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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69898; File No. SR-NASDAQ-2013-093)

July 1, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Fees under the QMM Pricing Incentive Program under Rules 7014 and 7015

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on June 26, 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 fees under its Qualified Market Maker (“QMM”) pricing incentive program under Rules 7014 and 7015. NASDAQ proposes to implement the proposed rule change on July 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.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

Under NASDAQ's QMM Program, a member may be designated as a QMM with respect to one or more of its market participant identifiers ("MPIDs") if:

- the member is not assessed any "Excess Order Fee" under Rule 7018 during the month;<sup>3</sup> 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 hours<sup>4</sup> in an average of at least 1,000 securities during the month.<sup>5</sup>

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<sup>3</sup> 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.

<sup>4</sup> 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).

<sup>5</sup> 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.

A member that is a QMM with respect to a particular MPID (a “QMM MPID”) is eligible to receive certain discounts and credits. NASDAQ is now proposing to eliminate one of these discounts. At present, a QMM receives a discount on fees for ports used for entering orders for a QMM MPID, up to a total discount equal to the lesser of the QMM’s total fees for such ports or \$5,000.<sup>6</sup> As provided in Rule 7015, the specific fees subject to this discount are: (i) all ports using the NASDAQ Information Exchange (“QIX”) protocol,<sup>7</sup> (ii) Financial Information Exchange (“FIX”) trading ports,<sup>8</sup> and (iii) ports using other trading telecommunications protocols.<sup>9</sup> Beginning July 1, 2013, the port discount will be eliminated. All other discounts and credits associated with the QMM program will remain in effect.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>10</sup> in general, and with Sections 6(b)(4), 6(b)(5), and 6(b)(8) of the Act,<sup>11</sup> 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, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, and does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>6</sup> The ports subject to the discount are not used for receipt of market data.

<sup>7</sup> 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).

<sup>8</sup> The applicable undiscounted fee is \$500 per port per month. See Rule 7015(b).

<sup>9</sup> The applicable undiscounted fee is \$500 per port pair per month. See Rule 7015(g).

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(4), (5) and (8).

The proposed change with respect to the QMM Program is reasonable because even with the change, QMMs will still continue to receive meaningful financial incentives consistent with the commitment to enhancing market quality that is reflected in their achievement of the program's quoting requirements. The proposed change is consistent with an equitable allocation of fees and is not unfairly discriminatory because it will cause the fees paid by QMMs with respect to order entry ports to be equivalent to the fees paid by other market participants for comparable access. Finally, the change does not impose any burden on competition that is not necessary or appropriate because although it will result in a fee increase for QMMs currently qualifying for the discount, it will also serve to return the applicable fees to the level in place before the introduction of the QMM program and make them equivalent to fees paid by other market participants for comparable access.

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 any burden on competition is extremely limited. In this instance, although the proposed change

eliminates one of the discounts provided through a previously introduced pricing incentive program, the incentive program in question remain in place and is itself reflective of the need for exchanges to offer significant financial incentives to attract order flow in a highly competitive environment. Moreover, if the changes are unattractive to market participants, it is likely that NASDAQ will lose market share as a result. 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

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 has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>13</sup> 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:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-093 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-2013-093. 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-2013-093 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.<sup>14</sup>

Elizabeth M. Murphy  
Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).