

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80928; File No. SR-NASDAQ-2017-056)

June 14, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Transaction Fees at Rule 7018(a)(2)

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 June 1, 2017, 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 Rule 7018(a)(2) to eliminate a \$0.0001 per share executed credit provided to a member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity in securities listed on the New York Stock Exchange.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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 Exchange's transaction fees at Rule 7018(a)(2) to eliminate a \$0.0001 per share executed credit provided to a member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity in Tape A securities. Under Rule 7018(a), the Exchange assesses fees for the removal of liquidity and provides credits for the provision thereof. The Exchange currently provides a \$0.0001 per share executed credit to a member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity if the member has shares of liquidity provided in all securities during the month representing at least 0.2% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs. This \$0.0001 per share executed credit is provided in addition to the credits provided for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity under Rule 7018(a)(2).³ This credit is also provided in addition to any rebates that a member qualifies for under the NBBO, and QMM programs under Rule 7014. The credit

³ The Exchange also provides a \$0.0001 per share executed credit with identical criteria applicable to Tape B securities. See Rule 7018(a)(3).

is not additive to DLP rebates under Rule 7014 or Designated Retail Order credits under Rule 7018.

The credit, together with an identical credit applicable to Tape B securities, was adopted to provide incentive to market participants to increase the level of liquidity provided to the Exchange, in which the Exchange had observed a decline in overall volume on the Exchange in Tape A and B securities in comparison to Tape C securities.⁴ The Exchange has not observed a significant improvement to the volume in Tape A securities on the Exchange in relation to the Tape A credit and is therefore proposing to eliminate the credit so that it may explore other incentives to improve market quality in Tape A securities.

2. Statutory Basis

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

Elimination of the \$0.0001 per share executed credit provided to a member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide

⁴ See Securities Exchange Act Release No. 77378 (March 16, 2016), 81 FR 15358 (March 22, 2016) (SR-NASDAQ-2016-037). The Exchange has since replaced the qualification criteria required to receive the Tape B \$0.0001 per share executed credit. Specifically, to now qualify for the \$0.0001 per share executed credit in Tape B securities, a member must have shares of liquidity provided in securities that are listed on exchanges other than NASDAQ or NYSE during the month representing at least 0.06% but less than 0.12% of Consolidated Volume during the month through one or more of its Nasdaq Market Center MPIDs. See Securities Exchange Act Release No. 78977 (September 29, 2016), 81 FR 69140 (October 5, 2016) (SR-NASDAQ-2016-132).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

liquidity in Tape A securities under Rule 7018(a)(2) is reasonable because providing a credit in addition to the other credits provided under Rules 7018(a) and 7014, as described above, is no longer necessary. As noted above, the Exchange set the credit at \$0.0001 per share executed because it believed that providing such a credit would improve the market in Tape A securities. The credit has not significantly provided such incentive and consequently the Exchange believes that it should eliminate the credit to focus its limited funds on other incentives to improve market quality. Accordingly, the Exchange believes eliminating this additional Tape A credit is reasonable.

Elimination of the \$0.0001 per share executed credit provided to a member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity in Tape A securities under Rule 7018(a)(2) is an equitable allocation and is not unfairly discriminatory because it is no longer needed to improve the market in Tape A securities. The Exchange has limited funds 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 has observed that the credit has not provided the incentive that was necessary to significantly improve the market in Tape A securities by attracting more order flow to the Exchange and is therefore removing the credit so that it may consider other incentives that may improve Tape A market quality. As noted above, the Exchange has limited funds to apply toward incentives, and although an incentive may not significantly achieve its goal of improving market quality, it may nonetheless result in a cost to the Exchange. Eliminating the credit will allow the Exchange to deploy its limited funds to incentives in Tape A securities or other areas designed to improve

market quality. Accordingly, the Exchange believes that eliminating the credit is an equitable allocation and is not unfairly discriminatory.

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 Exchange is proposing to eliminate an incentive provided to market participants, which was designed to improve market quality in Tape A securities. The incentive has not significantly improved market quality in Tape A securities and the Exchange does not believe that continuing to offer the credit is the best use of its limited fund nor would it likely achieve the market improvement for which it was designed. Because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues, the proposed elimination of the credit should not impose a burden on competition. If the Exchange is incorrect in concluding that the incentive was not significantly effective, it will likely lose market share in Tape A securities to one of the

many other trading venues to the extent market participants believe that those markets are more attractive. Thus, 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 or impose any burden on competition.

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:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2017-056) 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-2017-056). 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-2017-056, 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

Eduardo A. Aleman
Assistant Secretary

⁸ 17 CFR 200.30-3(a)(12).