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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69376; File No. SR-NASDAQ-2013-063)

April 15, 2013

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

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 April 1, 2013, 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 Substance of the Proposed Rule Change

NASDAQ is proposing changes to its schedule of fees and rebates for execution of orders for securities priced at \$1 or more under Rule 7018, as well as changes to its Qualified Market Maker ("QMM") and NBBO Setter Incentive Programs under Rule 7014. The changes pursuant to this proposal are effective upon filing, and the Exchange will implement the proposed rule changes on April 1, 2013.

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. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Designated Retail Orders

In March 2013,³ NASDAQ introduced new liquidity provider credit tiers for orders designated by a member as Designated Retail Orders. The change was part of an ongoing effort by NASDAQ to use financial incentives to encourage greater participation in NASDAQ by members that represent retail customers.⁴ For purposes of the new tiers and credits, a Designated Retail Order is defined as an agency or riskless principal⁵ order that originates from a natural

³ Securities Exchange Act Release No. 69133 (March 14, 2013), 78 FR 17272 (March 20, 2013) (SR-NASDAQ-2013-042).

⁴ The Commission has expressed concern that a significant percentage of the orders of individual investors are executed in over-the-counter markets, that is, at off-exchange markets. Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, “Concept Release”). In the Concept Release, the Commission recognized the strong policy preference under the Act in favor of price transparency and displayed markets. See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (“Schapiro Speech,” available on the Commission website) (comments of former Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that a significant percentage of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

⁵ To qualify as a Designated Retail Order, a riskless principal order must satisfy the criteria set forth in FINRA Rule 5320.03. These criteria include that that the member maintain supervisory systems to reconstruct, in a time-sequenced manner, all orders that are

person and is submitted to NASDAQ by a member that designates it pursuant to Rule 7018, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. As originally adopted, if a member enters Designated Retail Orders through a market participant identifier (“MPID”) through which (i) at least 90% of the shares of liquidity provided during the month are provided through Designated Retail Orders, and (ii) the member accesses, provides, or routes shares of liquidity that represent at least 0.10% of Consolidated Volume⁶ during the month, the member would receive a credit of \$0.0034 per share executed for Designated Retail Orders that provide liquidity if they are displayed orders. NASDAQ is proposing to modify the criteria for this tier in two respects. First, NASDAQ is removing the 0.10% of Consolidated Volume requirement, such that any member that satisfies the requirement to provide 90% of the shares of liquidity provided through a particular MPID using Designated Retail Orders will be eligible for the \$0.0034 per share executed rate. In addition, NASDAQ is proposing an additional means by which a member may receive the \$0.0034 per share executed rate. If the member provides shares of liquidity through Designated Retail Orders that represent at least 0.30% of Consolidated Volume, and the member also qualifies for the Penny Pilot Tier 4 Customer and Professional Rebate to Add Liquidity under Chapter XV, Section 2 of the NASDAQ Options Market (“NOM”) rules during the month through one or more of its NOM MPIDs, it will also qualify for the \$0.0034 rate. Under a proposed rule change for NOM being

entered on a riskless principal basis; and the member submits a report, contemporaneously with the execution of the facilitated order, that identifies the trade as riskless principal.

⁶ “Consolidated Volume” is defined as the total consolidated volume reported to all consolidated transaction plans by all exchanges and trade reporting facilities.

filed contemporaneously,⁷ a NOM Participant qualifies for the Tier 4 Customer and Professional Rebate if it adds a number of contracts of Customer and Professional⁸ liquidity that equals or exceeds 0.5% of total industry customer equity and ETF option average daily volume (“ADV”) during the month.

As is currently the case, Designated Retail Orders not qualifying for the \$0.0034 per share executed tier will receive a credit of \$0.0033 per share executed if they are displayed, and will receive NASDAQ’s existing credits for midpoint pegged and midpoint peg post-only orders (“midpoint orders”) and other forms of non-displayed orders if they are not displayed.⁹

New Tiers for Members Active in the NASDAQ Market Center and the NASDAQ Options Market

In March 2013,¹⁰ NASDAQ adopted a new liquidity provider credit tier for members that are active in both the Nasdaq Market Center and NOM. Under that tier, NASDAQ provides a credit of \$0.0030 per share executed for displayed orders that provide liquidity if a member (i) has shares of liquidity provided in all securities during the month representing at least 0.45% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center

⁷ SR-NASDAQ-2013-062 (April 1, 2013).

⁸ The term “Customer” 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 a broker or dealer or for the account of a Professional. The term “Professional” 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) of the NOM Rules.

⁹ Specifically, NASDAQ provides a credit of \$0.0017 per share executed for midpoint orders if the member provides an average daily volume of more than 3 million shares through midpoint orders during the month, \$0.0015 per share executed for midpoint orders if the member provides an average daily volume of 3 million or fewer shares through midpoint orders during the month, and \$0.0010 per share executed for other orders that are not displayed.

¹⁰ Securities Exchange Act Release No. 69133 (March 14, 2013), 78 FR 17272 (March 20, 2013) (SR-NASDAQ-2013-042).

MPIDs, and (ii) qualifies for the Penny Pilot Tier 8¹¹ Customer and Professional Rebate to Add Liquidity under Chapter XV, Section 2 of the NOM rules during the month through one or more of its NOM MPIDs. A NOM Participant may qualify for the Tier 8 Customer and Professional Rebate if it (i) has Total Volume¹² of 325,000 or more contracts per day in a month, (2) adds Customer and Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month, or (iii) adds Customer and Professional liquidity of 60,000 or more contracts per day in a month and NOM Market Maker liquidity of 40,000 (formerly 30,000) or more contracts per day per month.

In this proposed rule change, NASDAQ is proposing two additional tiers with similar criteria. Specifically, NASDAQ will provide a credit of \$0.0029 per share executed for displayed orders that provide liquidity if a member (i) has shares of liquidity provided in all securities during the month representing at least 0.10% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) qualifies for the Penny Pilot Tier 4 NOM Market Maker Rebate to Add Liquidity under Chapter XV, Section 2 of the NOM rules during the month through one or more of its NOM MPIDs. Similarly, NASDAQ will provide a credit of \$0.0027 per share executed for displayed orders that provide liquidity if a

¹¹ Formerly Tier 7, but redesignated as Tier 8 in SR-NASDAQ-2013-062 (April 1, 2013). SR-NASDAQ-2013-062 also increases the Tier's requirement for NOM Market Maker liquidity from 30,000 to 40,000 contracts per day during the month.

¹² "Total Volume" is defined as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and Non-Penny Pilot Options that either adds or removes liquidity on NOM. The term "Non-NOM Market Maker" means a registered market maker on another options exchange that is not a NOM Market Maker. The term "NOM Market Maker" means a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2 of the NOM Rules, and must also remain in good standing pursuant to Chapter VII, Section 4 of the NOM Rules. The term "Firm" applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC. The term "Broker-Dealer" applies to any transaction that is not subject to any of the other transaction fees applicable within a particular category.

member (i) has shares of liquidity provided in all securities during the month representing at least 0.05% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) qualifies for the Penny Pilot Tier 4 NOM Market Maker Rebate to Add Liquidity under Chapter XV, Section 2 of the NOM rules during the month through one or more of its NOM MPIDs. Under a contemporaneous NOM proposed rule change,¹³ a NOM Participant will qualify for the Tier 4 NOM Market Maker Rebate if it adds Market Maker liquidity in Penny Pilot Options of 110,000 or more contracts per day in a month.

As with existing tiers that require participation in both the Nasdaq Market Center and NOM, the criteria for these new tiers, as well as the new tier for Designated Retail Orders, establish volume thresholds that must be met on both markets in order to receive a higher rebate. In doing so, the pricing incentives recognize the prevalence of trading in which members simultaneously trade different asset classes within the same strategy. Because cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other, NASDAQ believes that pricing incentives that encourage market participant activity in NOM also support price discovery and liquidity provision in the Nasdaq Market Center.

QMM and NBBO Setter Incentive Programs

In November 2012,¹⁴ NASDAQ introduced two new pricing programs designed to create incentives for members to improve market quality. The programs are in effect on a pilot basis from November 1, 2012 until April 30, 2013, and NASDAQ expects to file a proposed rule

¹³ SR-NASDAQ-2013-062 (April 1, 2013).

¹⁴ Securities Exchange Act Release No. 68209 (November 9, 2012), 77 FR 69519 (November 19, 2012) (SR-NASDAQ-2012-126).

change next month to remove the pilot limitation on the programs.¹⁵ In this proposed rule change, NASDAQ is making several changes to the pilot programs as currently in effect.

Under the QMM Program, a member may be designated as a QMM with respect to one or more of its MPIDs if:

- the member is not assessed any “Excess Order Fee” under Rule 7018 during the month;¹⁶ and
- through such MPID the member quotes at the national best bid or best offer (“NBBO”) at least 25% of the time during regular market hours¹⁷ in an average of at least 1,000 securities during the month.¹⁸

¹⁵ As noted in the original filing to establish the programs, NASDAQ will report to the Commission on the effects of the programs on bid-ask spreads, depth of liquidity at the inside, and such other factors as may be deemed relevant.

¹⁶ Rule 7018(m). Last year, NASDAQ introduced an Excess Order Fee, aimed at reducing inefficient order entry practices of certain market participants that place excessive burdens on the systems of NASDAQ and its members and that may negatively impact the usefulness and life cycle cost of market data. In general, the determination of whether to impose the fee on a particular MPID is made by calculating the ratio between (i) entered orders, weighted by the distance of the order from the NBBO, and (ii) orders that execute in whole or in part. The fee is imposed on MPIDs that have an “Order Entry Ratio” of more than 100.

¹⁷ Defined as 9:30 a.m. through 4:00 p.m., or such shorter period as may be designated by NASDAQ on a day when the securities markets close early (such as the day after Thanksgiving).

¹⁸ A member MPID is considered to be quoting at the NBBO if it has a displayed order at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, NASDAQ will determine the number of securities in which the member satisfied the 25% NBBO requirement. To qualify for QMM designation, the MPID must meet the requirement for an average of 1,000 securities per day over the course of the month. Thus, if a member MPID satisfied the 25% NBBO requirement in 900 securities for half the days in the month, and satisfied the requirement for 1,100 securities for the other days in the month, it would meet the requirement for an average of 1,000 securities.

Currently, a member that is a QMM with respect to a particular MPID (a “QMM MPID”) is eligible to receive certain financial benefits. These benefits, and proposed modifications to them, are described below:

- The QMM may receive an NBBO Setter Incentive credit of \$0.0005 with respect to orders that qualify for the NBBO Setter Incentive Program (i.e., displayed orders with a size of at least one round lot that set the NBBO or join another trading center at the NBBO)¹⁹ and that are entered through the QMM MPID. Beginning April 1, 2013, in order to receive an NBBO Setter Incentive credit at the \$0.0005 rate, the QMM must also have a volume of liquidity provided through the QMM MPID (as a percentage of Consolidated Volume) that exceeds the lesser of the volume of liquidity provided through such QMM MPID during the first month in which the MPID qualified as a QMM MPID (as a percentage of Consolidated Volume) or 1.0% of Consolidated Volume.²⁰ If a QMM does not satisfy these volume requirements, it will receive an NBBO Setter Incentive credit of \$0.0002 per share executed with respect to orders that qualify for the NBBO Setter Incentive Program.²¹
- Currently, the QMM receives a credit of \$0.0001 per share executed with respect to all other displayed orders in securities priced at \$1 or more per share that provide liquidity and that are entered through a QMM MPID (in addition to any credit payable under Rule

¹⁹ The NBBO Setter Incentive program is described in more detail below.

²⁰ The QMM will also receive the \$0.0005 per share rate during the first month in which an MPID becomes a QMM MPID.

²¹ Beginning April 1, 2013, Designated Retail Orders will not be eligible to receive an NBBO Setter Incentive credit.

7018).²² This aspect of the program is being changed only to stipulate that Designated Retail Orders are not eligible to receive this additional credit.

- Currently, the QMM may receive a 25% discount on fees for ports used for entering orders for that MPID, up to a total discount of \$10,000 per MPID per month.²³ As provided in Rule 7015, the specific fees subject to this discount are: (i) all ports using the NASDAQ Information Exchange (“QIX”) protocol,²⁴ (ii) Financial Information Exchange (“FIX”) trading ports,²⁵ and (iii) ports using other trading telecommunications protocols.²⁶ Beginning April 1, 2013, the discount will be equal to the lesser of the QMM’s total fees for such ports or \$5,000.
- Currently, the QMM may receive a credit of \$0.0020 per share executed for all midpoint orders in securities priced at \$1 or more per share entered through a QMM MPID (in lieu of any credit payable under Rule 7018). Effective April 1, 2013, NASDAQ will eliminate this provision, such that the applicable credit will be the credit payable under Rule 7018.
- Currently, for a number of shares not to exceed the number of shares of liquidity provided through a QMM MPID (the "Numerical Cap"), NASDAQ charges a fee of \$0.0028 per share executed for orders in securities priced at \$1 or more per share that

²² If the QMM also participates in NASDAQ Investor Support Program (the “ISP”) NASDAQ will pay the greater of any applicable credit under the ISP or the QMM program, but not a credit under both programs.

²³ The ports subject to the discount are not used for receipt of market data.

²⁴ The applicable undiscounted fees are \$1,200 per month for a port pair or ECN direct connection port pair, and \$1,000 per month for an unsolicited message port. See Rule 7015(a).

²⁵ The applicable undiscounted fee is \$500 per port per month. See Rule 7015(b).

²⁶ The applicable undiscounted fee is \$500 per port pair per month. See Rule 7015(g).

access liquidity on the NASDAQ Market Center and that are entered through the same QMM MPID; provided, however, that orders that would otherwise be charged \$0.0028 per share executed under Rule 7018 do not count toward the Numerical Cap. For shares above the Numerical Cap, NASDAQ charges the rate otherwise applicable under Rule 7018. Beginning on April 1, 2013, the Numerical Cap will be the lower of the number of shares of liquidity provided through a QMM MPID or 20 million shares per trading day. Moreover, in order to be charged the execution rate of \$0.0028 per share executed, the QMM's volume of liquidity added, provided, and/or routed through the QMM MPID during the month (as a percentage of Consolidated Volume) must be not less than 0.05% lower than the volume of liquidity added, provided, and/or routed through such QMM MPID during the first month in which the MPID qualified as a QMM MPID (as a percentage of Consolidated Volume).²⁷

Under the NBBO Setter Incentive program, NASDAQ provides an enhanced liquidity provider rebate with respect to displayed liquidity-providing orders that set the NBBO or join another trading center with a protected quotation at the NBBO. The NBBO Setter Incentive credit is paid on a monthly basis, and the amount is determined by multiplying the applicable rate by the number of shares of displayed liquidity provided to which a particular rate applies.²⁸ Currently, a member receives an NBBO Setter Incentive credit at the \$0.0002 rate with respect to all shares of displayed liquidity that are executed at a price of \$1 or more in the Nasdaq Market Center during a given month if posted through an order that:

- displayed a quantity of at least one round lot at the time of execution; and

²⁷ This limitation will not apply during the first month in which an MPID becomes a QMM MPID.

²⁸ Beginning April 1, 2013, a member will not be eligible to receive an NBBO Setter Incentive credit with respect to a Designated Retail Order.

- either established the NBBO or was the first order posted on NASDAQ that had the same price as an order posted at another trading center with a protected quotation that established the NBBO.

Beginning April 1, 2013, members must also provide a daily average volume of at least 5 million shares of liquidity through orders that satisfy the foregoing criteria (i.e., that qualify for an NBBO Setter Incentive credit) in order to receive a credit at the \$0.0002 rate. Members with a lower daily average volume will receive a NBBO Setter Incentive credit at a rate of \$0.0001 per shares executed. Alternatively, a member may receive a credit at the \$0.0002 per share executed rate if it is a QMM but does not satisfy new volume criteria to be required for a QMM to receive a credit at the \$0.0005 per share executed rate.

Under the current program, a member receives an NBBO Setter Incentive credit at the \$0.0005 rate with respect to all shares of displayed liquidity that are executed at a price of \$1 or more in the NASDAQ Market Center during a given month if posted through an order that:

- displayed a quantity of at least one round lot at the time of execution;
- either established the NBBO or was the first order posted on Nasdaq that had the same price as an order posted at another trading center with a protected quotation that established the NBBO; and
- was entered through a QMM MPID.

As discussed above, beginning April 1, 2013, in order to receive an NBBO Setter Incentive credit at the \$0.0005 rate, the QMM must also have a volume of liquidity provided through the QMM MPID (as a percentage of Consolidated Volume) that exceeds the lesser of the volume of liquidity provided through such QMM MPID during the first month in which the MPID qualified as a QMM MPID (as a percentage of Consolidated Volume) or 1.0% of Consolidated Volume.

If it does not satisfy this volume requirement, the QMM MPID will receive a credit at the \$0.0002 per share executed rate.

Modification to Tier for Members Entering Orders in the NASDAQ Closing Cross

Currently, NASDAQ charges \$0.0029 per share executed for orders that access liquidity when entered by a member with Market-on-Close and/or Limit-on-Close orders executed in the NASDAQ Closing Cross that represent more than 0.06% of Consolidated Volume during the month. NASDAQ is proposing to modify the requirements for this tier, such that the member must enter the required volume of orders through a single MPID. As with other provisions of the fee schedule requiring activity to be concentrated through a single MPID, the change is designed to avoid providing excessive encouragement to members aggregating the activity of several firms (some of whom may not themselves be members of the Exchange) for the sole purpose of earning a higher rebate or reducing fees.²⁹

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,³⁰ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,³¹ 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 NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

²⁹ See Securities Exchange Act Release No. 64003 (March 2, 2011), 76 FR 12784 (March 8, 2011) (SR-NASDAQ-2011-028) (discussing introduction of fees designed to discourage aggregation for purposes of earning a rebate).

³⁰ 15 U.S.C. 78f.

³¹ 15 U.S.C. 78f(b)(4) and (5).

The proposed changes to the \$0.0034 per share pricing tier for Designated Retail Orders are reasonable because they will make it easier for a wider range of members to achieve this pricing tier, thereby resulting in a higher credit for members introducing Designated Retail Orders to the market. The change is consistent with an equitable allocation of fees because it broadens the availability of fee reductions used as a means to encourage greater retail participation in NASDAQ. Because retail orders are likely to reflect long-term investment intentions, they promote price discovery and dampen volatility. Accordingly, their presence in the NASDAQ market has the potential to benefit all market participants, and it is therefore equitable to provide financial incentives with respect to such orders. NASDAQ further believes that the change is not unreasonably discriminatory because it will continue to broaden the retail pricing incentives already provided through Designated Retail Order pricing, the Routable Order Program (the “ROP”) and the ISP by offering a meaningful pricing incentive (\$0.0034 per share executed) to all members that are able to concentrate Designated Retail Orders through a single MPID, while also continuing to offer a credit of \$0.0033 per share executed that is available to all members that are able to attest that orders designated by them for participation in the program meet the definition of a Designated Retail Order.

The new tiers for members active in both the NASDAQ Market Center and NOM are reasonable because they reflect the availability of a significant price reduction for members that support liquidity on both markets. The changes are consistent with an equitable allocation of fees because the pricing tiers require significant levels of liquidity provision, which benefits all market participants, and because activity in NOM also supports price discovery and liquidity provision in the NASDAQ Market Center due to the increasing propensity of market participants to be active in both markets and the influence of each market on the pricing of securities in the

other. The new tiers are not unreasonably discriminatory because market participants may qualify for a comparable or a higher rebate through alternative means that do not require participation in NOM, including through existing volume-based NASDAQ Market Center tiers, the use of Designated Retail Orders, participation in the ROP, or through a combination of qualification for volume-based tiers and participation in the ISP.³²

The changes to the QMM Program and the NBBO Setter Incentive Program are reasonable, equitable, and not unreasonably discriminatory because they merely serve to limit the extent of the incentives associated with the programs, thereby causing the credits received by program participants to become more consistent with credits received by members that are not participants, while maintaining an incentive structure designed to benefit all market participants by encouraging quoting at or near the NBBO in a wide range of securities. NASDAQ hopes thereby to maintain the benefits associated with the programs while reducing their costs and making the programs sustainable in the longer term. Specifically:

- The change with respect to the availability of an NBBO Setter Incentive Credit of \$0.0005 per share executed for QMMs is reasonable because it does not prevent a QMM from earning the credit at the specified level, but does provides an incentive for QMMs to increase their participation in NASDAQ above a prior benchmark level (or 1.0% of Consolidated Volume), thereby benefitting the Exchange and other market participants through high levels of liquidity provision. The change is consistent with an equitable allocation of fees because

³² The change made by NOM with respect to the requirements for the Penny Pilot Tier 8 Customer and Profession Rebate to Add Liquidity is reasonable because it is intended to incentivize NOM Market Makers to post additional liquidity, an incentive that is strengthened by the availability of a higher rebate in the NASDAQ Market Center. The change is consistent with an equitable allocation of fees because it has the potential to increase liquidity provided on both markets, and is not unreasonably discriminatory because members have alternative means to earn a comparable rebate on NASDAQ that do not require use of NOM.

members that contribute significantly to market quality by satisfying the requirements of both the QMM and the NBBO Setter Incentive program while participating actively in the NASDAQ Market Center justifiably earn the higher credit of \$0.0005 per share executed. The change is not unreasonably discriminatory because a QMM that does not achieve the higher requirements may still receive a credit of \$0.0002 for orders that set the NBBO.

- Similarly, the modified requirements for the \$0.0002 per share NBBO Setter Incentive credit to be earned by a non-QMM are reasonable because volume thresholds are widely used by NASDAQ and other exchanges as requirements for the receipt of favorable pricing, and NASDAQ is introducing a credit of \$0.0001 per share for NBBO setting orders of a member that do not meet the requirement to ensure that financial incentives continue to be provided with respect to these beneficial orders. The change is consistent with an equitable allocation of fees in that it introduces a volume-based requirement for one tier of the program: such volume-based tiers are widely used by NASDAQ and other exchanges as a means of increasing participation or other desirable activity in their markets. The change is not unreasonably discriminatory because a credit of \$0.0001 will now offered for NBBO setting orders that do not meet the volume requirement, and because comparable credits may be earned through other means, including participation in the ISP.

- The modification with respect to port fees is reasonable because it does not alter the fact that QMMs continue to be provided a discount as compared with other members, thereby resulting in lower overall fees for QMMs. The change is consistent with an equitable allocation of fees and not unreasonably discriminatory because the discount, like other QMM incentives, serves to encourage beneficial quoting conduct by QMMs, but the change will make the fees paid by QMMs for ports more consistent with the fees paid by others.

- The elimination of the QMM credit for midpoint orders is reasonable because QMMs, like other members, will continue to receive a higher credit with respect to midpoint orders, which provide price improvement, than with respect to other forms of non-displayed orders. The change is consistent with an equitable allocation of fees and not unreasonably discriminatory because the change will cause the credits paid to QMMs with respect to midpoint orders to be identical to the credits paid to other members with respect to the same orders.

- The change with respect to the \$0.0028 per share executed pricing tier for QMMs is reasonable because it will maintain the availability of the pricing incentive in question while limiting the associated cost (by altering the number of shares to which the discount may apply) and providing an incentive for QMMs to maintain their participation in NASDAQ near or above a prior benchmark level. The change is consistent with an equitable allocation of fees because members that contribute significantly to market quality by satisfying the requirements of the QMM program while participating actively in the NASDAQ Market Center justifiably may be charged a lower fee with respect to order executions. The change is not unreasonably discriminatory because a QMM that does not achieve the higher requirements would pay a fee that is only slightly higher (\$0.0029 or \$0.0030 per share executed, depending on other aspects of its participation in NASDAQ).

- The change to provide that NBBO Setter Incentive credits and QMM credits will not be paid with respect to Designated Retail Orders is reasonable because Designated Retail Orders are already eligible to receive a high credit of \$0.0034 or \$0.0033 per share executed. The change is consistent with an equitable allocation of fees and is not unreasonably discriminatory because NASDAQ believes that the credit provided with respect to Designated

Retail Orders provides sufficient incentive with respect to the market benefits associated with the orders in question, such that an additional credit is not warranted.

The change with respect to the tier for members active in the NASDAQ Closing Cross is reasonable because it does not materially alter the availability of the discount in question, but merely requires a member receiving the discount to concentrate its activity through a single MPID. Accordingly, the change is consistent with an equitable allocation of fees and not unreasonably discriminatory because it is consistent with other provisions of NASDAQ's fee schedule that are designed to avoid providing excessive encouragement to members aggregating the activity of several firms (some of whom may not themselves be members of the Exchange) for the sole purpose of earning a higher rebate or paying reduced fees.³³

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. 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, or rebate opportunities available at other venues to be more favorable. 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. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose

³³ See Securities Exchange Act Release No. 64003 (March 2, 2011), 76 FR 12784 (March 8, 2011) (SR-NASDAQ-2011-028) (discussing introduction of fees designed to discourage aggregation for purposes of earning a rebate).

any burden on competition is extremely limited. In this instance, although some of the proposed changes impose conditions on the availability of certain previously introduced pricing incentives, the incentive programs in question remain in place and are themselves reflective of the need for exchanges to offer significant financial incentives to attract order flow. Moreover, if the changes are unattractive to market participants, it is likely that NASDAQ will lose market share as a result. Similarly, certain of the changes broaden the availability of incentive programs, thereby reducing costs to market participants and possibly encouraging competitive responses from other trading venues. Accordingly, 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.

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) of the Act³⁴ and paragraph (f) of Rule 19b-4 thereunder.³⁵ 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.

³⁴ 15 U.S.C. 78s(b)(3)(A).

³⁵ 17 CFR 240.19b-4(f).

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-2013-063 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-2013-063. 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 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-2013-063 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.³⁶

Kevin M. O'Neill
Deputy Secretary

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³⁶ 17 CFR 200.30-3(a)(12).