

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78089; File No. SR-NASDAQ-2016-083)

June 16, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rules 7018(a) and 7014(h)

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 8, 2016, The NASDAQ Stock Market LLC (“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 Rules 7018(a) and 7014(h) to: (i) provide a new credit for providing liquidity in securities of all three Tapes; (ii) amend the requirements of an existing credit tier provided in securities of all three Tapes; (iii) delete text from the preamble of Rule 7018(a) and from Rule 7014(h)(5) concerning Consolidated Volume; and (iv) make technical corrections to the rule text.

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.

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, 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 certain credits 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, and to make clarifying and technical changes to Rule 7018(a). Specifically, the Exchange proposes to amend Rules 7018(a) and 7014(h) to: (i) provide a new credit for providing liquidity in securities of all three Tapes;³ (ii) amend the requirements of an existing credit tier provided in securities of all three Tapes; (iii) delete text from the preamble of Rule 7018(a) and from Rule 7014(h)(5) concerning Consolidated Volume;⁴ and (iv) make technical corrections to the rule text.

³ There are three Tapes, which are based on the listing venue of the security: Tape C securities are Nasdaq-listed; Tape A securities are New York Stock Exchange-listed; and Tape B securities are listed on exchanges other than Nasdaq and NYSE.

⁴ Consolidated Volume is defined as 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).

First Change

The purpose of the first change is to provide an additional credit to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity. Currently, the Exchange provides several credits under Rules 7018(a)(1), (2), and (3), each of which apply to securities of a different Tape, in return for market-improving behavior. The Exchange is proposing to add a new credit tier of \$0.00305 per share executed to a member that has shares of liquidity provided in all securities during the month representing at least 0.60% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, adds NOM⁵ Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.10% or more of total industry ADV in the Customer clearing range⁶ for

⁵ NOM is an abbreviation of the “Nasdaq Options Market.”

⁶ NOM Chapter XV provides the following defined terms:

The term “Customer” or (“C”) applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Chapter I, Section 1(a)(48)).

The term “NOM Market Maker” or (“M”) is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

The term “Non-NOM Market Maker” or (“O”) is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

The term “Firm” or (“F”) applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

The term “Professional” or (“P”) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

Equity and ETF option contracts per day in a month on the Nasdaq Options Market, and adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.50% or more of total industry ADV in the Customer clearing range for Equity and ETF option contracts per day in a month on the Nasdaq Options Market. Thus, to qualify under the new proposed credit tiers under Rule 7018(a)(1), (2) and (3), an Exchange member must be a NOM Participant and meet the NOM rebate criteria described above, in addition to providing at least 0.60% of Consolidated Volume on the Exchange.

Second Change

The purpose of the second change is to amend the criteria required to qualify for an existing credit, which is available to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity. Currently, the Exchange provides a credit of \$0.0029 per share executed in the security of any of the Tapes to a member with (i) shares of liquidity provided in all securities during the month representing more than 0.15% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) Total Volume, as defined in Chapter XV, Section 2, of the Nasdaq Options Market rules, of 125,000 or more contracts per day in a month executed on the Nasdaq Options Market. The Exchange is proposing to change the Total Volume requirement of paragraph (ii) of the rule to no longer require 125,000 or more contracts per day in a month executed on the Nasdaq Options Market, but to now require Total Volume of 0.90% or more of total industry ADV in the Customer clearing range for Equity and ETF option contracts per day in a month on the Nasdaq Options Market.

The term “Broker-Dealer” or (“B”) applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

Third Change

The purpose of the third change is to delete rule text from the preamble of Rule 7018(a) concerning Consolidated Volume. The rule currently defines Consolidated Volume as 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. The Exchange excludes from the calculations of fees and credits that have a Consolidated Volume component all trading that occurs on the date of the annual reconstitution of the Russell Investments. The annual reconstitution represents a day of abnormal trading volume, as the Russell Investment indexes adjust holdings to accurately reflect the current state of equity markets and their market segments.⁷ Consequently, the Exchange excludes trading occurring on the date of the Russell Investment reconstitution in all calculations of fees and credits because it is not reflective of a member's normal trading. The Exchange expresses this under the rule by stating that, “[f]or 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.” The Exchange believes that the text stating “expressed as a percentage of, or ratio to, Consolidated Volume” may be confusing to market participants in understanding how the Exchange excludes trading activity on the day of the Russell Investment reconstitution because some charges and credits under Rule 7018(a) are based on a measure of Consolidated Volume that is not a percentage or ratio thereof. Thus, the Exchange seeks to clarify that all volume based activity on the date of the Russell Investment reconstitution (including trading activity not based on a

⁷ See <https://www.ftserussell.com/research-insights/russell-reconstitution>.

percentage or ratio of Consolidated Volume) is excluded from a member's trading activity for determining credit and fee tiers. This proposed change will ensure that members understand that all volumes on the day of the Russell Investment reconstitution would be excluded for purposes of measuring fees and credits.

The Exchange is also deleting an identical definition of Consolidated Volume from Rule 7014, which provides rules applicable to the Exchange's Market Quality Incentive Programs. The definition of Consolidated Volume under Rule 7014(h)(5) is identical to Rule 7018(a). In light of the changes to the definition under Rule 7018(a) and to avoid duplication in the rules, the Exchange is eliminating the identical definition from Rule 7014(h)(5) and is replacing it with text that cross references the definition under Rule 7018(a).

Fourth Change

The Exchange is proposing to make minor technical and corrective changes to the rule text. Specifically, the Exchange is adding punctuation to certain credit tiers, which was inadvertently omitted when the text was adopted. The Exchange is also reorganizing a credit tier so that it reads more consistently with other credit tiers under the rule. The reorganization of the credit tier does not change how the credit tier is applied. Last, the Exchange is deleting from Rules 7018(a)(2) and (3) text under a credit tier that concerns its application during a period that has since expired.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁹ in particular, in

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

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.

First Change

The Exchange believes that the proposed \$0.00305 per share executed credit is reasonable because it is consistent with other credits that the Exchange provides to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity. As a general principle, the Exchange chooses to offer credits to members in return for market improving behavior. Under Rule 7018(a), the various credits the Exchange provides for displayed quotes/orders require members to significantly contribute to market quality by providing certain levels of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs, and volume on NOM. The proposed credit will be provided to members that not only contribute to the Exchange by providing more than 0.60% of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs during the month, but also add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.10% or more of total industry ADV in the Customer clearing range for Equity and ETF option contracts per day in a month on the Nasdaq Options Market, and add Customer, Professional, Firm, Non-NOM Market Maker, and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.50% or more of total industry ADV in the Customer clearing range for Equity and ETF option contracts per day in a month on the Nasdaq Options Market.

The Exchange notes that the proposed credit is consistent with other credits that it provides for displayed quotes/orders under the rule, which range from \$0.0015 per share executed to \$0.00305 per share executed and which apply progressively more stringent

requirements in return for higher per share executed credits. In this case, the proposed requirements to receive the \$0.00305 per share executed credit are set very high, consistent with the criteria of other \$0.00305 per share executed credit tiers available under Rule 7018(a). For instance, the Exchange provides a \$0.00305 per share executed credit in securities of any Tape to a member with shares of liquidity provided in all securities during the month representing at least 0.15% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and that adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.90% or more of total industry ADV in the Customer clearing range for Equity and ETF option contracts per day in a month on the Nasdaq Options Market. The Exchange notes that, while the level of Consolidated Volume is lower for the existing \$0.00305 per share executed credit tier, it requires a significantly larger contribution to NOM Market Maker liquidity. The proposed new credit tier, however, requires a member to also provide a significant level of Customer, Professional, Firm, Non-NOM Market Maker, and/or Broker-Dealer liquidity that the current credit does not. Thus, the proposed new \$0.00305 per share executed credit tier criteria is similar, in terms of the level of contribution that a member must make to the markets, to the criteria required to qualify for an existing \$0.00305 per share executed credit that the Exchange offers. In sum, both of these credit tiers have high standards to earn the credit and, in return for meeting these high standards, both provide a high credit. For these reasons, the Exchange believes that the proposed \$0.00305 per share executed credit is reasonable.

The proposed \$0.00305 per share executed credit is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same credit to all similarly situated members. Thus, if a member meets the requirements, it will receive the credit unless it qualifies

for a higher credit. Moreover, as discussed above, some credit tiers require participation on NOM while others do not. As such, members will continue to have opportunities to qualify for similar credits based on market participation not tied to NOM.

Second Change

The Exchange believes that the proposed amendment to the requirements of an existing credit tier provided in securities of all three Tapes is reasonable because it merely replaces a measure of activity on NOM with another, both of which represent a significant contribution to that market. Specifically, the Exchange is replacing the requirement that a member have 125,000 or more contracts per day in a month executed on the Nasdaq Option Market with a new requirement that a member have 0.90% or more of total industry ADV in the Customer clearing range for Equity and ETF option contracts per day in a month on the Nasdaq Options Market. The Exchange notes that it is more precisely targeting market-improving behavior on NOM by replacing the fixed requirement of providing a certain number of contracts executed per day on NOM with a requirement that fluctuates based on total industry ADV in the Customer clearing range for both Equity and ETF options contracts per day. Thus, the Exchange is proposing to require NOM activity that is more closely correlated to the member's activity on NOM as compared to overall industry activity.

The Exchange believes that the proposed amendment to the requirements of an existing credit tier provided in securities of all three Tapes is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same credit to all similarly situated members. Thus, if a member meets the requirements, it will receive the credit unless it qualifies for a higher credit. Moreover, as discussed above, some credit tiers require participation on NOM while others do not. As such, members will continue to have opportunities to qualify for similar credits based on market participation not tied to NOM. Also the proposed criteria will

allow the threshold to fluctuate with industry volume, making it easier to achieve in low volume environments and more onerous to meet in high volume environments.

Third Change

The Exchange believes that deleting rule text from the preamble of Rule 7018(a) concerning Consolidated Volume and the related change to Rule 7014(h)(5) are reasonable because they will help clarify how volume related to credit and fee tiers will be handled by the Exchange during the annual Russell Indexes reconstitution. Currently, the rule text could be interpreted to apply to only a member organization's trading activity under a fee or credit tier that is expressed as a ratio or percentage of Consolidated Volume. The Exchange believes that such an interpretation would undermine the Exchange's intent to exclude the abnormal trading activity that occurs on that day. Accordingly, the Exchange believes that it is reasonable to remove the potentially confusing rule text.

The Exchange believes that deleting rule text from the preamble of Rule 7018(a) concerning Consolidated Volume and the related change to Rule 7014(h)(5) are an equitable allocation and are not unfairly discriminatory because the proposed changes only serve to clarify the application of the rule and does not alter how Consolidated Volume or activity for tiers is calculated. Thus, the Exchange will apply the same process to all similarly situated member organizations that seek to qualify under a fee or credit tier, or rebate under the rules.

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 changes to the 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 are reflective of the intense competition among trading venues in capturing order flow. Moreover, the proposed changes do not impose a burden on competition because Exchange membership is optional and is also the subject of competition from other trading venues. For these reasons, the Exchange does not believe that any of the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that the Exchange will lose market share as a result of the changes if they are unattractive to market participants.

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.¹⁰

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2016-083 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-2016-083. 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-2016-083, 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

Robert W. Errett
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).