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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68421; File No. SR-NASDAQ-2012-135)

December 13, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend NASDAQ's Fees for Order Execution

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on November 30, 2012, 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 NASDAQ. 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 NASDAQ Stock Market LLC proposes changes to NASDAQ's fees for order execution. While changes pursuant to this proposal are effective upon filing, the Exchange will implement the proposed rule on December 3, 2012.

The text of the proposed rule change is available on the Exchange's Website at <http://www.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. 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

NASDAQ currently charges \$0.0030 per share executed with respect to all orders for securities priced at \$1 or more per share that execute in the NASDAQ Market Center. In this proposed rule change, NASDAQ is proposing two specific discounts from this fee.³ First, if a member enters Market-on-Close ("MOC") and/or Limit-on-Close ("LOC") orders that execute in the NASDAQ Closing Cross, and such orders represent more than 0.06% of the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities ("Consolidated Volume") during the month, the member would pay a fee of \$0.0029 per share executed with respect to its orders that execute in the NASDAQ Market Center during the month.⁴ NASDAQ is introducing the discount because it believes that members that participate in the NASDAQ Closing Cross to a significant extent through the use of MOC and/or LOC orders are frequently acting on behalf of institutional investor customers. At present, such members may be giving NASDAQ lower relative priority in their order routing decisions due to its relatively high fees for accessing liquidity, as compared with lower-cost exchanges. As a result, liquidity providers on NASDAQ may receive larger orders that have

³ NASDAQ is also making conforming changes to relocate the placement of the definitions of "MPID" and "Consolidated Volume" in Rule 7018.

⁴ Unless a lower rate applies. For example, an order subject to the discount for Designated Securities described below would pay the lower rate.

already attempted to access liquidity elsewhere, such that the order is more likely to have an impact on the price of the stock. By lowering fees for these members, NASDAQ hopes to encourage them to give greater priority to NASDAQ in their routing decisions, thereby lowering their cost and improving the execution experience of liquidity providers. NASDAQ also hopes to encourage greater use of its Closing Cross through this pricing incentive. NASDAQ further notes that the New York Stock Exchange (“NYSE”) currently offers general pricing incentives to members that make use of its closing process to a specified extent.⁵

Second, NASDAQ is proposing a discounted execution fee of \$0.0028 per share executed for the following securities (“Designated Securities”):

BAC	Bank of America Corporation
DIA	SPDR Dow Jones Industrial Average ETF
EEM	iShares MSCI Emerging Markets Index ETF
F	Ford Motor Co.
GE	General Electric Company
GEN	GenOn Energy, Inc.
HPQ	Hewlett-Packard Company
INTC	Intel Corporation
IWM	iShares Russell 2000 Index ETF
MSFT	Microsoft Corporation
NOK	Nokia Corporation
QQQ	Powershares QQQ ETF
S	Sprint Nextel Corp.
SPY	SPDR S&P 500 ETF
TZA	Direxion Daily Small Cap Bear 3X Shares ETF
VXX	iPath S&P 500 VIX ST Futures ETN
XLF	Financial Select Sector SPDR ETF
YHOO	Yahoo! Inc.

The discounted fee would apply to all orders in Designated Securities entered through a market participant identifier (“MPID”) through which a member accesses, provides, or routes shares of liquidity that represent more than 0.25% of Consolidated Volume during the month,

⁵ Securities Exchange Act Release No. 68150 (November 5, 2012), 77 FR 67431 (November 9, 2012) (SR-NYSE-2012-56); Securities Exchange Act Release No. 68021 (October 9, 2012), 77 FR 63406 (October 16, 2012) (SR-NYSE-2012-50).

including a daily average volume of at least 2 million shares of liquidity provided. The Designated Securities were selected based on analysis of the extent to which (i) NASDAQ generally has a strong quote in the security, in terms of size and time at the national best bid or offer (“NBBO”), but (ii) NASDAQ’s share of executions in the security has declined. By lowering the fee for accessing liquidity in these securities, NASDAQ hopes to encourage members to give greater priority to NASDAQ in their routing decisions, thereby lowering their cost and improving the execution experience of liquidity providers in Designated Securities. In order to qualify for the discount, members must demonstrate a commitment to regular participation in the NASDAQ Market Center by reaching relatively modest usage levels (shares accessed, provided or routed representing 0.25% of Consolidated Volume), including an average daily volume of 2 million or more shares of liquidity provided. Through this requirement, NASDAQ will minimize the likelihood of offering the discount to members that engage solely in opportunistic trading without providing liquidity. NASDAQ believes that this will, in turn, increase the likelihood that offering the pricing incentive will increase NASDAQ’s market quality in Designated Securities. NASDAQ further notes that NYSE and NYSEArca currently offer pricing incentives that are limited to certain designated securities.⁶

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular,

⁶ Securities Exchange Act Release No. 68021 (October 9, 2012), 77 FR 63406 (October 16, 2012) (SR-NYSE-2012-50); Securities Exchange Act Release No. 67986 (October 4, 2012), 77 FR 61803 (October 11, 2012) (SR-NYSEArca-2012-104).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4) and (5).

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 NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, NASDAQ believes that the proposal to introduce a pricing incentive for members that achieve certain participation levels in the NASDAQ Closing Cross is reasonable because it will result in a reduction of fees below the levels currently in effect, which in turn are consistent with the requirements of Rule 610 under Regulation NMS⁹ applicable to access fees. The proposal is consistent with an equitable allocation of fees and not unfairly discriminatory because it will reduce fees to members that NASDAQ believes are generally acting on behalf of institutional investors, and NASDAQ believes that drawing the orders of such members to NASDAQ will be beneficial to other market participants. Specifically, by encouraging such members to route orders to NASDAQ sooner, the pricing change is intended to benefit liquidity providers by allowing them to achieve more frequent executions under conditions where the execution of their posted liquidity is less likely to have a negative impact on the price of the security being traded. In addition, the change is intended to increase the proportion of orders in NASDAQ that reflect long-term trading interest, rather than opportunistic trading strategies. Accordingly, although the fee reduction applies only to members with certain characteristics, it is equitable and not unfairly discriminatory because it is intended to encourage trading behavior that is beneficial to the market as a whole. The discount is also not unfairly discriminatory because an appreciable number of members are expected to qualify for it based on current trading volumes, and more may qualify by increasing their participation in NASDAQ.

⁹ 17 CFR 242.610.

Similarly, NASDAQ believes that the proposal to introduce a pricing incentive for Designated Securities is reasonable because it will result in a reduction of fees below the levels currently in effect, which in turn are consistent with the requirements of Rule 610 under Regulation NMS¹⁰ applicable to access fees. The proposal is consistent with an equitable allocation of fees and not unfairly discriminatory because it will reduce fees for members that have demonstrated a commitment to regular participation in the NASDAQ Market Center through reaching specified levels of overall usage and liquidity provision. Incentives focused on the members that provide liquidity are prevalent in securities markets because higher levels of liquidity provision aid price discovery and dampen volatility. In addition, the focus of the incentive on Designated Securities is equitable and not unreasonably discriminatory because, despite strong quotes in terms of size and time at the inside, NASDAQ's share of executions in these securities has declined, thereby risking the willingness of members to continue to offer liquidity at current levels. By providing an incentive for members to access NASDAQ's quote in these securities, the price change will benefit liquidity providers as well as liquidity accessors. The discount is also not unfairly discriminatory because an appreciable number of members are expected to qualify for it based on current trading volumes, and more may qualify by increasing their participation in NASDAQ.

Finally, NASDAQ 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. In such an environment, NASDAQ 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. NASDAQ believes that

¹⁰Id.

the proposed rule change reflects this competitive environment because it lowers fees for members whose trading activity is likely to reinforce incentives for other members to provide liquidity at NASDAQ.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. By reducing fees, the proposal is a manifestation of the continued intense level of competition in the market for order execution.

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.¹¹ 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2012-135 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2012-135. 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, D.C. 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-2012-135, 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.¹²

Kevin M. O'Neill
Deputy Secretary

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¹² 17 CFR 200.30-3(a)(12).