SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83025; File No. SR-NASDAQ-2018-025)

April 10, 2018

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

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 March 29, 2018, 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 Rule 7018(a) to modify the system of credits it offers to members that add liquidity in securities that are listed on exchanges other than Nasdaq or the New York Stock Exchange ("NYSE"), as described further below. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on April 2, 2018.

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

2 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

The purpose of the proposed rule change is to amend the Exchange's transaction fees at Rule 7018(a) to modify the current system of credits it provides to members that add liquidity in securities that are listed on exchanges other than Nasdaq or NYSE. These changes are described below.

The Exchange proposes to modify one and eliminate another one of the volume-based credits that it currently offers for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity on Nasdaq in Tape B Securities. Currently, in addition to other credits that the Exchange offers to members for providing liquidity, the Exchange offers a member a credit of $0.0001 per share executed if the member provides liquidity in securities that are listed on exchanges other than Nasdaq or NYSE during the month representing at least 0.06% but less than 0.12% of Consolidated Volume during the month through one or more of the member's Nasdaq Market Center MPIDs. Nasdaq proposes to change the threshold for the first credit, so that a member will receive a credit of $0.0001 per share executed if it provides liquidity in securities that are listed on exchanges other than Nasdaq or

NYSE during the month representing at least 0.10% of Consolidated Volume during the month through one or more of its Nasdaq Market Center MPIDs. The proposal will eliminate the upper 0.12% Consolidated Volume threshold for the credit.

Second, Nasdaq proposes to eliminate the next credit tier for members that provide liquidity in securities that are listed on exchanges other than Nasdaq or NYSE. Currently, in addition to other credits that the Exchange offers to members for providing liquidity, the Exchange offers a member a credit of $0.0002 per share executed if the member provides liquidity in securities that are listed on exchanges other than Nasdaq or NYSE during the month representing at least 0.12% of Consolidated Volume during the month through one or more of the member's Nasdaq Market Center MPIDs. Again, Nasdaq proposes to eliminate this credit.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[4] 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has

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3 15 U.S.C. 78f(b).

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

been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[5]

Likewise, in NetCoalition v. Securities and Exchange Commission[6] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[7] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."[8]

Further, "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[9]

Nasdaq believes that the proposed changes to the current credits for transactions in Tape B Securities are reasonable, equitable and not unfairly discriminatory. Nasdaq believes that its proposals to eliminate the $0.0002 per share credit and increase the volume threshold for the $0.0001 per share credit are reasonable because the current system of credits has not been

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5 Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

6 NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

7 See NetCoalition, at 534 - 535.

8 Id. at 537.

9 Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

effective in achieving its intended objective of incentivizing members to transact greater volume on Nasdaq in Tape B Securities. The Exchange's proposal will not eliminate this incentive program altogether, but it will instead adjust the incentive structure so that the cost of the program is more aligned with the benefit it brings to the market. The Exchange has limited resources available to it to devote to the operation of special pricing programs and as such, it is reasonable and equitable for the Exchange to allocate those resources to those programs that are effective and away from those programs that are ineffective. The proposals are also equitable and not unfairly discriminatory because the proposed changes to the credits will apply uniformly to all similarly situated members. Moreover, all similarly situated members are equally capable of qualifying for the modified credit if they choose to meet the volume requirements, and the same credit will be paid to all members that qualify for it.

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 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.

The proposed changes to the existing credits for transactions in Tape B Securities do not impose a burden on competition because the Exchange's execution services are completely voluntary. All similarly situated members are equally capable of qualifying for modified credit if they choose to meet the volume requirements, and the same credit will be paid to all members that qualify for it.

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.[10]

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.

[10] 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. Please include File Number SR-NASDAQ-2018-025 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-2018-025. 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.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2018-025, 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.[11]

Eduardo A. Aleman
Assistant Secretary

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[11] 17 CFR 200.30-3(a)(12).