members for improving the market through displayed liquidity. As such, the Exchange believes that providing an additional credit for such liquidity is reasonable.

The Exchange also believes that it is reasonable to limit the credit to only quotes/orders in Tape A and B securities because the Exchange has observed a decline in overall volume on the Exchange in Tape A and B securities in comparison to Tape C securities, and is thus providing incentive to members to provide displayed liquidity in Tape A and B securities.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

Further, the Exchange has limited funds with which to apply in the form of incentives, and thus must deploy those limited funds to incentives that it believes will be the most effective and improve market quality in areas that the Exchange determines are in need of improvement. The Exchange believes that the proposed increased credit is an equitable allocation and is not unfairly discriminatory because the Exchange will provide the credit to all members that qualify for it under the rule.

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 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 proposed new credit for displayed liquidity in Tape A and B securities is reflective of robust competition among exchanges and other trading venues and does not place any burden on competition whatsoever. The credit is designed to provide additional incentive to members to enter displayed quotes and orders in Tape A and B securities traded on

the Exchange, which are most in need of improvement. To the extent the incentive is successful; it will benefit all market participants trading in such securities on the Exchange.

Last, although the Exchange does not believe the proposed changes will be unattractive to market participants, if the changes were unattractive then it is likely that the Exchange would lose market share as a result. 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.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 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:

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2016-037 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2016-037. 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 offices 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-2016-037, 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

Robert W. Errett
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).