

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80192; File No. SR-NASDAQ-2017-026)

March 9, 2017

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

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 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) to adopt two new credits provided to a member for displayed quotes/orders that provide liquidity.

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 proposed rule change. The text of these 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 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), 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 [sic] trades. The Exchange is proposing to adopt two new credits provided to a member for displayed quotes/orders that provide liquidity. Currently under Rules 7018(a)(1) – (3), the Exchange provides credits ranging from \$0.0015 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.³ As described below, the Exchange is providing two new credits of \$0.0026 and \$0.0027 per share executed.

First Credit

The Exchange is proposing to provide a new credit to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) under Rule 7018(a), which will apply to securities of all three Tapes⁴ under Rule 7018(a)(1) – (3). Specifically, the

³ Under Rule 7018(a)(2), the Exchange also provides a credit of \$0.0001 per share executed to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders), and under Rule 7018(a)(3), the Exchange provides credits of \$0.0001 and \$0.0002 per share executed to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders). These credits are provided in addition to the credits provided for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity.

⁴ Tape C securities are those that are listed on the Exchange, Tape A securities are those that are listed on NYSE, and Tape B securities are those that are listed on exchanges other than Nasdaq or NYSE.

Exchange is adopting [sic] to provide a \$0.0027 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: (i) has shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.40% of Consolidated Volume⁵ during the month, and (ii) has shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.15% of Consolidated Volume during the month, and (iii) provides a daily average of at least 800,000 shares of non-displayed liquidity through one or more of its Nasdaq Market Center MPIDs through one or more of its Nasdaq Market Center MPIDs [sic] during the month.

Second Credit

The Exchange is proposing to provide a new credit to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) under Rule 7018(a), which will apply to securities of all three Tapes under Rule 7018(a)(1) – (3). Specifically, the Exchange is proposing to provide a \$0.0026 per share executed to a member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity if the member: (i) has shares of liquidity provided in securities that are listed on exchanges other than NASDAQ or NYSE through one or more of its Nasdaq Market Center MPIDs that represents [sic] at least 800,000 shares a day on average during the month, and (ii) doubles the daily average share volume provided in securities that are listed on exchanges other

⁵ Rule 7018(a) 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. For purposes of calculating Consolidated Volume and the extent of a member’s trading activity 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.

than NASDAQ or NYSE through one or more of its Nasdaq Market Center MPIDs during the month versus the member's daily average share volume provided in securities that are listed on exchanges other than NASDAQ or NYSE in January 2017.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ 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.

First Credit

The Exchange believes that the \$0.0027 per share executed credit of the proposed credit tier 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. As noted above, the Exchange provides credits ranging from \$0.0015 per share executed to \$0.00305 per share executed to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders), and the Exchange applies progressively more stringent requirements in return for higher per share executed credits. Accordingly, the \$0.0027 per share executed credit is reasonable.

The proposed \$0.0027 per share executed credit tier is an equitable allocation and is not unfairly discriminatory because it is similar to other credit tiers provided under Rule 7018(a).

The proposed credit will be provided to members that not only contribute to the Exchange by

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

removing liquidity in all securities through one or more of its [sic] Nasdaq Market Center MPIDs that represent more than 0.40% of Consolidated Volume during the month, but also provide liquidity in all securities through one or more of its [sic] Nasdaq Market Center MPIDs that represent more than 0.15% of Consolidated Volume during the month, and maintain a daily average of at least 800,000 shares of non-displayed liquidity through one or more of its [sic] Nasdaq Market Center MPIDs during the month. Thus, the proposed criteria requires a significant level of market participation, by being both a remover and provider of liquidity, both displayed and non-displayed.

The Exchange currently provides a \$0.0027 per share executed credit to a member with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.65% of 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. The proposed credit tier requires the member to access less liquidity and provide more liquidity, as measured by Consolidated Volume, but also requires the member to additionally maintain a significant level of non-displayed liquidity. Moreover, since a member achieving this credit tier will be both accessing and providing liquidity, the proposed credit tier will benefit other members by encouraging 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. As a consequence, the Exchange believes that the proposed credit tier is comparable to the existing credit and therefore an equitable allocation and is not unfairly discriminatory. Last, the Exchange believes the new credit is an equitable allocation and is not unfairly discriminatory because it is one of many possible means

by which a member may qualify for a credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) under Rule 7018(a).

Second Credit

The Exchange believes that the \$0.0026 per share executed credit of the proposed credit tier 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 noted above, the Exchange provides credits ranging from \$0.0015 per share executed to \$0.00305 per share executed to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders), and the Exchange applies progressively more stringent requirements in return for higher per share executed credits. Accordingly, the \$0.0026 per share executed credit is reasonable.

The proposed \$0.0026 per share executed credit tier is an equitable allocation and is not unfairly discriminatory because it is consistent with other credits provided under Rule 7018(a). The proposed credit will be provided to members that have shares of liquidity provided in securities that are listed on exchanges other than NASDAQ or NYSE through one or more of its [sic] Nasdaq Market Center MPIDs that represents at least 800,000 shares a day on average during the month and also doubles the daily average share volume provided in securities that are listed on exchanges other than NASDAQ or NYSE through one or more of its [sic] Nasdaq Market Center MPIDs during the month versus the member's daily average share volume provided in securities that are listed on exchanges other than NASDAQ or NYSE in January 2017. The Exchange notes that requiring a member to increase its participation in Tape B securities as measured by its daily average share volume compared to its daily average share volume in the month of January 2017 will ensure that the member [sic] increasing its

participation in the market in securities that are listed on exchanges other than NASDAQ or NYSE. The Exchange is also requiring the member provide a significant level of liquidity [sic] provided in securities that are listed on exchanges other than NASDAQ or NYSE through one or more of its Nasdaq Market Center MPIDs that represents at least 800,000 shares a day on average. The Exchange does not currently have a credit under Rule 7018(a) that measures a member's eligibility for a credit based on activity compared to a prior month's activity; however, the Exchange does use a benchmark date against which performance is measured under the Nasdaq Growth Program.⁸ Last, the Exchange believes the new credit is an equitable allocation and is not unfairly discriminatory because it is one of many possible means by which a member may qualify for a credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) under Rule 7018(a).

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.

⁸ See the "Growth Baseline" of Rule 7014(j). The Exchange notes that other markets also apply similar benchmarking concepts. For example, Bats BZX Exchange, provides a credit of \$0.0030 per share if the member increases its Total Consolidated Volume for adding liquidity by 0.15% or more in comparison to its volume in April 2016, and assesses a fee of \$0.00295 per share if the member increases its Total Consolidated Volume for removing liquidity by 0.05% or more in comparison to its July 2016 volume. Similarly, Bats EDGX Exchange pays a credit of \$0.0032 per share if the member increases its Total Consolidated Volume for adding liquidity by 0.10% or more in comparison to its volume in January 2017.

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 credits provided to a member for execution of securities of each of the three Tapes do not impose a burden on competition 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 changes are designed to reward market-improving behavior by providing two new credit tiers based on various measures of such behavior, which may encourage other market venues to provide similar credits to improve their market quality. Thus, the Exchange does not believe that the proposed changes will impose any burden on competition, but may rather promote competition.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will 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.⁹

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-2017-026 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-2017-026. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2017-026, 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.¹⁰

Eduardo A. Aleman
Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(12).