SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rules 7014 and 7018

February 12, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, notice is hereby given that on January 31, 2013, The NASDAQ Stock Market LLC ("NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission ("SEC” or “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASDAQ is proposing (i) to modify the recently introduced Qualified Market Maker (“QMM”) pilot program to increase the incentives for participation provided thereunder; (ii) to replace the Extended Hours Investor Program ("EHIP") with a similar financial incentive program focused both on usage of NASDAQ during pre- and post-market hours and use of NASDAQ’s routing facility, to be referred to as the Routable Order Program ("ROP"); and (iii) to modify the securities covered by NASDAQ’s recently introduced program of special pricing for certain “Designated Securities.”

While changes pursuant to this proposal are effective upon filing, the Exchange will implement the proposed rule changes on February 1, 2013.


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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Qualified Market Maker Program

In November 2012, NASDAQ introduced, on a six-month pilot basis, 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;
• Through such MPID the member quotes at the national best bid or best offer (“NBBO”) at least 25% of the time during regular market hours in an average of at least 1,000 securities during the month.

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


Kevin M. O’Neill,
Deputy Secretary.

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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 does, 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.

By providing incentives under the program, 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. Under the program as originally implemented, a member that is a QMM with respect to a particular MPID (a “QMM MPID”)7 will receive:

• An “NBBO Setter Incentive credit” of $0.0005 with respect to displayed orders with a size of at least one round lot that set the NBBO or that first allow NASDAQ to join another trading center at the NBBO and that are entered through a QMM MPID; and
• A 25% discount on fees for ports used for entering orders for a QMM MPID, up to a total discount of $10,000 per QMM MPID per month.8 The specific fees subject to this discount are: (i) all ports using the NASDAQ Information Exchange (“QIX”) protocol,9 (ii) Financial Information Exchange (“FIX”) trading ports,10 and (iii) ports using other trading telecommunications protocols.11

In order to further increase the appeal of the QMM program to potential participants, NASDAQ is adding the following additional benefits for QMMs:

• NASDAQ will provide a credit of $0.0001 per share executed with respect to all orders in securities priced at $1 or more per share that provide liquidity and that are entered through a QMM MPID, other than orders qualifying for the higher NBBO Setter Incentive credit described above. The $0.0001 credit will be in addition to any credit payable under Rule 7018. However, if a QMM also participates in the Investor Support Program (the “ISP”), NASDAQ will pay the greater of any applicable credit under the ISP or the QMM program, but not a credit under both programs.

• NASDAQ will provide a credit of $0.0020 per share executed for all midpoint pegged or midpoint peg post-only orders (“midpoint orders”) in securities priced at $1 or more per share entered through a QMM MPID (in lieu of the credit payable under Rule 7018). NASDAQ notes that under Rule 7018, midpoint orders receive a higher rebate than other forms of non-displayed orders because they offer price improvement.

• For a number of shares not to exceed the number of shares of liquidity provided through a QMM MPID (the “Numerical Cap”), NASDAQ will charge a fee of $0.0028 per share executed for orders in securities priced at $1 or more per share that access liquidity on the NASDAQ Market Center and that are entered through the same QMM MPID; provided, however, that orders that would otherwise be charged $0.0028 per share executed under Rule 7018 will not count toward the Numerical Cap. For shares above the Numerical Cap, NASDAQ will charge the rate otherwise applicable under Rule 7018.

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 and providing greater incentives to market participants to meet the applicable quoting requirements. 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 thereby enhances the attractiveness of NASDAQ as a trading venue.

Routable Order Program and Extended Hours Investor Program

NASDAQ is replacing its Extended Hours Investor Program with a similar program focused on recognizing the propensity of members to NASDAQ by retail customers to make more extensive use of exchange-provided routing facilities and pre- and post-market trading sessions, as compared with proprietary traders. NASDAQ believes that this correlation results from the low cost and simplicity of exchange-provided routing, and the convenience of pre- and post-market trading for persons who are not professional traders. Accordingly, NASDAQ is proposing a new program that, together with the ISP, is aimed at encouraging greater participation in NASDAQ by members that represent retail customers.12 The EHIP will be eliminated, however, because it has not been successful in attracting additional trading activity to NASDAQ.

To be eligible for the new Routable Order Program, a member must have an MPID through which it provides an average daily volume of at least 35 million shares of displayed liquidity using orders that employ the SCAN or LIST routing strategies, including an average daily volume of at least 2 million shares that are provided prior to the NASDAQ Opening Cross and/or after the NASDAQ Closing Cross.13 SCAN is a basic routing strategy that is widely used by firms that represent retail customers. SCAN orders check the NASdaq Market Center System for available shares, while remaining shares are simultaneously routed to destinations on the applicable routing table. If shares remain un-executed after routing, they are posted on the book. Once on the book, if the order is

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7 NASDAQ is adding the defined term “QMM MPID” to the rule through this proposed rule change.
8 The ports subject to the discount are not used for receipt of market data.
9 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).
10 The applicable undiscounted fee is $500 per port per month. See Rule 7015(b).
11 The applicable undiscounted fee is $500 per port pair per month. See Rule 7015(g).
12 The Commission has expressed concern that a significant percentage of the orders of individual investors are executed in over-the-counter markets, that is, at-off exchange markets. Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (“Concept Release on Equity Market Structure, “Concept Release”). In the Concept Release, the Commission recognized the strong policy preference under the Act in favor of price transparency and displayed markets. See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) ("Schapiro Speech,” available on the Commission Web site) (comments of Commissioner Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public). For an analysis of why one argument for pre- and post-market trading, as compared with proprietary traders. NASDAQ believes that this correlation results from the low cost and simplicity of exchange-provided routing, and the convenience of pre- and post-market trading for persons who are not professional traders. Accordingly, NASDAQ is proposing a new program that, together with the ISP, is aimed at encouraging greater participation in NASDAQ by members that represent retail customers.12 The EHIP will be eliminated, however, because it has not been successful in attracting additional trading activity to NASDAQ.

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subsequently locked or crossed by another market center, the System will not route the order to any market center, and a three-tier payment structure would apply to any order routed to an alternate market. Instead, the System will route the order to NASDAQ if the order meets all of the following requirements: it is a Designated Securities Pricing order and it is a Large Market Share Order (LMSO) of at least $1 million in value, or it is a small order of at least 50,000 shares.

NASDAQ will charge a fee of $0.0029 per share executed otherwise. The discounted fee applies to all Designated Securities entering the market via the Large Market Share Order (LMSO) or Large Market Share Order (LMSO) with Lock Order (LLO) routing strategy. The discounted fee is $0.00003 per share executed otherwise.

The proposed rule change is consistent with the provisions of Section 6 of the Act, in general, and with Sections 6(b)(4) and 6(b)(5) of the Act, 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 changes are consistent with statutory requirements in the following respects:

- The proposal reduces the access fee paid by QMMs to $0.0028 per share executed, for a number of shares that reflects the number of shares of liquidity provided by the QMM. This change is reasonable because it reflects a price reduction from the rate of $0.0030 or $0.0029 per share executed otherwise applicable. The change is consistent with an equitable allocation of fees and is not unfairly discriminatory because it is being offered to market participants that make significant contributions to market quality by satisfying the QMM.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act, in general, and with Sections 6(b)(4) and 6(b)(5) of the Act, 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 changes are reflective of NASDAQ’s ongoing efforts to use pricing incentive programs to attract orders of retail customers to NASDAQ and improve market quality. The 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. The proposed changes to the program are intended to further promote these goals by providing additional incentives for market participants to achieve the requirements for participation in the program. Specifically, the proposed changes are consistent with statutory requirements in the following respects:

- The proposal reduces the access fee paid by QMMs to $0.0028 per share executed, for a number of shares that reflects the number of shares of liquidity provided by the QMM. This change is reasonable because it reflects a price reduction from the rate of $0.0030 or $0.0029 per share executed otherwise applicable. The change is consistent with an equitable allocation of fees and is not unfairly discriminatory because it is being offered to market participants that make significant contributions to market quality by satisfying the QMM.

14 The SKIP routing strategy is a form of SCAN in which the entering firm instructs the System to bypass any market centers included in the SCAN System routing table that are not posting Protected Quotations within the meaning of Regulation NMS. The ROP does not apply to SKIP orders, however, as it is less used by members that represent retail customers.

15 When such orders execute at other market centers, the routing fees charged for in Rule 7018 will apply.

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18 “Consolidated Volume” is defined as the total consolidated volume reported to all consolidated transaction plans by all exchanges and trade reporting facilities.
it is reasonable to use fee reductions as a means to encourage greater retail participation in NASDAQ. Because retail orders are more likely to reflect long-term investment intentions than the orders of proprietary traders, they promote price discovery and dampen volatility. Accordingly, their presence in the NASDAQ market has the potential to benefit all market participants. For this reason, NASDAQ believes that it is equitable to provide significant financial incentives to encourage greater retail participation in the market. NASDAQ further believes that the proposed program is not unreasonable discriminatory because it is offered to firms representing retail customers that provide significant levels of liquidity, and is therefore complementary to existing programs, such as the ISP, that already aim to encourage greater retail participation.

NASDAQ believes that the proposed elimination of the EHIP is reasonable because no market participants have taken advantage of it since its inception, and therefore its elimination will not have a significant impact on members’ fees and credits. Similarly, the elimination is consistent with an equitable allocation of fees and is not unreasonably discriminatory because significant financial incentives aimed at encouraging retail participation in a manner similar to the EHIP are already offered and are being added to NASDAQ’s fee schedule through this filing.

NASDAQ believes that the proposal to modify the pricing incentive for Designated Securities is reasonable because it will focus an existing fee reduction on securities that NASDAQ believes are more likely to have their volumes on NASDAQ increase, thereby reducing fees for a larger number of trades. The proposal is consistent with an equitable allocation of fees and not unfairly discriminatory because it will reduce fees for members that have demonstrated a commitment to regular participation in the Nasdaq Market Center through reaching specified levels of overall usage and liquidity provision. Incentives focused on the members that provide liquidity are prevalent in securities markets because higher levels of liquidity provision aid price discovery and dampen volatility. In addition, the focus of the incentive on Designated Securities is equitable and not unreasonably discriminatory because, despite strong quotes in terms of size and time at the inside, NASDAQ’s share of executions in these securities has declined, thereby risking the unwillingness of members to continue to offer liquidity at current levels. By providing an incentive for members to access NASDAQ’s quote in these securities, the price change will benefit liquidity providers as well as liquidity accessor. The discount is also not unfairly discriminatory because NASDAQ believes that the modified list of Designated Securities will be more widely traded than the former list, and the change will therefore result in broader pricing reductions.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that all aspects of the proposed rule change reflect this competitive environment because the changes reflect significant price reductions, offset only to a small extent by the elimination of the EHIP.

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. Specifically, NASDAQ believes that these changes reflect significant price reductions, offset only to a small extent by the elimination of the EHIP. Such reductions reflect the high degree of competition in the cash equities markets and will further enhance that competition by lowering fees and possibly encouraging NASDAQ’s competitors to make competitive responses. The market for order execution is extremely competitive and members may readily opt to disfavor NASDAQ’s execution services if they believe that alternatives offer them better value. Accordingly, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.
G. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b–4 thereunder. 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.

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 email to rule-comments@sec.gov. Please include File Number SR–NASDAQ–2013–023 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–2013–023. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–023 and should be submitted on or before March 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Kevin M. O’Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 7.11 To Establish Rules To ComPLY With the Requirements of the Plan To Address Extraordinary Market Volatility Submitted to the Commission Pursuant to Rule 608 of Regulation

NMS

February 12, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) and Rule 19b–4 thereunder, notice is hereby given that, on January 31, 2013, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Exchange Rule 7.11 to establish rules to comply with the requirements of Plan To Address Extraordinary Market Volatility submitted to the Commission pursuant to Rule 608 of Regulation NMS. The text of the proposed rule change is available on the Exchange’s Web site at www.nyse.com, at the principal office of the Exchange, on the Commission’s Web site at http://www.sec.gov, 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 7.11 to establish rules to comply with the requirements of the Plan To Address Extraordinary Market Volatility submitted to the Commission pursuant to Rule 608 of Regulation NMS under the Act (the “Plan”). The Exchange proposes to adopt the changes for a pilot period that coincides with the pilot period for the Plan, which is currently scheduled as a one-year pilot to begin on April 8, 2013.

Background

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, i.e., the “flash crash,” the equities exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses and related changes to the equities market clearly erroneous execution rules.