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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69055; File No. SR-NASDAQ-2013-038)

March 7, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Fee Schedule Governing Order Routing

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 February 26, 2013, The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II 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 Substance of the Proposed Rule Change

NASDAQ is proposing [sic] proposed changes to amend NASDAQ’s fee schedule governing order routing. NASDAQ will implement the proposed change on February 27, 2013.

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 self-regulatory organization 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 III [sic] below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is amending its fee schedule governing order routing to establish fees for routing orders using its two new order routing strategies, QDRK and QCST.³ All of the changes pertain to securities priced at \$1 or more per share, and to securities listed on NASDAQ, the New York Stock Exchange ("NYSE") and exchanges other than NASDAQ and NYSE. In addition, QDARK [sic] and QCST orders, like other routable orders, will not count toward determining a member's shares of liquidity routed for purposes of NASDAQ fees.

With respect to QDRK and QCST orders that access liquidity in the NASDAQ Market Center, members will be charged \$0.0029 per share executed. With respect to QDRK and QCST orders that execute on a venue other than NASDAQ, members will be charged \$0.0005 per share executed, except that for QCST orders that execute on NASDAQ OMX BX, members will receive a credit of \$0.0014 per share executed.

2. Statutory Basis

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

³ QDRK orders, pursuant to Rule 4758(a)(1)(A)(xii), check the System for available shares and simultaneously route to certain destinations on the System routing table that are not posting Protected Quotations within the meaning of Regulation NMS (i.e. "dark venues" or "dark pools"). QCST orders, pursuant to Rule 4758(a)(1)(A)(xiii), check the System for available shares and simultaneously route to select dark venues and to certain low cost exchanges. See Securities Exchange Act Release No. 68839 (February 6, 2013), 78 FR 9957 (February 12, 2013) (SR-NASDAQ-2013-014).

⁴ 15 U.S.C. 78f.

⁵ 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.

The proposed pricing for QDRK and QCST orders executed on NASDAQ is reasonable because it is similar to the current pricing for most orders executed on NASDAQ. The proposed fee for QDRK and QCST orders that execute on a venue other than NASDAQ is s [sic] the same as the current fee for TFTY orders, and the credit for orders that execute on NASDAQ OMX BX is the same as the current credit for TFTY, SOLV [sic] CART and SAVE orders that execute on NASDAQ OMX BX.

The proposed pricing for QDRK and QCST orders is consistent with an equitable allocation of fees and is not unfairly discriminatory because the pricing, which is the same for all NASDAQ participants, applies solely to members that opt to route QDRK and QCST orders. Moreover, the lower cost of these routing strategies as compared with other existing routing strategies is not unfairly discriminatory because it is consistent with the lower costs associated with routing to the venues that are accessed by the new strategies.

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 the proposed rule change reflects this competitive environment because it is designed to ensure

that the charges for use of the NASDAQ routing facility to route reflect changes in the cost of such routing.

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 routing is extremely competitive, members may readily opt to disfavor NASDAQ's routing services if they believe that alternatives offer them better value. Moreover, by introducing new routing options and charging fees that NASDAQ believes to be reasonable, NASDAQ believes that it is increasing its competitiveness vis-à-vis other trading venues. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, NASDAQ 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. NASDAQ also does not believe that the proposal raises issues of competition among its own market participants, because the proposal applies fee and credits equally to all 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 rule change is effective upon filing pursuant to Section 19(b)(3)(A)⁶ of the Act and subparagraph (f)(2) of Rule 19b-4⁷ thereunder, because it establishes a due, fee, or other charge imposed by NASDAQ.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(2).

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)⁸ of the Act to determine whether the proposed rule change 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-2013-038 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-2013-038. 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

⁸ 15 U.S.C. 78s(b)(2)(B).

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. 20549-1090, 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 offices 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-2013-038, 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.⁹

Kevin M. O'Neill
Deputy Secretary

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⁹ 17 CFR 200.30-3(a)(12).