

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78567; File No. SR-NASDAQ-2016-115)

August 12, 2016

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

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 August 10, 2016, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 the Substance of the Proposed Rule Change

Nasdaq is proposing to amend Nasdaq Rule 7018(a) to add a new credit tier for a combination of accessing and providing liquidity in securities of all three Tapes.³

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 Item IV

¹ 15 U.S.C. 78s(b)(1).

² 17 C.F.R. 240.19b-4.

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 (“NYSE”)-listed; and Tape B securities are listed on exchanges other than Nasdaq and NYSE.

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

The purpose of the proposed rule change is to add a new credit tier 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 proposes to amend Nasdaq Rule 7018(a)(1), (2), and (3) to add a new credit tier for a combination of accessing and providing liquidity in securities of all three Tapes. Specifically, this new credit tier will be added to the Nasdaq rule book under each of Nasdaq Rule 7018(a)(1), (2), and (3) in the part entitled "Credit to member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity".

The new credit tier will be for \$0.0027 per share executed and will be available for a member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center market participant identifiers ("MPIDs") that represent more than 0.65% of consolidated volume ("Consolidated Volume") during the month, and (ii) 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.

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 members require them to significantly contribute to market quality by accessing and providing liquidity at certain levels of Consolidated Volume through one or more of its [sic] Nasdaq Market Center MPIDs.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁵ 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 credits Nasdaq provides are designed to improve market quality for all market participants, and Nasdaq allocates its credits in a manner that it believes are the most likely to achieve that result. Specifically, the Exchange believes that the proposed rule change to add a new credit tier of \$0.0027 per share executed is reasonable because it is consistent with other credits that the Exchange provides to members that access and/or provide liquidity. As discussed previously, 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 members require them to significantly contribute to market quality by accessing and/or providing certain levels of Consolidated Volume through one or more of its [sic] Nasdaq Market Center MPIDs, and volume.

The proposed credit will be provided to members that not only access liquidity in all securities through one or more of its [sic] Nasdaq Market Center MPIDs of more than 0.65% of Consolidated Volume during the month, but also that contribute to the Exchange by providing liquidity in all securities through one or more of its [sic] Nasdaq Market Center MPIDs of more than 0.10% of Consolidated Volume during the month.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that the proposed \$0.0027 per share executed credit is an equitable allocation and is not unfairly discriminatory because a member achieving this credit tier will be both accessing and providing liquidity, which should be beneficial to other members as this both encourages more liquidity on the Exchange, as well as increasing the likelihood that members [sic] resting limit orders may be accessed by members seeking to attain this credit tier. The Exchange seeks to encourage such behavior.

Additionally, the Exchange believes that the proposed new credit tier is an equitable allocation and is not unfairly discriminatory because the new credit tier is uniformly available to all members and affects all members equally and in the same way. Additionally, the proposed new credit tier will further encourage market participant activity and will also support price discovery and liquidity provision.

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 rule change does 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

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 Act.⁶ 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:

⁶ 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-2016-115 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-2016-115. 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-2016-115, 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.⁷

Robert W. Errett
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).