

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79277; File No. SR-NASDAQ-2016-150)

November 9, 2016

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

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 October 31, 2016, 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 proposes to amend the Exchange’s NBBO Program at Rule 7014(g) to change the qualification criteria required to receive the \$0.0004 per share executed NBBO Program rebate in NYSE-listed securities and in Securities Listed on Exchanges other than Nasdaq and NYSE.

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

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

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

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

The purpose of the proposed rule change is to amend the Exchange's NBBO Program at Rule 7014(g) to change the qualification criteria required to receive the \$0.0004 per share executed NBBO Program rebate in NYSE-listed securities and in Securities Listed on Exchanges other than Nasdaq and NYSE. The NBBO Program provides two rebates per share executed with respect to all other displayed orders (other than Designated Retail Orders, as defined in Rule 7018) in securities priced at \$1 or more per share that provide liquidity, establish the NBBO, and displayed a quantity of at least one round lot at the time of execution. The rebates provided are in addition to any rebate or credit payable under Rule 7018(a) and other programs under Rule 7014. The rebates are provided to executions from orders originating on ports that meet certain requirements. To qualify for the \$0.0004 per share executed NBBO Program rebate in NYSE-listed securities and in Securities Listed on Exchanges other than Nasdaq and NYSE a member must execute shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represents 1.0% or more of Consolidated Volume during the month and the order must have been entered on a port that has a ratio of at least 25% NBBO liquidity provided<sup>3</sup> to liquidity provided during the month.

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<sup>3</sup> NBBO liquidity provided means liquidity provided from orders (other than Designated Retail Orders, as defined in Nasdaq Rule 7018), that establish the NBBO, and displayed a quantity of at least one round lot at the time of execution.

The Exchange is proposing to amend one of the data points used in the calculation of the ratio required for a port to qualify for the \$0.0004 per share executed NBBO Program rebate to now compare liquidity provided by displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) to NBBO liquidity provided. Thus, the Exchange is using a more limited category of liquidity (i.e., displayed quotes/orders) against which NBBO liquidity provided is compared to determine a member's ratio. For example, under the current rule if a member provides 100,000 shares of displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) in a month (30,000 of which is NBBO liquidity) and it provides 100,000 of midpoint liquidity (non-displayed) during the same month, the member's ratio would be 15% (30,000 shares of NBBO liquidity divided by 200,000 shares of liquidity provided). Under the proposed change using this example, the ratio would be 30% based on 30,000 shares of NBBO liquidity provided divided by 100,000 shares of displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) provided (the member's 100,000 shares of non-displayed liquidity is not included). As a consequence, this member would not qualify for the \$0.0004 per share executed NBBO Program rebate in NYSE-listed securities and in Securities Listed on Exchanges other than Nasdaq and NYSE under the current criteria, but would under the amended criteria.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>5</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among

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

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

members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change is an equitable allocation and is not unfairly discriminatory because it makes it easier to qualify for the rebate. As a consequence, the Exchange is making the rebate more achievable for members, which may in turn, attract new members to the program. The Exchange notes that the program rewards members that provide liquidity that sets the NBBO, thus improving the market for all participants. To the extent the proposed change is successful in attracting more members to participate in the program, all participants will benefit from the increased competition in setting the NBBO. The Exchange further notes that a member that currently qualifies for the rebate would qualify for the rebate under the amended criteria. Last, the proposed change does not alter the amount of the rebate provided. Thus, the Exchange believes that the amount of the rebate continues to be reasonable for the reasons stated by the Exchange when the rebate was adopted.

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 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 and rebates 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 proposed changes to the criteria required of members to receive a rebate under the NBBO Program make it easier for members to qualify for a rebate under the program, with the intent of making the program more attractive to members. Thus, the proposed change promotes competition for order flow among trading venues, and does not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues, which may provide similar incentives to their members. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange 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>6</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,

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2016-150 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-2016-150. 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-2016-150 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>7</sup>

Brent J. Fields  
Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).