SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65717; File No. SR-NASDAQ-2011-150)

November 9, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify NASDAQ's Investor Support Program, Offer an Additional Liquidity Provider Credit through a Pre-Market Investor Program, and Make Other Changes to Pricing for Members Using the NASDAQ Market Center

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 November 1, 2011, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("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 proposes to modify its Investor Support Program, offer an additional liquidity provider credit through a pre-market investor program, and make other changes to pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on November 1, 2011. The text of the proposed rule change is available at http://nasdaq.cchwallstreet.com/, at NASDAQ's principal office, 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, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

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

2 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ 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

The Investor Support Program

The Exchange is proposing changes to the credit provisions of Rule 7014 to modify the structure of its Investor Support Program. The ISP enables NASDAQ members to earn a monthly fee credit for providing additional liquidity to NASDAQ and increasing the NASDAQ-traded volume of what are generally considered to be retail and institutional investor orders in exchange-traded securities ("targeted liquidity").[3] The goal of the ISP is to incentivize members

3 For a detailed description of the Investor Support Program as originally implemented, see Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ-2010-141) (notice of filing and immediate effectiveness) (the "ISP Filing"). See also Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (NASDAQ-2010-153) (notice of filing and immediate effectiveness); 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ-2010-154) (notice of filing and immediate effectiveness); 63891 (February 11, 2011), 76 FR 9384 (February 17, 2011) (NASDAQ-2011-022) (notice of filing and immediate effectiveness); and 64050 (March 8, 2011), 76 FR 13694 (March 14, 2011) (SR-NASDAQ-2011-034).

to provide such targeted liquidity to the NASDAQ Market Center.[4] The Exchange noted in the ISP Filing that maintaining and increasing the proportion of orders in exchange-listed securities executed on a registered exchange (rather than relying on any of the available off-exchange execution methods) would help raise investors' confidence in the fairness of their transactions and would benefit all investors by deepening NASDAQ's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange now proposes modifications to the ISP designed to broaden participation by members with targeted liquidity and create a clearer incentive structure. First, NASDAQ is modifying the definition of "Baseline Participation Ratio" to allow a greater number of members to participate in the program. In general terms, the Baseline Participation Ratio is the ratio of shares of liquidity provided by the member in NASDAQ for the month of August 2010 to the total consolidated volume for that month. To the extent that a member's participation in NASDAQ exceeds its Baseline Participation Ratio (i.e., to the extent that the member increases its participation in NASDAQ above August 2010 levels), the member may be eligible for the

---

4 The Commission has recently expressed its concern that a significant percentage of the orders of individual investors are executed at over the counter ("OTC") markets, that is, at off-exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, "Concept Release"). In the Concept Release, the Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. The Commission published the Concept Release to invite public comment on a wide range of market structure issues, including high frequency trading and un-displayed, or "dark," liquidity. See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) ("Schapiro Speech," available on the Commission website) (comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

program.[5] The current definition of Baseline Participation Ratio is "with respect to a member, such member's Participation Ratio[6] for the month of August 2010, provided that in calculating the August 2010 Participation Ratio, the numerator shall be increased by the amount (if any) of the member's August 2010 Indirect Order Flow,[7] and provided further that if the result is zero, the Baseline Participation Ratio shall be deemed to be 0.485% (when rounded to three decimal places)."

NASDAQ is proposing to modify the definition to allow a member's Baseline Participation Ratio to be based on the lower of its Participation Ratio for August 2010 or August 2011. Thus, to the extent that a member's participation in the ISP was limited by having a high Participation Ratio in August 2010, the member might have greater eligibility to participate to the extent that its Participation Ratio was lower in August 2011 than in August 2010. On the other hand, a current participant with a low ratio in August 2010 would be eligible to continue to participate based on that ratio. The revised definition will read as follows: "with respect to a

---

5 As discussed below, the ISP is being modified such that participation must <u>equal</u> or exceed past levels.

6 The term "Participation Ratio" is defined as: "for a given member in a given month, the ratio of (A) the number of shares of liquidity provided in orders entered by the member through any of its Nasdaq ports and executed in the Nasdaq Market Center during such month to (B) the Consolidated Volume." The term "Consolidated Volume" is defined as: "for a given member in a given month, the consolidated volume of shares of System Securities in executed orders reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during such month." The term "System Securities" is defined in Rule 4751(b) as: "all securities listed on NASDAQ and all securities subject to the Consolidated Tape Association Plan and the Consolidated Quotation Plan."

7 The term "Indirect Order Flow" is defined as: "for a given member in a given month, the number of shares of liquidity provided in orders entered into the Nasdaq Market Center at the member's direction by another member with minimal substantive intermediation by such other member and executed in the Nasdaq Market Center during such month." Thus, the term allows a member to include orders that it entered through another member in calculating the baseline.

member, the lower of such member's Participation Ratio for the month of August 2010 or the month of August 2011, provided that in calculating such Participation Ratios, the numerator shall be increased by the amount (if any) of the member's Indirect Order Flow for such month, and provided further that if the result is zero for either month, the Baseline Participation Ratio shall be deemed to be 0.485% (when rounded to three decimal places)."

Second, NASDAQ is proposing to allow a member that is eligible to participate in the ISP to receive a credit with respect to all of the displayed liquidity that it provides through NASDAQ, not merely liquidity provided above the level of the Baseline Participation Ratio, as is currently the case. However, because a credit will be provided with respect to more shares, the level of the credit will be lowered in some cases.

Currently, a member that participates in the ISP program receives a credit of \$0.0003, \$0.0004, or \$0.0005 per share with respect to the lower of (i) the number of shares of displayed liquidity provided by the member through ports designated for ISP use that execute at \$1 or more per share;[8] or (ii) the member's "Added Liquidity," which is a measure of the extent to which the member's participation in the market exceeds its Baseline Participation Ratio.[9] The precise credit rate – \$0.0003, \$0.0004, or \$0.0005 per share – is determined by factors designed to measure the degree of the member's participation in the Nasdaq Market Center and the percentage of orders that it enters that execute – its "ISP Execution Ratio" – which is seen as indicative of retail or institutional participation. Under the proposed change, a credit will be paid

---

8 A participant in the ISP must designate specific order-entry ports for use in tabulating certain requirements under the program.

9 Specifically, "Added Liquidity" is defined as: "for a given member in a given month, the number of shares calculated by (i) subtracting from such member's Participation Ratio for that month the member's Baseline Participation Ratio, and the (ii) multiplying the resulting difference by the average daily Consolidated Volume; provided that if the result is a negative number, the Added Liquidity amount shall be deemed zero."

with respect to all displayed liquidity- providing orders that execute at a price of $1 or more, provided the member satisfies the criteria described below, which are likewise designed to be indicative of retail or institutional participation. The rates of the credit vary based on criteria similar to those currently in use.

Under the revised program, NASDAQ will pay a credit of $0.0001 per share with respect to all of a member's displayed liquidity-providing orders that execute at a price of $1 or more per share during the month if the following conditions are met:

(1) The member's Participation Ratio for the month is equal to or greater than its Baseline Participation Ratio. Thus, the percentage of Consolidated Volume represented by the member's liquidity-providing orders must be equal to or greater than the member's percentage in either August 2010 or August 2011. The requirement reflects the expectation that a member participating in the program must maintain or increase its participation in NASDAQ as compared with an historical baseline.

(2) As is currently the case, the member's "ISP Execution Ratio" for the month must be less than 10.[10] The ISP Execution Ratio is defined as "the ratio of (A) the total number of liquidity-providing orders entered by a member through its ISP-designated ports during the specified time period to (B) the number of liquidity-providing orders entered by such member through its ISP-designated ports and executed (in full or partially) in the Nasdaq Market Center during such time period; provided that: (i) no order shall be counted as executed more than once; (ii) no Pegged Orders, odd-lot orders, or MIOC or SIOC orders shall be included in the

10 Under the current provisions of Rule 7014(c), it is stated that a member may not participate in the ISP if its ISP Execution Ratio is 10 or above. Under the revised rule, it is stated that a member may participate in the ISP if its ISP Execution Ratio is less than 10. The change is intended to promote the clarity of the rule, but is not a substantive change.

tabulation;[11] and (iii) no order shall be included in the tabulation if it executes but does not add liquidity."[12] Thus, the definition requires a ratio between the total number of orders that post to the NASDAQ book and the number of such orders that actually execute that is low, a characteristic that NASDAQ believes to be reflective of retail and institutional order flow.

(3) The shares of liquidity provided through ISP-designated ports during the month are equal to or greater than 0.2% of Consolidated Volume during the month. This requirement replaces a provision stipulating that a participant's liquidity provision through ISP-designated ports may not average less than 10 million shares per day. The requirements are generally comparable, in that they require a certain base level of usage of ISP ports. However, because the new requirement is based on a percentage of Consolidated Volume, rather than an absolute amount of shares, it adjusts to reflect changes in market volumes from month to month.

(4) At least 25% of the liquidity provided by the member during the month is provided through ISP-designated ports. This new requirement is designed to mitigate "gaming" of the program by firms that do not generally represent retail or institutional order flow but that nevertheless are able to channel a portion of their orders that they intend to execute through ISP-designated ports and thereby receive a credit with respect to those orders. Because, under the modified program, an ISP credit will be paid with respect to all liquidity-providing orders, the change is especially important to insure that the program remains focused on its purpose of encouraging greater participation in NASDAQ by retail and institutional investors.

---

11 These terms have the meanings assigned to them in Rule 4751. MIOC and SIOC orders are forms of "immediate or cancel" orders and therefore cannot be liquidity-providing orders.

12 Clause (iii) of the definition is redundant, since all orders that do not provide liquidity are otherwise excluded by the remainder of the definition. Accordingly, NASDAQ is also proposing to delete the clause.

Alternatively, NASDAQ will pay a credit of $0.0003 per share with respect to shares of displayed liquidity executed at a price of $1 or more and entered through ISP-designated ports, and $0.0001 per share with respect to all other shares of displayed liquidity executed at a price of $1 or more, if the following conditions are met:

(1) The member's Participation Ratio for the month exceeds its Baseline Participation Ratio by at least 0.43%.[13]

(2) As is currently the case, the member's "ISP Execution Ratio" for the month must be less than 10.

(3) The shares of liquidity provided through ISP-designated ports during the month are equal to or greater than 0.2% of Consolidated Volume during the month.

(4) At least 40% of the liquidity provided by the member during the month is provided through ISP-designated ports. Thus, the higher credit requires that a greater percentage of the member's order flow has execution ratio characteristics associated with retail and institutional order flow.

Finally, NASDAQ will pay a credit of $0.0004 per share with respect to shares of displayed liquidity executed at a price of $1 or more and entered through ISP-designated ports, and $0.0001 per share with respect to all other shares of displayed liquidity executed at a price of $1 or more, if the following conditions are met:

---

13 Under the current provisions of Rule 7014(c), it is stated that a member may <u>not</u> receive a higher credit at currently specified rates if the member <u>does not</u> exceed its Baseline Participation Ratio by at least 0.43%. Under the revised rule, it is stated that a member <u>may</u> receive a credit at the $0.0003 rate <u>if</u> the member exceeds its Baseline Participation Ratio by at least 0.43%. The change is intended to promote the clarity of the rule, but is not a substantive change.

(1) The member's Participation Ratio for the month exceeds its Baseline Participation Ratio by at least 0.86%.[14]

(2) As is currently the case, the member's "ISP Execution Ratio" for the month must be less than 10.

(3) The shares of liquidity provided through ISP-designated ports during the month are equal to or greater than 0.2% of Consolidated Volume during the month.

(4) At least 40% of the liquidity provided by the member during the month is provided through ISP-designated ports.

Because the program will now pay eligible participants with respect to all liquidity provided, rather than only with respect to liquidity added in excess of the Baseline Participation Ratio, the definition of "Added Liquidity" is being deleted. In addition, under the current program, a member may add or remove the designation of a port for ISP use for a given month, provided the member provides notice to NASDAQ by the first day of the month. This provision will remain in effect for a member's existing ports. However, if a member adds a new port and designates it for ISP use, the designation of that port will take effect immediately, even if it occurs in the middle of the month. The existing provision ensures that members and NASDAQ will not be required to prorate order flow for the purpose of making the calculations required under the program. In the case of a new port, however, all of the order flow under the designated port during the course of the month can be counted without having to remove flow from days prior to the designation.

---

14 Under the current provisions of Rule 7014(c), it is stated that a member may <u>not</u> receive a higher credit at currently specified rates if the member <u>does not</u> exceed its Baseline Participation Ratio by at least 0.86%. Under the revised rule, it is stated that a member <u>may</u> receive a credit at the $0.0004 rate <u>if</u> the member exceeds its Baseline Participation Ratio by at least 0.86%. The change is intended to promote the clarity of the rule, but is not a substantive change.

Pre-Market Investor Program

NASDAQ is introducing a Pre-Market Investor Program (the "PMI program") to encourage greater use of NASDAQ's facilities for trading before the market open at 9:30 a.m. and through the trading day. The goal of the PMI is to encourage the development of a deeper, more liquid trading book during pre-market hours, while also recognizing the correlation observed by NASDAQ between levels of liquidity provided during pre-market hours and levels provided during regular trading hours. Under the program, a member will be required to designate one or more market participant identifiers ("MPIDs") for use under the program.[15] The member will then qualify for an extra rebate of $0.0001 per share with respect to all of displayed liquidity provided through a designated MPID that executes at a price of $1 or more during the month if the following conditions are met:

(1) The MPID's "PMI Execution Ratio" for the month is less than 10. Similar to the ISP Execution Ratio, the PMI Execution Ratio is defined as "the ratio of (A) the total number of liquidity-providing orders entered by a member through a PMI-designated MPID during the specified time period to (B) the number of liquidity-providing orders entered by such member through such PMI-designated MPID and executed (in full or partially) in the Nasdaq Market Center during such time period; provided that: (i) no order shall be counted as executed more than once; and (ii) no Pegged Orders, odd-lot orders, or MIOC or SIOC orders shall be included in the tabulation." Thus, the requirement stipulates that a high proportion of potentially liquidity-providing orders entered through the MPID actually execute and provide liquidity.

---

[15] Similar to the ISP, after the initial designation of Nasdaq MPIDs for PMI use, a member may add or remove such PMI designations for existing MPIDs, provided that Nasdaq must be appropriately notified of such a change on or before the first trading day of the month when the change is to become effective. A newly established MPID may be designated for PMI use immediately upon establishment.

Similar to the ISP, this requirement is designed to focus the availability of the program on members representing retail and institutional customers.

(2) The member provides an average daily volume of 2 million or more shares of liquidity during the month using orders that are executed prior to NASDAQ's Opening Cross. NASDAQ has observed that members that provide higher volumes of liquidity-providing orders during the pre-market hours generally do so throughout the rest of the trading day. Accordingly, the PMI pays a credit with respect to all liquidity-providing orders, but only in the event that comparatively large volumes of such orders execute in pre-market hours.

(3) The ratio between shares of liquidity provided through the MPID and total shares accessed, provided, or routed through the MPID during the month is at least 0.80. This requirement reflects the PMI's goal of encouraging members that provide high levels of liquidity in pre-market hours to also do so during the rest of the trading day.

The new program is similar to a fee provision of the EDGX Exchange under which a favorable execution fee and rebate are offered to members that add or route an average of more than 4 million shares of liquidity during pre-market and/or post-market hours.[16]

Change in Rule 7018 Rebate Provisions

NASDAQ is making a minor modification to its fee and credit schedule for transaction executions in Rule 7018(a)[17] to broaden the conditions under which a member may qualify for a liquidity provider rebate of $0.0025 per share executed with respect to displayed liquidity (and $0.0010 per share executed with respect to non-displayed liquidity). Currently, a member qualifies for this rebate tier if:

---

16 http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx.

17 Rule 7018(a) applies to executions at $1 or more per share.

(1) it has an average daily volume in all securities of more than 20 million shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs;

(2) it accesses shares of liquidity in all securities through one or more of its Nasdaq Market Center MPIDs representing more than 0.45% of the Consolidated Volume during the month; provided that the member also provides 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; or

(3) the member has (i) shares of liquidity provided in all securities during the month representing more than 0.10% of the Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) an average daily volume during the month of more than 115,000 contracts of liquidity accessed or provided through one or more of its Nasdaq Options Market MPIDs.

In addition to these methods of achieving this rebate tier, NASDAQ will also make the tier available to a member that (i) provides liquidity through one or more MPIDs representing 0.10% of the Consolidated Volume during the month; and (ii) accesses shares of liquidity representing more than 0.20% of the Consolidated Volume during the month.

Housekeeping Changes

NASDAQ is also making a few "housekeeping" changes to the fee rules. Specifically, NASDAQ is deleting rule language that governed a pilot "attributable market provider program," which, by its terms, expired on September 30, 2011. NASDAQ is also redesignating the definition section of Rule 7014 from Rule 7014(d) to Rule 7014(g), to allow the insertion of provisions relating to the PMI. NASDAQ is renumbering provisions of this definition section to reflect the deletion of the definition of "Added Liquidity", and is making changes to Rule

7014(h) (formerly 7014(e)) to allow NASDAQ to obtain information from members with regard to compliance with requirements of the PMI (as well as the ISP) and to correct a typographical error. NASDAQ is also adding a definition of "Nasdaq Opening Cross" to the definitions of Rule 7014. Finally, NASDAQ is redesignating clauses in the definitions of ISP Execution Ratio and Participation Ratio to enhance their clarity, and deleting redundant language from the definition of ISP Execution Ratio.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[18] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[19] 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 it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

The ISP encourages members to add targeted liquidity that is executed in the NASDAQ Market Center. The primary objective in making the enhancements to the ISP reflected in the proposed rule change is to add an even greater amount of targeted liquidity to the Exchange. Specifically:

(i) The proposed rule change introduces a requirement that participants provide specified percentages of liquidity through ISP-designated ports. Because ISP-designated ports are required to have a low ratio of orders to executions, a characteristic reflective of targeted liquidity, the added requirement that a percentage of all of the member's provided liquidity

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4) and (5).

comes through such ports provides further assurance that ISP participants represent targeted liquidity.

(ii) The proposed rule change replaces a requirement that liquidity provided through ISP-designated ports average at least 10 million shares per day with a corresponding requirement that such liquidity constitute at least 0.2% of Consolidated Volume. The change is not intended to materially impact the scope of the program, but rather to allow it to adjust to months with varying market volumes.

(iii) The change reduces the credit rates payable under the program from $0.0003, $0.0004, and $0.0005 to $0.0001, $0.0003, and $0.0004, but expands the shares to which the rates apply to include all displayed liquidity provided at a price of $1 or more. The change is intended to simplify member's calculations of expected credits by making them applicable to all shares, but lower the rates to avoid an excessive increase in the cost of the program.

(iv) The change enhances the availability of the program to a wider range of members representing targeted liquidity by modifying the Baseline Participation Ratio to reflect the lower of a member's participation in August 2010 or August 2011. Given the requirement that ISP participations must equal or exceed their baseline participation in the market, the change will enhance the value of the program to members whose market participation was higher in 2010 than in 2011, thereby encouraging them to again increase their participation.

(v) The change enhances the flexibility of the program with respect to designation of new ports for ISP use.

NASDAQ believes that the overall effect of these changes is to ensure that the program is focused as carefully as possible on targeted liquidity, to ensure that as many firms representing targeted liquidity as possible are eligible to participate, and to simplify the calculation of such member's credits. The rule change proposal, like the original ISP, is not designed to permit unfair discrimination, but rather is intended to promote submission of liquidity-providing orders to NASDAQ, which benefits all NASDAQ members and all investors. Likewise, the proposal, like the ISP, is consistent with the Act's requirement for the equitable allocation of reasonable dues, fees, and other charges. As explained in the immediately preceding paragraphs, the proposal enhances the goal of the ISP. Members who choose to significantly increase the volume of ISP-eligible liquidity-providing orders that they submit to NASDAQ would be benefitting all investors, and therefore providing credits to them, as contemplated in the proposed enhanced program, is equitable. Moreover, NASDAQ believes that the level of the credit – $0.0001, $0.0003, or $0.0004 per share, in addition to credits ranging from $0.0010 to $0.00295 per share under NASDAQ regular transaction execution fee and rebate schedule – is reasonable.

The proposed Pre-Market Investor Program is similarly designed to attract greater liquidity to NASDAQ, with a particular emphasis on encouraging a deeper and more liquid book during pre-market hours and recognizing and further encouraging the observed correlation between liquidity provision during pre-market hours and throughout the trading day. Accordingly, in a manner comparable to the ISP, the PMI will provide an additional credit to members that satisfy criteria designed to be indicative these patterns of market participation. Thus, a participant in the program is required to designate MPIDs with a low ratio between orders entered and executions; to provide a specified volume of liquidity during pre-market hours; and to maintain a high ratio of liquidity provision to order execution throughout the month.

The PMI, like the ISP, is not unfairly discriminatory because it is intended to promote submission of liquidity-providing orders to NASDAQ, which benefits all NASDAQ members and all investors. Likewise, the PMI, like the ISP, is consistent with the Act's requirement for the equitable allocation of reasonable dues, fees, and other charges. Members who choose to significantly increase the volume of PMI-eligible liquidity-providing orders that they submit to NASDAQ would be benefitting all investors, and therefore providing credits to them, as contemplated in the proposed enhanced program, is equitable. Moreover, NASDAQ believes that the level of the credit – $0.0001 per share, in addition to credits ranging from $0.0010 to $0.00295 per share under NASDAQ regular transaction execution fee and rebate schedule – is reasonable.

With regard to the additional rebate tier in NASDAQ's transaction execution fee and credit schedule, NASDAQ believes that this change is reasonable because it will provide an additional means by which members may qualify for an enhanced rebate, without eliminating any of the existing means of qualifying for the rebate level in question. NASDAQ further believes that the change is equitable and non-discriminatory, because it is designed to encourage greater levels of liquidity provision, which benefits all market participants, and because it is open to all market participants on the same terms.

Finally, 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. NASDAQ believes that all aspects of the proposed rule change reflect this competitive environment because the changes to the ISP, the

PMI, and the additional rebate tier are all designed to increase the credits provided to members that enhance NASDAQ's market quality through liquidity provision.

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. Because the market for order execution is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, 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)(ii) of the Act.[20] 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[20] 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

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-2011-150 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-2011-150. 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-2011-150 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.[21]

Kevin M. O'Neill
Deputy Secretary

[21] 17 CFR 200.30-3(a)(12).