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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76826; File No. SR-NASDAQ-2015-164)

January 5, 2016

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

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 December 23, 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 Substance of the Proposed Rule Change

The Exchange is proposing to make two changes to Rule 7014.

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 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,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange is proposing to make two changes to Rule 7014. Rule 7014 provides the Exchange's Market Quality Incentive Programs. Nasdaq currently provides the following incentive programs under the rule: Investor Support Program, Qualified Market Maker Program, Lead Market Maker Program, and NBBO Program. The Exchange is proposing to add new rule text concerning what is not considered eligible displayed liquidity under the Investor Support Program and to add clarifying rule text to the NBBO Program.

First, the Exchange is adding new rule text to the Investor Support Program ("ISP") under rule 7014(b) to state that Designated Retail Orders³ are not included in the number of shares of displayed liquidity. The Investor Support Program enables Nasdaq member firms to earn a monthly fee credit for providing displayed liquidity to Nasdaq. Currently, there are three rates that a member firm may qualify for based on the execution price of the displayed liquidity and whether the shares of displayed liquidity were entered through an ISP-designated port.

³ A "Designated Retail Order" is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural 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. An order from a "natural person" can include orders on behalf of accounts that are held in a corporate legal form -- such as an Individual Retirement Account, Corporation, or a Limited Liability Company -- that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. Members must submit a signed written attestation, in a form prescribed by Nasdaq, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as "Designated Retail Orders" comply with these requirements. Orders may be designated on an order-by-order basis, or by designating all orders on a particular order entry port as Designated Retail Orders. See Rule 7018.

Subsequent to the adoption of the ISP Program,⁴ Nasdaq adopted a new program under Rule 7018⁵ to use financial incentives to encourage greater participation. The new program adopted liquidity provider credit tiers for orders designated by a member firm as Designated Retail Orders. Currently, Nasdaq has a single liquidity provider credit tier of \$0.0034 per share executed provided for orders designated by a member firm as Designated Retail Orders.⁶ Nasdaq has excluded Designated Retail Orders from the calculation of credits available under the NBBO Program, QMM Program, and the ISP Program, since those orders already receive a significant credit under Rule 7018(a). Similarly, Nasdaq excludes Designated Retail Orders from the credits provided for providing displayed quotes/orders for securities of all three tapes.⁷ Unlike the NBBO Program and QMM Program rules, which reflect that Designated Retail Orders are not included in those programs' credits, Nasdaq neglected to amend the ISP Program rules to state that Designated Retail Orders are not considered in the calculation of the ISP credit. In adopting the Designated Retail Order credit tiers, Nasdaq intended to also exclude Designated Retail Orders from the calculation of credits available under the ISP Program, consistent with the other programs under the rule. Thus, Nasdaq is proposing to state in the rule that Designated Retail Orders are not included in the number of shares of displayed liquidity used to calculate credit received under the ISP Program.

Second, Nasdaq is proposing to add clarifying rule text to Rule 7014(g), which concerns the NBBO Program. The NBBO Program provides rebates per share executed with respect to all

⁴ See Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (SR-NASDAQ-2010-141).

⁵ See Securities Exchange Act Release No. 69133 (March 14, 2013), 78 FR 17272 (March 20, 2013) (SR-NASDAQ-2013-042).

⁶ See Rule 7018(a).

⁷ See Rule 7018(a)(1), (2) and (3).

other displayed orders (other than Designated Retail Orders) in securities priced at \$1 or more per share that provide liquidity and establish the NBBO. When Nasdaq adopted the rule, it neglected to note that the displayed quantity of the NBBO Program-qualifying order must be at least one round lot at the time of execution. An odd lot order of less than 100 shares is not displayed on the consolidated feeds, and thus is not able to set the NBBO. Although implied in the rule, the Exchange believes that adding clarifying language is appropriate. Consequently, the Exchange is adding rule text that makes it clear that the displayed quantity of the Order must be at least one round lot at time of execution.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed change furthers these objectives because it clarifies what is required to receive the rebates in the case of the NBBO Program and states expressly that Designated Retail Orders are not considered in the calculation of the credit provided by the ISP Program. The Exchange does not propose to alter the operation of, or the specific criteria required to qualify under, the program. Rather, the Exchange is expressly stating criteria that may otherwise be reasonably

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

implied, in the case of the NBBO Program, and that is consistent with the treatment of Designated Retail Orders by the other Market Quality Incentive Programs under Rule 7014 and credit tiers under Rule 7018(a), in the case of the ISP Program. With respect to the proposed change to the ISP Program, the Exchange is noting that Designated Retail Orders are not included in the number of shares of displayed liquidity used to calculate credit received under the ISP Program. As discussed, Designated Retail Orders are excluded from the calculations under the NBBO Program and QMM Program and from the credits provided for displayed quotes/orders under Rule 7018(a) because Nasdaq provides a substantial credit of \$0.0034 per share executed for such orders. As such, member firms have understood that Designated Retail Orders are excluded from the calculation of the ISP Program credits. With respect to the proposed change to the NBBO Program, the Exchange is expressly stating what is reasonably implied as a precondition to set the NBBO, namely, that the minimum quantity must be no less than one round lot at time of execution. As such, these changes promote the protection of the investors and the public interest by more precisely stating and by clarifying the requirements of the programs, as they have been applied since these programs' adoption.

The Exchange also believes that the proposed change to the ISP Program is consistent with Section 6(b)(4) of the Act¹⁰ 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 the Exchange operates or controls. Specifically, the proposed new rule text that states that the ISP Program credit will not be paid with respect to Designated Retail Orders is reasonable because those orders are already eligible to receive a high credit of \$0.0034 per share executed. The change is consistent with an equitable allocation of fees because Nasdaq believes

¹⁰ 15 U.S.C. 78f(b)(4).

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.

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.¹¹ The Exchange believes that the proposal is irrelevant to competition because it is not driven by, and will have no impact on, competition. Specifically, the proposal clarifies the application of Nasdaq's rules.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such

¹¹ 15 U.S.C. 78f(b)(8).

¹² 15 U.S.C. 78s(b)(3)(a)(iii) [sic].

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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.

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-2015-164 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-2015-164. 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-2015-164 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.¹⁴

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Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

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