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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75458; File No. SR-NASDAQ-2015-081)

July 15, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify NASDAQ Rule 7018 Governing Fees and Credits Assessed for Execution and Routing

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 13, 2015, 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 modify changes to amend NASDAQ Rule 7018, governing fees and credits assessed for execution and routing of securities.

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.

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

<sup>2</sup> 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 and discussed any comments it received on 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 is proposing to amend the fees and credits provided under NASDAQ Rule 7018. Specifically, NASDAQ is proposing to delete the charge it assesses a member firm for its orders that execute in the NASDAQ Market Center, which is assessed if the member firm has Market-on Close ("MOC") or Limit-on-Close ("LOC") orders that execute in the NASDAQ Closing Cross entered through a single NASDAQ Market Center market participant identifier ("MPID"), that represent more than 0.15% of Consolidated Volume during the month. Currently, the Exchange assesses a charge of \$0.0030 per share executed in securities listed on NASDAQ ("Tape C"), and a charge of \$0.00295 per share executed in securities listed on NYSE ("Tape A") and on exchanges other than NASDAQ and the NYSE ("Tape B") (collectively, the "Tapes"). The Exchange is proposing to eliminate this charge under Rules 7018(a)(1), (2) and (3).

The Exchange is also proposing to add a new credit applied to securities of all three Tapes. Specifically, the Exchange proposes a \$0.0029 per share executed credit provided to

member firms that add Customer,<sup>3</sup> Professional,<sup>4</sup> Firm,<sup>5</sup> Non-NASDAQ Options Market (“NOM”) market maker<sup>6</sup> and/or broker-dealer<sup>7</sup> liquidity in Penny Pilot Options<sup>8</sup> and/or Non-Penny Pilot Options<sup>9</sup> of 1.25% or more of total industry average daily volume (“ADV”) in the customer clearing range for Equity and ETF option contracts per day, in a month on NOM. The Exchange believes that the new credit tier will provide incentive to NASDAQ market participants to also provide liquidity in NOM and notes that it currently provides a similar credit tier available for executions in securities of all three Tapes. That credit tier provides a slightly higher credit in return for a certain level of Consolidated Volume in addition to total industry ADV.<sup>10</sup>

The Exchange is also deleting a credit tier applied to securities of all three Tapes. The Exchange currently provides a \$0.0029 per share executed credit to a member firm (i) with

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<sup>3</sup> As defined by NASDAQ Options Rules, Chapter XV.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> The Penny Pilot allows market participants to quote in penny increments in certain series of option classes and is designed to narrow the average quoted spreads in all classes in the Pilot, which may result in customers and other market participants to trade options at better prices. See NASDAQ Options Rules, Chapter XV, Sec. 2(1).

<sup>9</sup> Id.

<sup>10</sup> A member firm will receive a \$0.0030 per share executed credit if it has (i) shares of liquidity provided in all securities during the month representing at least 0.60% of Consolidated Volume during the month, through one or more of its NASDAQ Market Center MPIDs, and (ii) Adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.25% or more of total industry ADV in the customer clearing range for Equity and ETF option contracts per day in a month on NOM. See Rules 7018(a)(1) – (3).

shares of liquidity provided in all securities during the month representing more than 0.10% of Consolidated Volume during the month, through one or more of its NASDAQ Market Center MPIDs, and (ii) that adds Total NOM Market Maker Volume, as defined in Chapter XV, Section 2 of the Nasdaq Options Market rules, of 80,000 or more contracts per day in a month executed through one or more of its NOM MPIDs. The Exchange notes no member firms have elected to qualify in recent months for this credit.

The Exchange is also proposing to amend the qualification criteria a member firm is required to meet in order to receive a \$0.0029 per share executed credit, which is available to securities of all three Tapes. Currently, the Exchange will provide a credit of \$0.0029 per share executed to a member firm with (i) shares of liquidity provided in all securities during the month representing more than 0.08% of Consolidated Volume during the month, through one or more of its NASDAQ Market Center MPIDs, and (ii) Total Volume, as defined in Chapter XV, Section 2 of the NOM rules, of 100,000 or more contracts per day in a month executed through one or more of its NOM MPIDs. The Exchange is proposing to increase the Consolidated Volume required to meet the standard from 0.08% to 0.15%. The Exchange is also proposing to increase the level of Total Volume required under the tier from 100,000 or more contracts per day in a month to 125,000 or more contracts per day in a month. Lastly, the Exchange is making a clarifying change to the rule. Specifically, the Exchange is proposing to eliminate language from the credit tier that discusses NOM MPIDs. The Exchange notes that there are not MPIDs on NOM, but rather activity on NOM is measured by Participant.<sup>11</sup> Accordingly, the Exchange is correcting the rule text, but continuing to measure activity on NOM by Participant, unchanged.

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<sup>11</sup> The term “Options Participant” or “Participant” means a firm, or organization that is registered with the Exchange pursuant to Chapter II of the NASDAQ Options Rules for purposes of participating in options trading on NOM as a “Nasdaq Options Order Entry

The Exchange is proposing to increase the fee it assesses for participation in the Closing Cross. Currently, the Exchange assesses a charge of \$0.0006 per share executed for all orders, other than MOC and LOC orders executed in the Closing Cross. The Exchange is proposing to increase the fee from \$0.0006 to \$0.0008 per share executed. Similarly, the Exchange is proposing to increase the charge assessed for participation in the Opening Cross. Currently, the Exchange assesses a charge a charge of \$0.0006 per share executed for all orders, other than Market-on-Open (“MOO”) and Limit-on-Open (“LOO”) orders executed in the Opening Cross. The Exchange is proposing to increase the fee from \$0.0006 to \$0.0008 per share executed.

The Exchange is also proposing to add a new means by which a member firm may be excluded from the Excess Order Fee under Rule 7018(m)(4). In 2012, NASDAQ introduced an Excess Order Fee, imposed on MPIDs that have characteristics indicative of inefficient order entry practices.<sup>12</sup> The fee is designed to dissuade inefficient order entry practices that may place excessive burdens on the systems of NASDAQ and its member firms, and may negatively impact the usefulness and life cycle cost of market data. For example, market participants that flood the market with orders that are rapidly cancelled or that are priced away from the inside market do little to support meaningful price discovery. Currently, the Exchange excludes from the Excess Order Fee a member firm with a daily average Weighted Order Total of less than 100,000 during the month. NASDAQ believes that this exclusion is reasonable because a member firm with an extremely low volume of entered orders has only a *de minimis* impact on the market. The Exchange is proposing a new exclusion from the fee available to a member firm that is a

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Firm” or “Nasdaq Options Market Maker”. See NASDAQ Options Rules, Chapter I, Sec. 1(a)(40).

<sup>12</sup> Securities Exchange Act Release Nos. 66951 (May 9, 2012), 77 FR 28647 (May 15, 2012) (SR-NASDAQ-2012-055).

registered NASDAQ market maker in at least 100 issues.<sup>13</sup> The Exchange believes that market makers in a significant number of securities should not be captured by the Excess Order Fee because, in their capacity as a market maker, they are adding beneficial liquidity in a large number of securities thereby improving market quality for all market participants. Consequently, the Exchange believes that such market-improving activity offsets any negative impact caused by a market maker exceeding the Order Entry Ratio.<sup>14</sup>

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>15</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>16</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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

NASDAQ believes that elimination of the charges assessed member firms that provide certain levels of MOC and/or LOC orders executed in the Closing Cross is reasonable because the Exchange does not believe that market participants require additional incentives to participate

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<sup>13</sup> The Exchange will calculate a market maker's eligibility for the exclusion monthly, by taking the number of securities in which the market maker was registered in each trading day during the calendar month divided by the number of trading days in the calendar month, resulting in the average daily number of registered securities for the month.

<sup>14</sup> The Order Entry Ratio is the ratio of (i) the member firm's Weighted Order Total to (ii) the greater of one or the number of displayed, non-marketable orders sent to NASDAQ by the member firm that execute in full or in part. See Rule 7018(m)(2). Member firms with an Order Entry Ratio of 100 or more are assessed the Excess Order Fee.

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

<sup>16</sup> 15 U.S.C. 78f(b)(4) and (5).

in the Closing Cross using MOC and LOC orders. Currently, member firms are assessed a charge of \$0.00295 per share executed for removal of Tape A and B securities as opposed to the default charge of \$0.0030 per share executed. The Exchange believes that it is reasonable to eliminate the lower charge in Tape A and B securities because it does not believe that an incentive is needed to provide MOC and LOC orders in the Closing Cross. Moreover, the Exchange believes that it is reasonable to eliminate the charge as applied to Tape C securities because it is currently set at the default removal rate of \$0.0030 per share executed, and therefore does not act as an incentive whatsoever. The Exchange believes that the proposed deletion of the charge tier is an equitable allocation and is not unfairly discriminatory because NASDAQ will apply the default charge assessed for removal of liquidity from NASDAQ. As such, all member firms that do not otherwise qualify for a lower charge, will be assessed the same charge for removing liquidity from NASDAQ in the securities of all three Tapes.

NASDAQ believes that the proposed new \$0.0029 per share executed credit tier based on NOM activity, which is applied to executions of displayed quotes/and orders (other than Supplemental Orders or Designated Retail Orders) in the securities of all three Tapes is reasonable because it continues to provide incentives to market participants to improve the NASDAQ Options Market and increase their participation on NASDAQ. As discussed, NASDAQ currently provides a credit with similar NOM-based qualification criteria under Rule 7018(a). The Exchange believes that the proposed new credit tier is an equitable allocation and is not unfairly discriminatory because the credit will be available to all member firms that provide the required level of average daily volume in option contracts. Tiers such as the proposed are not novel and have been previously implemented across all U.S. equities and options exchanges, including Nasdaq. Like all credit tiers, there is the possibility that some

member firms may not be able to qualify for this credit tier as easily as others due to their size and capacity to transact on the Exchange. Notwithstanding, the Exchange does not believe that this credit tier discriminates unfairly because in return for the reduced credit, qualifying member firms are providing market improving participation to the benefit of all market participants and the Exchange is not placing any barriers to prevent any member firms to achieve the required levels of market improving participation. Further, the proposed volume threshold is less than previously established tiers.

NASDAQ believes that elimination of the \$0.0029 per share executed credit tier based on providing a certain level of Consolidated Volume and NOM Market Maker Volume is reasonable because it is not currently effective in providing incentive to market participants to provide the volume necessary to meet the requirements of the tier. Deletion of this credit tier will allow the Exchange to offer other incentives, which may be more effective in providing incentive to market participants to provide market-improving order flow in return for a credit. The Exchange believes that the proposed elimination of the credit tier is an equitable allocation and is not unfairly discriminatory because no member firms have qualified for the credit in recent months and removal of the credit will not impact any member firms at this juncture.

The Exchange believes that the proposed amendments to the \$0.0029 per share executed credit tier provided for transactions in securities of all three Tapes, which is provided in return for the member firm providing a certain level of Consolidated Volume and Total Volume, are reasonable because require a modest increase in the levels of Consolidated Volume and Total Volume in order to qualify for the credit. The Exchange chooses to offer credits to market participants in return for certain market-improving activity. The Exchange notes that from time to time it will adjust charges and credits, and/or the criteria required to receive them, in order to

balance the incentives provided to market participants with the beneficial market activity the Exchange seeks to promote and attract. In the present case, the Exchange is requiring member firms to provide increased market participation in both NASDAQ and NOM in return for the credit, which NASDAQ believes better aligns the credit with the market improving behavior. The Exchange believes the clarifying change to the tier is reasonable because the language of the tier will more accurately reflect how the contracts are measured to meet the criteria. In this regard, the current criterion is meant to capture all contracts executed on NOM. Accordingly, the proposed amended rule text more accurately reflects that all of a Participant's contracts on NOM will be counted toward the requirement while also will removing inaccurate text, which may be confusing to market participants. The Exchange believes that the proposed changes to the credit tier is an equitable allocation and is not unfairly discriminatory because all member firms that qualify under the revised requirements of the tier will receive the credit.

The Exchange believes that the proposed increases to the charges assessed member firms for quotes and orders executed in the NASDAQ Closing and Opening Crosses under Rules 7018(d) and (e), respectively, are reasonable because NASDAQ must from time to time increase fees to cover expenses incurred in operating its systems in response to increased costs and/or decreased revenue from fees. The proposed increase in the charge to participate in the Closing and Opening Crosses using all other quotes and orders from \$0.0006 per share executed to \$0.0008 per share executed reflects a modest increase to better align the fee with the functionality provided. The Exchange notes that the charges continue to be lower than the charges assessed for using MOC and LOC orders to participate in the Closing Cross and MOO and LOO orders to participate in the Opening Cross, and are significantly lower than the default charge assessed for removal of liquidity from NASDAQ. The Exchange believes that the

proposed increase in the charges for participation in the Closing and Opening Crosses is an equitable allocation and is not unfairly discriminatory because the charges will apply uniformly to all market participants that participate in the Crosses.

The Exchange believes that the proposed addition of a new exclusion from the Excess Order Fee is reasonable because NASDAQ would like to avoid providing market makers a disincentive to participate in NASDAQ. The Exchange notes that the Excess Order Fee was designed to dissuade inefficient order entry practices that may place excessive burdens on the systems of NASDAQ and its member firms. NASDAQ has observed market makers approaching the fee threshold near the end of the month reduce their participation in the market to avoid reaching an Order Entry Ratio that would trigger the fee. NASDAQ believes that it is reasonable to provide an exemption to registered market makers in order to avoid a decrease in quoting behavior, which will benefit all market participants. Moreover, the Exchange believes that the proposed 100 securities threshold is reasonable because it sets a modest level of securities in which the market maker must be registered, which balances the need to set a meaningful standard against setting the level too high to be achievable for most market makers. The Exchange notes that the Exchange may revisit the registered securities threshold should it determine that the level is too high or low. The Exchange believes that the proposed exemption from the fee is an equitable allocation and is not unfairly discriminatory because it will apply uniformly to all market makers, which, unlike other market participants, have obligations to provide liquidity to the market. The Exchange notes that liquidity is critical to the trading efficiency and quality of the exchange, and changes to enhance liquidity should be viewed favorably by all participants. The Exchange believes 100 securities threshold is an equitable allocation and is not unfairly discriminatory because it is a modest level of securities in which

the market maker must be registered, which was selected by the Exchange based on its observation of market maker activity, its desire to slowly unwind this program for market makers generally and is designed to provide the greatest improvement in market quality. To the extent the Exchange's estimation is incorrect, it may adjust the requirement appropriately. Lastly, the Exchange believes that the passive liquidity provisioning benefits provided by market making to liquidity seeking market participants, especially investors, materially outweighs any potential harm that may be caused by allowing a market maker to exceed the Order Entry Ratio threshold.

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

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.<sup>17</sup> 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, the proposed changes to the charges assessed and credits available to member firms for execution of securities in securities of all three Tapes do not impose a burden on competition because NASDAQ's execution services are completely voluntary and subject to

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<sup>17</sup> 15 U.S.C. 78f(b)(8).

extensive competition both from other exchanges and from off-exchange venues. Excluding market makers from the Excess Order Fee does not place a burden on competition because the Exchange has balanced the goal of the fee with the potential negative impact on market quality and determined that excluding market makers from the fee will promote better market quality, and thereby promote NASDAQ's competitiveness among exchanges and other market venues. In sum, if the changes proposed herein 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

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.<sup>18</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: (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.

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<sup>18</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2015-081 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-2015-081. 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 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-2015-081, 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>19</sup>

Robert W. Errett  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).