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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78354; File No. SR-NASDAQ-2016-102]

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

July 19, 2016.

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 July 13, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a 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

Nasdaq is proposing changes to amend Nasdaq Rule 7018(a) to: (i) amend the consolidated volume ("Consolidated Volume") requirement for a credit tier for providing liquidity in securities of all three Tapes; (ii) delete a credit tier for providing liquidity in securities of all three Tapes; and (iii) provide a new credit for providing liquidity in securities of all three Tapes.

The text of the proposed rule change is available at nasdaq.cchwallstreet.com, at Nasdaq's principal office, and at the Commission's Public Reference Room.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 C.F.R. 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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend certain credits for the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at $1 or more that it trades.

Specifically, the Exchange proposes to amend Nasdaq Rule 7018(a)(1), (2), and (3) to: (i) amend the Consolidated Volume requirement for a credit tier for providing liquidity in securities of all three Tapes;[3] (ii) delete a credit tier for providing liquidity in securities of all three Tapes; and (iii) provide a new credit for providing liquidity in securities of all three Tapes.

First Change

The purpose of the first change is to increase the Consolidated Volume requirement for accessing liquidity in an existing credit tier. Currently, the credit tier requires a member to access more than 0.65% of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs, provided that the member also provides a daily average of at least 2 million

[3] There are three Tapes, which are based on the listing venue of the security: Tape C securities are Nasdaq-listed; Tape A securities are New York Stock Exchange ("NYSE")-listed; and Tape B securities are listed on exchanges other than Nasdaq and NYSE.

shares of liquidity in all securities during the month. The Exchange is proposing to increase the required Consolidated Volume requirement to more than 0.80%. The current credit will remain as $0.0029 per share executed. The Consolidated Volume requirement will be increased as stated above for all three Tapes.

Increasing the Consolidated Volume criteria will require members to access more liquidity to receive the $0.0029 per share executed credit tier, but the Exchange believes that the members that want to avail themselves of this credit tier will be able to meet the increased Consolidated Volume requirement. Increasing the amount of liquidity accessed should be beneficial to other members as more of their resting limit orders may be accessed by members seeking to attain this credit tier.

Second Change

The purpose of the second change is to delete the credit tier of $0.0030 per share executed for a member with shares of liquidity provided in all securities during the month representing more than 0.20% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs and that qualifies for the additional $0.05 per contract credit under Note c(3) of Nasdaq Options Market ("NOM") Chapter XV Section 2(1) in securities of all three Tapes.

No market participants qualified for this credit tier recently, thus rendering it ineffective as acting as an incentive. However, since the Exchange is limited in the amount of credits that it can provide to market participants and even though no market participants currently qualify for this credit tier, this can easily shift from month to month so Nasdaq is proposing to delete it. Nasdaq must be selective in providing credits to members, and allocates credits to where it believes it will receive the best result in terms of improvement to market quality. The Exchange believes that eliminating this credit tier for all three Tapes is the only way to ensure that it will not going forward impact the overall balance of credits and fees.

Third Change

The purpose of the third change is to provide an additional credit to members that provide liquidity. Currently, the Exchange provides several credits under Rules 7018(a)(1), (2), and (3), each of which apply to securities of a different Tape, in return for market-improving behavior. The Exchange is proposing to add a new credit tier of $0.0027 per share executed for a member that has 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 that adds Customer,[4] Professional,[5] Firm,[6] Non-NOM Market Maker[7] and/or Broker-Dealer[8] liquidity in Non-Penny Pilot Options of 0.40% or more of total industry average daily volume ("ADV") in the customer clearing range for Equity and exchange-traded fund ("ETF") option contracts per day in a month on the NOM.

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4 The term "Customer" or ("C") 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 broker or dealer or for the account of a "Professional" (as that term is defined in Chapter I, Section 1(a)(48)).

5 The term "Professional" or ("P") 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). All Professional orders shall be appropriately marked by Participants.

6 The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

7 The term "NOM Market Maker" or ("M") is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

8 The term "Broker-Dealer" or ("B") applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

As a general principle, the Exchange chooses to offer credits to members in return for market improving behavior. Under Rule 7018(a), the various credits the Exchange provides for members require them to significantly contribute to market quality by providing certain levels of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs, and volume on NOM. The Exchange believes that by adding more in Non-Penny names on NOM that the market for these options on NOM will improve and the Exchange seeks to encourage such behavior.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] 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 the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First Change

The Exchange believes that this proposed amendment to the requirements of an existing credit tier provided in securities of all three Tapes is reasonable because it amends a measure of activity with another, both of which represent a significant contribution to that market. Specifically, the Exchange is increasing the requirement that a member with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs representing more than 0.65% of Consolidated Volume during the month. The Exchange is proposing to increase the monthly Consolidated Volume requirement from more than 0.65% to more than

9 15 U.S.C. 78f(b).

10 15 U.S.C. 78f(b)(4) and (5).

0.80%. The member must also provide a daily average of at least 2 million shares of liquidity in all securities through one or more of its Nasdaq Market Center MPIDs during the month along with the required shares of liquidity accessed.

The Exchange believes that the proposed amendment to the requirements of an existing credit tier provided in securities of all three Tapes is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same $0.0029 per share executed credit to all similarly situated members. Thus, if a member meets the requirements, it will receive the credit. Also, and as previously discussed, Nasdaq believes that although increasing the Consolidated Volume criteria will require members to access more liquidity to receive the $0.0029 per share executed credit tier, members seeking to achieve this credit tier will be able to meet the increased Consolidated Volume requirement. Increasing the amount of liquidity accessed should be beneficial to other members as their resting limit orders may be accessed by members seeking to attain this credit tier.

<u>Second Change</u>

The Exchange believes that the proposed changes to delete a credit tier for a member with shares of liquidity provided in all securities during the month representing more than 0.20% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs and that qualifies for the additional $0.05 per contract credit under Note c(3) of NOM Chapter XV Section 2(1) in securities of all three Tapes is reasonable because the Exchange must, from time to time, adjust the level of credits provided, and the criteria required to receive them, to provide the most efficient allocation of credits in terms of market improving behavior.

Specifically, with regard to the eliminated $0.0030 per share executed credit tier, as discussed previously, Nasdaq observed that no market participants qualified for this credit tier recently, thus rendering it ineffective as acting as an incentive. The Exchange is limited in the amount of credits that it can provide to market participants so even though no market participants currently qualified for this credit tier, this can easily shift from month to month. Nasdaq must be selective in providing credits to members, and allocates credits to where it believes it will receive the best result in terms of improvement to market quality. The Exchange believes that it is reasonable to eliminate this credit tier as the only way to ensure that it will not going forward impact the overall balance of credits and fees.

The Exchange believes that the proposed change to delete the credit tier described above in Rule 7018(a) is an equitable allocation and is not unfairly discriminatory because the Exchange will eliminate the same credit for all similarly situated members. The credits Nasdaq provides are designed to improve market quality for all market participants, and Nasdaq allocates its credits in a manner that it believes are the most likely to achieve that result. Elimination of the existing credit tier under the rule is an equitable allocation and is not unfairly discriminatory because no participants qualified under this credit tier, therefore, its elimination will not impact any members.

Third Change

The Exchange believes that the proposed rule change to add a new credit tier of $0.0027 per share executed is reasonable because it is consistent with other credits that the Exchange provides to members that provide liquidity. As discussed previously, as a general principle the Exchange chooses to offer credits to members in return for market improving behavior. Under Rule 7018(a), the various credits the Exchange provides for members require them to significantly contribute to market quality by providing certain levels of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs, and volume on NOM. The proposed credit will be provided to members that not only contribute to the Exchange by providing more than 0.10% of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs during the month, but also adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options of 0.40% or more of total industry ADV in the customer clearing range for Equity and ETF option contracts per day in a month on the NOM.

The Exchange believes that the proposed new credit tier is reasonable because although it provides for a lower credit than some other NOM-linked credit tiers, it also has a corresponding lower Consolidated Volume threshold of 0.10%. Also, the proposed new credit tier specifically requires adding liquidity in Non-Penny Pilot Options.[11] Currently, the credit tier referencing the NOM fee schedule that is being deleted in the Second Change (described above) also has a Non-Penny liquidity component as part of the criteria, so using liquidity in Non-Penny Pilot Options as a tiering criteria is not novel.

The Exchange believes that the proposed $0.0027 per share executed credit is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same credit to all similarly situated members. Thus, if a member meets the requirements, it will receive the credit. A member achieving this credit tier will be providing liquidity in less liquid options classes (i.e., Non-Penny names). The Exchange believes that by adding more in Non-Penny names on NOM that the market for these options on NOM will improve and the Exchange seeks to encourage such behavior.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of

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[11] See NOM Chapter XV, Note c(3)(b) to Section 2(1), which also supports members to add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options.

inter-market competition, the Exchange 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, the Exchange 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, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the changes to the credits provided for the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at $1 or more that it trades are reflective of the intense competition among trading venues in capturing order flow. Moreover, the proposed changes do not impose a burden on competition because Exchange membership is optional and is also the subject of competition from other trading venues. For these reasons, the Exchange does not believe that any of the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that the Exchange will lose market share as a result of the changes if they are unattractive to market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[12] 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2016-102 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-2016-102. 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

12 15 U.S.C. 78s(b)(3)(A)(ii).

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 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-2016-102, and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,
Deputy Secretary.

[13] 17 CFR 200.30-3(a)(12).

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