

*Required fields are shown with yellow backgrounds and asterisks.*

Page 1 of *	21	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR -	2012	- *	024
Amendment No. (req. for Amendments *)						
Proposed Rule Change by NASDAQ Stock Market Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934						
Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
			Rule			
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)		
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)		
Exhibit 2 Sent As Paper Document		Exhibit 3 Sent As Paper Document				
<input type="checkbox"/>		<input type="checkbox"/>				
<b>Description</b>						
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).						
A Proposed Rule Change to Modify NASDAQ's Pre-Market Investor Program.						
<b>Contact Information</b>						
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.						
First Name *	John	Last Name *	Yetter			
Title *	Vice President and Deputy General Counsel					
E-mail *	john.yetter@nasdaqomx.com					
Telephone *	(301) 978-8497	Fax	(301) 978-8472			
<b>Signature</b>						
Pursuant to the requirements of the Securities Exchange Act of 1934,						
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.						
Date	02/01/2012					
By	Edward S. Knight		Executive Vice President and General Counsel			
	(Name *)		(Title *)			
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.			<div style="border: 1px solid gray; background-color: #cccccc; padding: 5px; display: inline-block;">Edward S Knight,</div>			

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information (required)**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change (required)**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) proposed changes to modify NASDAQ’s Pre-Market Investor Program.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the proposed rule change is attached as Exhibit 5.<sup>3</sup>

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of NASDAQ pursuant to authority delegated by the Board of Directors of NASDAQ on August 19, 2011. NASDAQ staff will advise the Board of Directors of NASDAQ of any action taken pursuant to delegated authority. No other action by NASDAQ is necessary for the filing of the rule change. NASDAQ proposes to implement the proposed rule change on February 1, 2011.

Questions regarding this rule filing may be directed to John M. Yetter, Vice President and Deputy General Counsel, NASDAQ OMX, 301-978-8497.

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

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

<sup>3</sup> The text of the proposed rule change is available from NASDAQ’s website at <http://nasdaq.cchwallstreet.com/Filings>, at NASDAQ’s principal office, and at the Commission’s Public Reference Room.

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

a. Purpose

Last year, NASDAQ introduced a Pre-Market Investor 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.<sup>4</sup> The goal of the program 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. While maintaining the structure of the existing program, NASDAQ is now proposing to modify the program to also encourage greater use of NASDAQ's facilities for trading after the market close at 4:00 p.m. In connection with the change, NASDAQ will also rename the program as the "Extended Hours Investor Program" ("EHIP").

Under the program, a member is required to designate one or more market participant identifiers ("MPIDs") for use under the program.<sup>5</sup> The member will then qualify for an extra rebate of \$0.0002 per share executed<sup>6</sup> with respect to all displayed

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<sup>4</sup> Securities Exchange Act Release No. 65717 (November 9, 2011), 76 FR 70784 (November 15, 2011) (SR-NASDAQ-2011-150).

<sup>5</sup> After the initial designation of NASDAQ MPIDs for EHIP use, a member may add or remove such EHIP 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 EHIP use immediately upon establishment.

<sup>6</sup> Originally, the rebate was set at \$0.0001 per share executed, but effective February 1, 2012, NASDAQ increased the rate to \$0.0002 per share executed. See SR-NASDAQ-2012-020 (January 27, 2012).

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 "EHIP Execution Ratio"<sup>7</sup> for the month is less than 10. The EHIP Execution Ratio is defined as "the ratio of (A) the total number of liquidity-providing orders entered by a member through an EHIP-designated MPID during the specified time period to (B) the number of liquidity-providing orders entered by such member through such EHIP-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<sup>8</sup> 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. This requirement is designed to focus the availability of the program on members representing retail and institutional customers.

(2) Currently, the member must provide 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 program 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. To broaden the focus of the program to include after-hours trading, NASDAQ is proposing to modify this provision

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<sup>7</sup> Formerly, the PMI Execution Ratio.

<sup>8</sup> "Market Hours Immediate-or-Cancel" or "System Hours Immediate-or-Cancel" orders.

to provide an alternative criterion for participation in the program, but without removing or modifying the existing criteria. Specifically, a member may also satisfy the volume requirement if the member provides an average daily volume of 3 million or more shares of liquidity during the month using orders that are entered through its designated MPID and executed prior to the Nasdaq Opening Cross and/or after the Nasdaq Closing Cross. Thus, the modified volume criteria may be satisfied either through substantial activity during pre-market trading hours, or by substantial activity spread across the pre-market and after-hours trading sessions.

(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 program's goal of encouraging members that provide high levels of liquidity in the pre-market and/or after-hours trading sessions to also do so during the rest of the trading day.

The modified program is similar to a fee provision of the EDGX Exchange under which a favorable execution fee and rebate are offered to members that make significant use of the EDGX Exchange's facilities during pre-market and/or post-market hours.<sup>9</sup>

b. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>10</sup> in general, and with Sections 6(b)(4) and (5) of the Act,<sup>11</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and

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<sup>9</sup> <http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx>.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. All similarly situated members are subject to the same fee structure, and access to NASDAQ is offered on fair and non-discriminatory terms.

The Pre-Market Investor Program, now renamed with Extended Hours Investment Program, is designed to attract greater liquidity to NASDAQ, with a particular emphasis on encouraging a deeper and more liquid book during pre-market and post-market hours and recognizing and further encouraging the observed correlation between liquidity provision during pre-market and post-market hours and throughout the trading day. The EHIP provides 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, or pre-market and/or post-market hours; and to maintain a high ratio of liquidity provision to order execution throughout the month.

The EHIP 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 EHIP 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 EHIP-eligible liquidity-providing orders that they submit to NASDAQ would be benefitting all investors, and therefore providing credits to such members, as contemplated in the proposed enhanced program, is

equitable. Moreover, NASDAQ believes that the level of the credit – \$0.0002 per share, in addition to credits ranging from \$0.0020 to \$0.00295 per share for displayed liquidity under NASDAQ regular transaction execution fee and rebate schedule – is reasonable.

NASDAQ further believes that expanding the program to incentivize greater participation in the after-hours trading session is not unfairly discriminatory, because it will promote still further the provision of liquidity, which benefits all market participants, and will broaden the availability of the offered rebate to a greater number of market participants. Similarly, NASDAQ believes that the expansion of the program is consistent with the equitable allocation of fees, because it will further incentivize members to provide liquidity. NASDAQ further believes that the expansion is reasonable, because it will reduce the fees paid by a larger number of market participants.

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 change is designed to increase the credits provided to members that enhance NASDAQ's market quality through liquidity provision.

#### 4. 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. The proposed changes will enhance competition by offering a higher rebate to more market participants. In addition, the change will enhance competition with the EDGX Exchange, which encourages participation in its pre-market and post-market trading sessions by means of favorable pricing offered to members that are active during pre-market and/or post-market hours.<sup>12</sup>

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>13</sup> NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission. However, NASDAQ notes that the EDGX Exchange

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<sup>12</sup> <http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx>.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

encourages participation in its pre-market and post-market trading sessions by means of a favorable execution fee and rebate.<sup>14</sup>

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.
5. Text of the proposed rule change.

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<sup>14</sup> <http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx>.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NASDAQ-2012-024)

February \_\_, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify NASDAQ's Pre-Market Investor 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 February 1, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange"), 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 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 to modify its NASDAQ's Pre-Market Investor Program. NASDAQ proposes to implement the proposed rule change on February 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, 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

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

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

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

Last year, NASDAQ introduced a Pre-Market Investor 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.<sup>3</sup> The goal of the program 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. While maintaining the structure of the existing program, NASDAQ is now proposing to modify the program to also encourage greater use of NASDAQ's facilities for trading after the market close at 4:00 p.m. In connection with the change, NASDAQ will also rename the program as the "Extended Hours Investor Program" ("EHIP").

Under the program, a member is required to designate one or more market participant identifiers ("MPIDs") for use under the program.<sup>4</sup> The member will then

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<sup>3</sup> Securities Exchange Act Release No. 65717 (November 9, 2011), 76 FR 70784 (November 15, 2011) (SR-NASDAQ-2011-150).

<sup>4</sup> After the initial designation of NASDAQ MPIDs for EHIP use, a member may add or remove such EHIP 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 EHIP use immediately upon establishment.

qualify for an extra rebate of \$0.0002 per share executed<sup>5</sup> with respect to all 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 "EHIP Execution Ratio"<sup>6</sup> for the month is less than 10. The EHIP Execution Ratio is defined as "the ratio of (A) the total number of liquidity-providing orders entered by a member through an EHIP-designated MPID during the specified time period to (B) the number of liquidity-providing orders entered by such member through such EHIP-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<sup>7</sup> 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. This requirement is designed to focus the availability of the program on members representing retail and institutional customers.

(2) Currently, the member must provide 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 program pays a credit with

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<sup>5</sup> Originally, the rebate was set at \$0.0001 per share executed, but effective February 1, 2012, NASDAQ increased the rate to \$0.0002 per share executed. See SR-NASDAQ-2012-020 (January 27, 2012).

<sup>6</sup> Formerly, the PMI Execution Ratio.

<sup>7</sup> "Market Hours Immediate-or-Cancel" or "System Hours Immediate-or-Cancel" orders.

respect to all liquidity-providing orders, but only in the event that comparatively large volumes of such orders execute in pre-market hours. To broaden the focus of the program to include after-hours trading, NASDAQ is proposing to modify this provision to provide an alternative criterion for participation in the program, but without removing or modifying the existing criteria. Specifically, a member may also satisfy the volume requirement if the member provides an average daily volume of 3 million or more shares of liquidity during the month using orders that are entered through its designated MPID and executed prior to the Nasdaq Opening Cross and/or after the Nasdaq Closing Cross. Thus, the modified volume criteria may be satisfied either through substantial activity during pre-market trading hours, or by substantial activity spread across the pre-market and after-hours trading sessions.

(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 program's goal of encouraging members that provide high levels of liquidity in the pre-market and/or after-hours trading sessions to also do so during the rest of the trading day.

The modified program is similar to a fee provision of the EDGX Exchange under which a favorable execution fee and rebate are offered to members that make significant use of the EDGX Exchange's facilities during pre-market and/or post-market hours.<sup>8</sup>

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and with Sections 6(b)(4) and (5) of the Act,<sup>10</sup> in

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<sup>8</sup> <http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx>.

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 is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. All similarly situated members are subject to the same fee structure, and access to NASDAQ is offered on fair and non-discriminatory terms.

The Pre-Market Investor Program, now renamed with Extended Hours Investment Program, is designed to attract greater liquidity to NASDAQ, with a particular emphasis on encouraging a deeper and more liquid book during pre-market and post-market hours and recognizing and further encouraging the observed correlation between liquidity provision during pre-market and post-market hours and throughout the trading day. The EHIP provides 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, or pre-market and/or post-market hours; and to maintain a high ratio of liquidity provision to order execution throughout the month.

The EHIP 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 EHIP is consistent with the Act's requirement for the equitable allocation of reasonable dues, fees, and other charges. Members who

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<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

choose to significantly increase the volume of EHIP-eligible liquidity-providing orders that they submit to NASDAQ would be benefitting all investors, and therefore providing credits to such members, as contemplated in the proposed enhanced program, is equitable. Moreover, NASDAQ believes that the level of the credit – \$0.0002 per share, in addition to credits ranging from \$0.0020 to \$0.00295 per share for displayed liquidity under NASDAQ regular transaction execution fee and rebate schedule – is reasonable.

NASDAQ further believes that expanding the program to incentivize greater participation in the after-hours trading session is not unfairly discriminatory, because it will promote still further the provision of liquidity, which benefits all market participants, and will broaden the availability of the offered rebate to a greater number of market participants. Similarly, NASDAQ believes that the expansion of the program is consistent with the equitable allocation of fees, because it will further incentivize members to provide liquidity. NASDAQ further believes that the expansion is reasonable, because it will reduce the fees paid by a larger number of market participants.

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 change is 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. The proposed changes will enhance competition by offering a higher rebate to more market participants. In addition, the change will enhance competition with the EDGX Exchange, which encourages participation in its pre-market and post-market trading sessions by means of favorable pricing offered to members that are active during pre-market and/or post-market hours.<sup>11</sup>

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<sup>12</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>13</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 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,

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<sup>11</sup> <http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx>.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

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-2012-024 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-2012-024. 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 Web site (<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 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 offices 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-2012-024, 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>14</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

The text of the proposed rule change is below. Proposed new language is underlined; deletions are bracketed.<sup>1</sup>

**7014. Investor Support Program; [Pre-Market] Extended Hours Investor Program****Investor Support Program**

(a) – (c) No change.

**[Pre-Market] Extended Hours Investor Program**

(d) A member wishing to participate in the [Pre-Market] Extended Hours Investor Program ("[PMI]EHIP") must submit an application in the form prescribed by Nasdaq and designate one or more of its Nasdaq market participant identifiers ("MPIDs") for [PMI] EHIP use. By participating in the [PMI Program] EHIP and entering in the Nasdaq Market Center eligible orders in System Securities, a member may qualify for a monthly [PMI] EHIP fee credit. Eligibility criteria and credit amounts are set forth herein.

Subsequent to the initial designation of Nasdaq MPIDs for [PMI] EHIP use, a member may add or remove such [PMI] EHIP 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] EHIP use immediately upon establishment.

(e) Subject to the conditions set forth in section (f) of this Rule, Nasdaq shall issue to the member a monthly [PMI] EHIP credit, which shall be determined by multiplying \$0.0002 by the number of shares of displayed liquidity to which a particular rate applies, as described below. [A PMI] An EHIP credit issued under this Rule will be in addition to (and will not replace) any other credit or rebate for which a member may qualify.

(f) (1) A member shall be entitled to receive [a PMI] an EHIP credit at the \$0.0002 rate with respect to all shares of displayed liquidity entered through [a PMI] an EHIP-designated MPID that are executed at a price of \$1 or more in the Nasdaq Market Center during a given month if:

(A) the MPID's [PMI] EHIP Execution Ratio for the month in question is less than 10;

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<sup>1</sup> The text of the proposed rule change reflects the text available at <http://nasdaq.cchwallstreet.com/Filings>, as amended by SR-NASDAQ-2012-020 (January 27, 2011), which was filed on an immediately effective basis, but which has not yet been published in the Federal Register.

(B) the member provides an average daily volume of 2 million or more shares of liquidity during the month using orders that are entered through the MPID and executed prior to the Nasdaq Opening Cross, or the member provides an average daily volume of 3 million or more shares of liquidity during the month using orders that are entered through the MPID and executed prior to the Nasdaq Opening Cross and/or after the Nasdaq Closing Cross;

(C) 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.

## Definitions and Certifications

### (g) Definitions

For purposes of this Rule, the terms set forth below shall have the following meanings:

(1) – (6) No change.

(7) The term "[PMI] EHIP Execution Ratio" shall mean the ratio of (A) the total number of liquidity-providing orders entered by a member through [a PMI]an EHIP-designated MPID during the specified time period to (B) the number of liquidity-providing orders entered by such member through such [PMI]EHIP-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.

(h) A member shall certify to the reasonable satisfaction of Nasdaq: (i) its Baseline Participation Ratio; and (ii) if requested by Nasdaq, its compliance with any other sections or requirements of this Rule, but not more often than once a month during participation in ISP and/or the [PMI] EHIP.

(i) No change.