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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 31

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2012 - * 126

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"/> | | | |
| Pilot | Extension of Time Period for Commission Action * | Date Expires * | 19b-4(f)(1) | 19b-4(f)(2) | 19b-4(f)(3) | 19b-4(f)(4) | 19b-4(f)(5) | 19b-4(f)(6) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



Description

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Proposed changes to modify NASDAQ's rebates for order execution and its fees for order entry ports through the introduction of new market quality incentive programs on a pilot basis.

Contact Information

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 | | |
| E-mail * | john.yetter@nasdaqomx.com | | |
| Telephone * | (301) 978-8472 | Fax | (301) 978-8472 |

Signature

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 11/01/2012

By Edward S. Knight

(Name *)

Executive Vice President and General Counsel

(Title *)

Edward S Knight,

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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information (required)

Add **Remove** **View**

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)

Add **Remove** **View**

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

Add **Remove** **View**

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

Add **Remove** **View**

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

Add **Remove** **View**

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”)¹ and Rule 19b-4 thereunder,² The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) proposed changes to modify NASDAQ’s rebates for order execution and its fees for order entry ports through the introduction of new market quality incentive programs on a pilot basis.

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.

(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 July 10, 2012. 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 November 1, 2012.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

NASDAQ is introducing two new pricing programs designed to create incentives for members to improve market quality. The programs will be in effect on a pilot basis from November 1, 2012 until April 30, 2013, subject to being modified, terminated, extended, or made permanent through a subsequent proposed rule change. The pilot nature of the proposals will allow NASDAQ to assess and report to the Commission on the effects of the programs on bid-ask spreads, depth of liquidity at the inside, and such other factors as may be deemed relevant.

First, under the NBBO Setter Incentive program, NASDAQ will provide an enhanced liquidity provider rebate with respect to displayed liquidity-providing orders that set the national best bid or best offer (“NBBO”) or join another trading center with a protected quotation at the NBBO. The NBBO Setter Incentive credit will be paid on a monthly basis, and the amount will be determined by multiplying \$0.0005 or \$0.0002 by the number of shares of displayed liquidity provided to which a particular rate applies. A member will receive an NBBO Setter Incentive credit at the \$0.0002 rate with respect to all shares of displayed liquidity that are executed at a price of \$1 or more in the Nasdaq Market Center during a given month if posted through an order that:

- displayed a quantity of at least one round lot at the time of execution; and
- either established the NBBO or was the first order posted on NASDAQ that had the same price as an order posted at another trading center with a protected quotation that established the NBBO. Thus, the credit will be paid for orders that incur risk by setting the inside market or allowing NASDAQ to join another

trading center that has already set the inside market, thereby aiding price discovery and NASDAQ's market quality. The credit will not be paid with respect to orders that join another order on NASDAQ that has already established or joined the NBBO.

A member will receive an NBBO Setter Incentive credit at the \$0.0005 rate with respect to all shares of displayed liquidity that are executed at a price of \$1 or more in the NASDAQ Market Center during a given month if posted through an order that:

- displayed a quantity of at least one round lot at the time of execution;
- either established the NBBO or was the first order posted on Nasdaq that had the same price as an order posted at another trading center with a protected quotation that established the NBBO; and
- was entered through a market participant identifier ("MPID") that qualified for the Qualified Market Maker ("QMM") program during the month. The QMM program is the other market quality incentive being introduced by NASDAQ in this proposed rule change, and is discussed below.

Similar to other market quality incentive programs already in place at NASDAQ, such as the Investor Support Program, an NBBO Setter Incentive credit will be in addition to (and will not replace) any other credit or rebate for which a member may qualify. The program is similar to a provision of the fee schedule of the BATS Exchange, Inc. ("BATS"), under which BATS pays its members an additional rebate of \$0.0002 per share executed for displayed liquidity that sets the NBBO (provided the member has an

average daily volume equal to or greater than 0.5% of the total consolidated volume during the month).³

Qualified Market Maker Program

NASDAQ is proposing a market quality incentive program under which a member may be designated as a QMM with respect to one or more of its MPIDs if:

- the member is not assessed any “Excess Order Fee” under Rule 7018 during the month;⁴ and
- through such MPID the member quotes at the NBBO at least 25% of the time during regular market hours⁵ in an average of at least 1,000 securities during the month.⁶

³ See http://cdn.batstrading.com/resources/regulation/rule_book/BZX_Fee_Schedule.pdf (“\$0.0002 additional rebate per share for adding displayed liquidity to the BZX Exchange order book on an order that sets the NBBO for Members who have an ADV equal to or greater than 0.5% of TCV”).

⁴ Rule 7018(m). NASDAQ recently introduced an Excess Order Fee, aimed at reducing inefficient order entry practices of certain market participants that place excessive burdens on the systems of NASDAQ and its members and that may negatively impact the usefulness and life cycle cost of market data. In general, the determination of whether to impose the fee on a particular MPID is made by calculating the ratio between (i) entered orders, weighted by the distance of the order from the NBBO, and (ii) orders that execute in whole or in part. The fee is imposed on MPIDs that have an “Order Entry Ratio” of more than 100.

⁵ Defined as 9:30 a.m. through 4:00 p.m., or such shorter period as may be designated by NASDAQ on a day when the securities markets close early (such as the day after Thanksgiving).

⁶ A member MPID is considered to be quoting at the NBBO if it has a displayed order at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, NASDAQ will determine the number of securities in which the member satisfied the 25% NBBO requirement. To qualify for QMM designation, the MPID must meet the requirement for an average of 1,000 securities per day over the course of the month. Thus, if a member MPID satisfied the 25% NBBO requirement in 900 securities for half the days in the

Thus, to be a QMM, a member must make a significant contribution to market quality by providing liquidity at the NBBO in a large number of stocks for a significant portion of the day. In addition, the member must avoid imposing the burdens on NASDAQ and its market participants that may be associated with excessive rates of entry of orders away from the inside and/or order cancellation. A QMM may be, but is not required to be, a registered market maker in any security; thus, the QMM designation does not by itself impose a two-sided quotation obligation or convey any of the benefits associated with being a registered market maker. The designation will, however, reflect the QMM's commitment to provide meaningful and consistent support to market quality and price discovery by extensive quoting at the NBBO in a large number of securities. Thus, the program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO. Through these incentives, NASDAQ hopes to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market. In addition, the program reflects an effort to use financial incentives to encourage a wider variety of members, including members that may be characterized as high-frequency trading firms, to make positive commitments to promote market quality.

A member that is a QMM with respect to a particular MPID will receive:

- an NBBO Setter Incentive credit of \$0.0005 with respect to orders that qualify for the NBBO Setter Incentive program (*i.e.*, displayed orders with a size of at least

month, and satisfied the requirement for 1,100 securities for the other days in the month, it would meet the requirement for an average of 1,000 securities.

one round lot that set the NBBO or join another trading center at the NBBO) and that are entered through that MPID; and

- a 25% discount on fees for ports used for entering orders for that MPID, up to a total discount of \$10,000 per MPID per month.⁷ As provided in amendments to Rule 7015, the specific fees subject to this discount are: (i) all ports using the NASDAQ Information Exchange (“QIX”) protocol,⁸ (ii) Financial Information Exchange (“FIX”) trading ports,⁹ and (iii) ports using other trading telecommunications protocols.¹⁰

NASDAQ is proposing these discounts as a means of recognizing the value of market participants that consistently quote at the NBBO in a large number of securities.

Even when such market participants are not formally registered as market makers, they risk capital by offering immediately executable liquidity at the price most favorable to market participants on the opposite side of the market. Such activity promotes price discovery and dampens volatility and enhances the attractiveness of NASDAQ as a trading venue. A discount on order entry port fees is an appropriate incentive to encourage broad-based liquidity provision because active management of quotes across over 1,000 securities may require a member to employ numerous order entry ports.

NASDAQ further notes that the proposed discount on port fees is similar in structure and

⁷ The ports subject to the discount are not used for receipt of market data.

⁸ The applicable undiscounted fees are \$1,200 per month for a port pair or ECN direct connection port pair, and \$1,000 per month for an unsolicited message port. See Rule 7015(a).

⁹ The applicable undiscounted fee is \$500 per port per month. See Rule 7015(b).

¹⁰ The applicable undiscounted fee is \$500 per port pair per month. See Rule 7015(g).

purpose to a provision of the fee schedule for BATS's options market under which the \$1,000 per month fee for a port with bulk-quoting capabilities is waived if a member achieves certain market quality standards with respect to options on more than 25 underlying securities.¹¹

In addition to the foregoing changes, NASDAQ is also modifying the name of Rule 7014 to reflect the fact that it includes a range of market quality incentive programs, adding definitions of “NBBO”, “trading center”, and “protected quotation”, and “regular market hours” to the rule, and making conforming changes to the letter designations of paragraphs within the rule.

b. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹² in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹³ 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 is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed NBBO Setter Incentive program is intended to encourage members to add liquidity at prices that benefit all NASDAQ market participants and the NASDAQ market itself, and enhance price discovery, by establishing a new NBBO or allowing

¹¹ See http://cdn.batstrading.com/resources/regulation/rule_book/BZX_Fee_Schedule.pdf (“fees for logical ports with bulk-quoting capabilities will be waived for Members achieving QIP [Quoting Incentive Program] thresholds in more than 25 underlying securities”).

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(4) and (5).

NASDAQ to join the NBBO established by another trading center. NASDAQ believes that the level of the credits available through the program – \$0.0002 or \$0.0005 per share executed – is reasonable, in that it does not reflect a disproportionate increase above the rebates provided to all members with respect to the provision of displayed liquidity under Rule 7018, which range from \$0.0020 to \$0.00295 per share executed. NASDAQ further notes that by introducing the program, NASDAQ is reducing fees for members that set the NBBO or join another market at the NBBO. The program is consistent with the Act's requirement for an equitable allocation of fees because members that establish the NBBO or cause NASDAQ to join another market at the NBBO benefit all investors by promoting price discovery and increasing the depth of liquidity available at the inside market. Such members also benefit NASDAQ itself by enhancing its competitiveness as a market that attracts actionable orders. Accordingly, NASDAQ believes that it is consistent with an equitable allocation of fees to pay an enhanced rebate in recognition of these benefits to NASDAQ and its market participants. NASDAQ further notes that the program is consistent with an equitable allocation of fees because it is immediately available to all market participants that allow NASDAQ to set or join the NBBO, regardless of the size of the firm or its trading volumes. Finally, NASDAQ believes that the program and the payment of a higher rebate with respect to qualifying orders is not unfairly discriminatory because it is intended to promote the benefits described above, and because the magnitude of the additional rebate is not unreasonably high in comparison to the rebate paid with respect to other displayed liquidity-providing orders.

Similarly, the proposed QMM program is intended to encourage members to promote price discovery and market quality by quoting at the NBBO for a significant

portion of each day in a large number of securities, thereby benefitting NASDAQ and other investors by committing capital to support the execution of orders. With respect to the enhanced NBBO Setter Incentive rebate provided to QMMs, NASDAQ believes that the rebate itself is reasonable, equitable, and not unfairly discriminatory for the reasons discussed above with regard to the NBBO Setter Incentive program. In addition, NASDAQ believes that it is reasonable to pay a higher rebate under that program to QMMs because of the additional commitment to market quality reflected in the quoting requirements associated with being a QMM. Similarly, NASDAQ believes that the higher rebate is consistent with an equitable allocation of fees because a QMM that sets the NBBO is demonstrating both a specific commitment to the market through the NBBO-setting order and a broad commitment through its quoting activity throughout the month. Accordingly, NASDAQ believes that it is consistent with an equitable allocation to pay a higher rebate in comparison with the rebate for other NBBO-setting orders. Finally, NASDAQ believes that this higher rebate is not unfairly discriminatory because it is consistent with the market quality and competitiveness benefits associated with the program and because the magnitude of the additional rebate is not unreasonably high in comparison to the rebate paid with respect to other displayed liquidity-providing orders.

NASDAQ believes that the proposed port fee discount for QMMs is consistent with an equitable allocation of fees because the fees for connectivity, such as the ports used for order entry, are a significant component of the overall cost of trading on NASDAQ and other trading venues. Accordingly, to the extent that a member maintains a significant presence in the NASDAQ market through the extent of its quoting at the NBBO, NASDAQ believes that it is equitable to provide the member a discount on this

component of its trading costs. NASDAQ further believes that the discount is not unfairly discriminatory, because it is subject to a monthly cap, such that the disparity between the monthly costs of a QMM and another market participant with a similar configuration of order entry ports may not exceed \$10,000. Finally, NASDAQ believes that the discount is reasonable because it will result in a fee reduction for members that provide the market quality benefits associated with QMM status.

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. 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 the proposed rule change reflects this competitive environment because it is designed to reduce fees for members that enhance the quality of NASDAQ's market.

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. By reducing fees for order execution and order entry ports, the proposal is a manifestation of the continued intense level of competition in the market for order execution.

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,¹⁴ 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, the NBBO Setter Incentive program is similar to a provision of the fee schedule of BATS, under which BATS pays its members an additional rebate of \$0.0002 per share executed for displayed liquidity that sets the NBBO (provided the member has an average daily volume equal to or greater than 0.5% of the total consolidated volume during the month). In addition, the proposed port fee discount for QMMs is similar in structure and purpose to a provision of the fee schedule for BATS's options market under which the \$1,000 per month fee for a port with bulk-quoting capabilities is waived if a member achieves certain market quality standards with respect to options on more than 25 underlying securities. See http://cdn.batstrading.com/resources/regulation/rule_book/BZX_Fee_Schedule.pdf.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

9. Exhibits

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASDAQ-2012-126)

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify NASDAQ'S Rebates for Order Execution and its Fees for Order Entry Ports Through the Introduction of New Market Quality Incentive Programs on a Pilot Basis

November __, 2012

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, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing a change to modify rebates for order execution and its fees for order entry ports through the introduction of new market quality incentive programs on a pilot basis. NASDAQ will implement the proposed change on November 1, 2012. 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.

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

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

1. Purpose

NASDAQ is introducing two new pricing programs designed to create incentives for members to improve market quality. The programs will be in effect on a pilot basis from November 1, 2012 until April 30, 2013, subject to being modified, terminated, extended, or made permanent through a subsequent proposed rule change. The pilot nature of the proposals will allow NASDAQ to assess and report to the Commission on the effects of the programs on bid-ask spreads, depth of liquidity at the inside, and such other factors as may be deemed relevant.

First, under the NBBO Setter Incentive program, NASDAQ will provide an enhanced liquidity provider rebate with respect to displayed liquidity-providing orders that set the national best bid or best offer (“NBBO”) or join another trading center with a protected quotation at the NBBO. The NBBO Setter Incentive credit will be paid on a monthly basis, and the amount will be determined by multiplying \$0.0005 or \$0.0002 by the number of shares of displayed liquidity provided to which a particular rate applies. A member will receive an NBBO Setter Incentive credit at the \$0.0002 rate with respect to

all shares of displayed liquidity that are executed at a price of \$1 or more in the Nasdaq Market Center during a given month if posted through an order that:

- displayed a quantity of at least one round lot at the time of execution; and
- either established the NBBO or was the first order posted on NASDAQ that had the same price as an order posted at another trading center with a protected quotation that established the NBBO. Thus, the credit will be paid for orders that incur risk by setting the inside market or allowing NASDAQ to join another trading center that has already set the inside market, thereby aiding price discovery and NASDAQ's market quality. The credit will not be paid with respect to orders that join another order on NASDAQ that has already established or joined the NBBO.

A member will receive an NBBO Setter Incentive credit at the \$0.0005 rate with respect to all shares of displayed liquidity that are executed at a price of \$1 or more in the NASDAQ Market Center during a given month if posted through an order that:

- displayed a quantity of at least one round lot at the time of execution;
- either established the NBBO or was the first order posted on Nasdaq that had the same price as an order posted at another trading center with a protected quotation that established the NBBO; and
- was entered through a market participant identifier ("MPID") that qualified for the Qualified Market Maker ("QMM") program during the month. The QMM program is the other market quality incentive being introduced by NASDAQ in this proposed rule change, and is discussed below.

Similar to other market quality incentive programs already in place at NASDAQ, such as the Investor Support Program, an NBBO Setter Incentive credit will be in addition to

(and will not replace) any other credit or rebate for which a member may qualify. The program is similar to a provision of the fee schedule of the BATS Exchange, Inc. (“BATS”), under which BATS pays its members an additional rebate of \$0.0002 per share executed for displayed liquidity that sets the NBBO (provided the member has an average daily volume equal to or greater than 0.5% of the total consolidated volume during the month).³

Qualified Market Maker Program

NASDAQ is proposing a market quality incentive program under which a member may be designated as a QMM with respect to one or more of its MPIDs if:

- the member is not assessed any “Excess Order Fee” under Rule 7018 during the month;⁴ and
- through such MPID the member quotes at the NBBO at least 25% of the time during regular market hours⁵ in an average of at least 1,000 securities during the month.⁶

³ See http://cdn.batstrading.com/resources/regulation/rule_book/BZX_Fee_Schedule.pdf (“\$0.0002 additional rebate per share for adding displayed liquidity to the BZX Exchange order book on an order that sets the NBBO for Members who have an ADV equal to or greater than 0.5% of TCV”).

⁴ Rule 7018(m). NASDAQ recently introduced an Excess Order Fee, aimed at reducing inefficient order entry practices of certain market participants that place excessive burdens on the systems of NASDAQ and its members and that may negatively impact the usefulness and life cycle cost of market data. In general, the determination of whether to impose the fee on a particular MPID is made by calculating the ratio between (i) entered orders, weighted by the distance of the order from the NBBO, and (ii) orders that execute in whole or in part. The fee is imposed on MPIDs that have an “Order Entry Ratio” of more than 100.

⁵ Defined as 9:30 a.m. through 4:00 p.m., or such shorter period as may be designated by NASDAQ on a day when the securities markets close early (such as the day after Thanksgiving).

Thus, to be a QMM, a member must make a significant contribution to market quality by providing liquidity at the NBBO in a large number of stocks for a significant portion of the day. In addition, the member must avoid imposing the burdens on NASDAQ and its market participants that may be associated with excessive rates of entry of orders away from the inside and/or order cancellation. A QMM may be, but is not required to be, a registered market maker in any security; thus, the QMM designation does not by itself impose a two-sided quotation obligation or convey any of the benefits associated with being a registered market maker. The designation will, however, reflect the QMM's commitment to provide meaningful and consistent support to market quality and price discovery by extensive quoting at the NBBO in a large number of securities. Thus, the program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO. Through these incentives, NASDAQ hopes to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market. In addition, the program reflects an effort to use financial incentives to encourage a wider variety of members, including members that may be characterized as high-frequency trading firms, to make positive commitments to promote market quality.

⁶ A member MPID is considered to be quoting at the NBBO if it has a displayed order at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, NASDAQ will determine the number of securities in which the member satisfied the 25% NBBO requirement. To qualify for QMM designation, the MPID must meet the requirement for an average of 1,000 securities per day over the course of the month. Thus, if a member MPID satisfied the 25% NBBO requirement in 900 securities for half the days in the month, and satisfied the requirement for 1,100 securities for the other days in the month, it would meet the requirement for an average of 1,000 securities.

A member that is a QMM with respect to a particular MPID will receive:

- an NBBO Setter Incentive credit of \$0.0005 with respect to orders that qualify for the NBBO Setter Incentive program (*i.e.*, displayed orders with a size of at least one round lot that set the NBBO or join another trading center at the NBBO) and that are entered through that MPID; and
- a 25% discount on fees for ports used for entering orders for that MPID, up to a total discount of \$10,000 per MPID per month.⁷ As provided in amendments to Rule 7015, the specific fees subject to this discount are: (i) all ports using the NASDAQ Information Exchange (“QIX”) protocol,⁸ (ii) Financial Information Exchange (“FIX”) trading ports,⁹ and (iii) ports using other trading telecommunications protocols.¹⁰

NASDAQ is proposing these discounts as a means of recognizing the value of market participants that consistently quote at the NBBO in a large number of securities. Even when such market participants are not formally registered as market makers, they risk capital by offering immediately executable liquidity at the price most favorable to market participants on the opposite side of the market. Such activity promotes price discovery and dampens volatility and enhances the attractiveness of NASDAQ as a trading venue. A discount on order entry port fees is an appropriate incentive to

⁷ The ports subject to the discount are not used for receipt of market data.

⁸ The applicable undiscounted fees are \$1,200 per month for a port pair or ECN direct connection port pair, and \$1,000 per month for an unsolicited message port. See Rule 7015(a).

⁹ The applicable undiscounted fee is \$500 per port per month. See Rule 7015(b).

¹⁰ The applicable undiscounted fee is \$500 per port pair per month. See Rule 7015(g).

encourage broad-based liquidity provision because active management of quotes across over 1,000 securities may require a member to employ numerous order entry ports.

NASDAQ further notes that the proposed discount on port fees is similar in structure and purpose to a provision of the fee schedule for BATS's options market under which the \$1,000 per month fee for a port with bulk-quoting capabilities is waived if a member achieves certain market quality standards with respect to options on more than 25 underlying securities.¹¹

In addition to the foregoing changes, NASDAQ is also modifying the name of Rule 7014 to reflect the fact that it includes a range of market quality incentive programs, adding definitions of “NBBO”, “trading center”, and “protected quotation”, and “regular market hours” to the rule, and making conforming changes to the letter designations of paragraphs within the rule.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹² in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹³ 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 is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

¹¹ See http://cdn.batstrading.com/resources/regulation/rule_book/BZX_Fee_Schedule.pdf (“fees for logical ports with bulk-quoting capabilities will be waived for Members achieving QIP [Quoting Incentive Program] thresholds in more than 25 underlying securities”).

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(4) and (5).

The proposed NBBO Setter Incentive program is intended to encourage members to add liquidity at prices that benefit all NASDAQ market participants and the NASDAQ market itself, and enhance price discovery, by establishing a new NBBO or allowing NASDAQ to join the NBBO established by another trading center. NASDAQ believes that the level of the credits available through the program – \$0.0002 or \$0.0005 per share executed – is reasonable, in that it does not reflect a disproportionate increase above the rebates provided to all members with respect to the provision of displayed liquidity under Rule 7018, which range from \$0.0020 to \$0.00295 per share executed. NASDAQ further notes that by introducing the program, NASDAQ is reducing fees for members that set the NBBO or join another market at the NBBO. The program is consistent with the Act's requirement for an equitable allocation of fees because members that establish the NBBO or cause NASDAQ to join another market at the NBBO benefit all investors by promoting price discovery and increasing the depth of liquidity available at the inside market. Such members also benefit NASDAQ itself by enhancing its competitiveness as a market that attracts actionable orders. Accordingly, NASDAQ believes that it is consistent with an equitable allocation of fees to pay an enhanced rebate in recognition of these benefits to NASDAQ and its market participants. NASDAQ further notes that the program is consistent with an equitable allocation of fees because it is immediately available to all market participants that allow NASDAQ to set or join the NBBO, regardless of the size of the firm or its trading volumes. Finally, NASDAQ believes that the program and the payment of a higher rebate with respect to qualifying orders is not unfairly discriminatory because it is intended to promote the benefits described above, and because the magnitude of the additional rebate is not unreasonably high in comparison to the rebate paid with respect to other displayed liquidity-providing orders.

Similarly, the proposed QMM program is intended to encourage members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities, thereby benefitting NASDAQ and other investors by committing capital to support the execution of orders. With respect to the enhanced NBBO Setter Incentive rebate provided to QMMs, NASDAQ believes that the rebate itself is reasonable, equitable, and not unfairly discriminatory for the reasons discussed above with regard to the NBBO Setter Incentive program. In addition, NASDAQ believes that it is reasonable to pay a higher rebate under that program to QMMs because of the additional commitment to market quality reflected in the quoting requirements associated with being a QMM. Similarly, NASDAQ believes that the higher rebate is consistent with an equitable allocation of fees because a QMM that sets the NBBO is demonstrating both a specific commitment to the market through the NBBO-setting order and a broad commitment through its quoting activity throughout the month. Accordingly, NASDAQ believes that it is consistent with an equitable allocation to pay a higher rebate in comparison with the rebate for other NBBO-setting orders. Finally, NASDAQ believes that this higher rebate is not unfairly discriminatory because it is consistent with the market quality and competitiveness benefits associated with the program and because the magnitude of the additional rebate is not unreasonably high in comparison to the rebate paid with respect to other displayed liquidity-providing orders.

NASDAQ believes that the proposed port fee discount for QMMs is consistent with an equitable allocation of fees because the fees for connectivity, such as the ports used for order entry, are a significant component of the overall cost of trading on NASDAQ and other trading venues. Accordingly, to the extent that a member maintains a significant presence in the NASDAQ market through the extent of its quoting at the

NBBO, NASDAQ believes that it is equitable to provide the member a discount on this component of its trading costs. NASDAQ further believes that the discount is not unfairly discriminatory, because it is subject to a monthly cap, such that the disparity between the monthly costs of a QMM and another market participant with a similar configuration of order entry ports may not exceed \$10,000. Finally, NASDAQ believes that the discount is reasonable because it will result in a fee reduction for members that provide the market quality benefits associated with QMM status.

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. 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 the proposed rule change reflects this competitive environment because it is designed to reduce fees for members that enhance the quality of NASDAQ's market.

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. By reducing fees for order execution and order entry ports, the proposal is a manifestation of the continued intense level of competition in the market for order execution.

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.¹⁴ 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.

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
[\(<http://www.sec.gov/rules/sro.shtml>\);](http://www.sec.gov/rules/sro.shtml) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2012-126 on the subject line.

¹⁴

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

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-2012-126. 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-2012-126, 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 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.

7014. [Investor Support Program; Extended Hours Investor Program] Market Quality Incentive Programs**Investor Support Program**

(a) – (c) No change.

Extended Hours Investor Program

(d) – (f) No change.

Qualified Market Maker (“QMM”) Program

(g) A member may be designated as a QMM with respect to one or more of its MPIDs if:

(1) the member is not assessed any “Excess Order Fee” under Rule 7018 during the month; and

(2) through such MPID the member quotes at the NBBO at least 25% of the time during regular market hours in an average of at least 1,000 securities per day during the month. For purposes of this rule, a member MPID is considered to be quoting at the NBBO if it has a displayed order at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, NASDAQ will determine the number of securities in which the member satisfied the 25% NBBO requirement. To qualify for QMM designation, the MPID must meet the requirement for an average of 1,000 securities per day over the course of the month.

(h) During a pilot period expiring on April 30, 2013, a member that is a QMM with respect to a particular MPID will receive:

(1) an NBBO Setter Incentive credit of \$0.0005 with respect to orders that qualify for the NBBO Setter Incentive program under Rule 7014(j) and that are entered through that MPID; and

(2) a 25% discount on fees for ports used for entering orders for that MPID (as designated eligible for such discount in Rule 7015), up to a total discount of \$10,000 per MPID per month.

NBBO Setter Incentive Program

(i) During a pilot period expiring on April 30, 2013, and subject to the conditions set forth in section (j) of this Rule, Nasdaq shall issue to a member a monthly NBBO Setter Incentive credit, which shall be determined by multiplying \$0.0005 or \$0.0002 by the number of shares of displayed liquidity to which a particular rate applies, as described below. An NBBO Setter Incentive 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.

(j) (1) A member shall be entitled to receive an NBBO Setter Incentive credit at the \$0.0002 rate with respect to all shares of displayed liquidity that are executed at a price of \$1 or more in the Nasdaq Market Center during a given month if posted through an order that:

(A) displayed a quantity of at least one round lot at the time of execution; and

(B) either established the NBBO or was the first order posted on Nasdaq that had the same price as an order posted at another trading center with a protected quotation that established the NBBO.

(2) A member shall be entitled to receive an NBBO Setter Incentive credit at the \$0.0005 rate with respect to all shares of displayed liquidity that are executed at a price of \$1 or more in the Nasdaq Market Center during a given month if posted through an order that:

(A) displayed a quantity of at least one round lot at the time of execution;

(B) either established the NBBO or was the first order posted on Nasdaq that had the same price as an order posted at another trading center with a protected quotation that established the NBBO; and

(C) was entered through an MPID that qualified for the QMM program during the month.

Definitions and Certifications

[(g)] (k) Definitions

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

(1) – (7) No change.

(8) The term “NBBO” shall mean the national best bid or best offer.

(9) The terms “trading center” and “protected quotation” shall have the meanings assigned to them by SEC Rule 600 under Regulation NMS.

(10) The term “regular market hours” means 9:30 a.m. through 4:00 p.m., or such shorter period as may be designated by NASDAQ on a day when the securities markets close early.

[(h)] (1) 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 EHIP.

7015. Access Services

The following charges are assessed by Nasdaq for connectivity to systems operated by NASDAQ, including the Nasdaq Market Center, the FINRA/NASDAQ Trade Reporting Facility, and FINRA's OTCBB Service. The following fees are not applicable to the NASDAQ Options Market LLC. For related options fees for Access Services refer to Chapter XV, Section 3 of the Options Rules.

(a) Nasdaq Information Exchange (QIX)

| | |
|--|-------------------|
| Port pair (plus optional proprietary quote information port) | \$1200 per month* |
| ECN direct connection port pair | \$1200 per month* |
| Unsolicited message port | \$1000 per month* |

(b) Financial Information Exchange (FIX)

| Ports | Price |
|--|-------------------|
| FIX Trading Port | \$500/port/month* |
| FIX Port for Services Other than Trading | \$500/port/month |

(c) – (f) No change.

(g) Other Port Fees

The following port fees shall apply in connection with the use of other trading telecommunication protocols:

- \$500 per month for each port pair,* other than Multicast ITCH® data feed pairs, for which the fee is \$1000 per month for software-based TotalView-ITCH or \$2,500 per month for combined software- and hardware-based TotalView-ITCH.
- An additional \$200 per month for each port used for entering orders or quotes over the Internet.

- An additional \$600 per month for each port used for market data delivery over the Internet.
- (h) No change.

* Eligible for 25% discount under the Qualified Market Maker Program during a pilot period expiring on April 30, 2013.