

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 23	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2018 - * 076	Amendment No. (req. for Amendments *)
Filing by The Nasdaq Stock Market LLC Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
			Rule	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
			<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)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>		Section 806(e)(2) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>			
Description				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="A proposal to amend the Exchanges fees at Rule 7014"/>				
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 action.				
First Name *	<input type="text" value="Sean"/>	Last Name *	<input type="text" value="Bennett"/>	
Title *	<input type="text" value="Principal Associate General Counsel"/>			
E-mail *	<input type="text" value="sean.bennett@nasdaq.com"/>			
Telephone *	<input type="text" value="(301) 978-8499"/>	Fax	<input type="text"/>	
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.				
(Title *)				
Date	<input type="text" value="09/13/2018"/>	<input type="text" value="Executive Vice President and General Counsel"/>		
By	<input type="text" value="Edward S. Knight"/>	<input type="text"/>		
(Name *)				
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.				
		<input type="button" value="edward.knight@nasdaq.com"/>		

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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 *

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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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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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, security-based swap submission, or advance notice 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 the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s fees at Rule 7014 to: (i) eliminate the requirement that a member be a market maker to participate in the Qualified Market Maker (“QMM”) Program; and (ii) eliminate the additional \$0.0002 per share executed credit under the NBBO Program.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. 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 the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on September 19, 2017. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

T. Sean Bennett
Principal Associate General Counsel
Nasdaq, Inc.
(301) 978-8499

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

Rule 7014 provides various Market Quality Incentive Programs available to members. The purpose of the proposed rule change is to amend Rule 7014 to: (i) eliminate the requirement that a member be a market maker to participate in the QMM Program; and (ii) eliminate the additional \$0.0002 per share executed credit under the NBBO Program.

The Exchange initially filed the proposed pricing changes on September 4, 2018 (SR-NASDAQ-2018-071). On September 13, 2018, the Exchange withdrew that filing and submitted this filing, which makes a technical change to the proposed rule text.

First Change

The purpose of the first proposed rule change is to eliminate the requirement that a member be a market maker to participate in the QMM Program. A QMM is a member that makes a significant contribution to market quality by providing liquidity at the national best bid and offer ("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. The designation reflects 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. In return for its contributions, certain financial benefits are provided to a QMM with respect to its order activity, as described under Rule 7014(e). These benefits include a lower rate

charged for executions of orders in securities priced at \$1 or more per share that access liquidity on the Nasdaq Market Center.

Rule 7014(d) provides the qualification criteria a member must meet to be eligible for the QMM Program. Specifically, to be designated a QMM, a member must meet the following criteria: (1) the member is not assessed any “Excess Order Fee” under Rule 7018 during the month; (2) 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; and (3) the member is a registered Nasdaq market maker.³ The Exchange is proposing to eliminate the requirement that a member be a Nasdaq market maker to be designated as a QMM. As a consequence, any member may participate in the program if it meets the other qualification criteria of the rule.

Second Change

The purpose of the second proposed rule change is to eliminate the additional \$0.0002 per share executed credit under the NBBO Program at Rule 7014(g). The NBBO Program provides two rebates per share executed. The Exchange is proposing to eliminate the \$0.0002 per share executed credit, which is provided to a member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity priced at \$1 or more. Under Rule 7014(g), to qualify for the additional \$0.0002 per share executed credit for displayed quotes/orders (other than

³ In 2015, the Exchange adopted the requirement under Rule 7014(d) that a member must be a market maker to be designated a QMM. See Securities Exchange Act Release No. 74725 (April 14, 2015), 80 FR 21778 (April 20, 2015) (SR-NASDAQ-2015-032). Prior to the change, a QMM need not have been a Nasdaq market maker. 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. This is currently the case and it will continue to be the case with the elimination of the market maker requirement.

Supplemental Orders or Designated Retail Orders) that provide liquidity priced at \$1 or more, a member must (i) execute shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represents 0.5% or more of Consolidated Volume⁴ during the month, and (ii) has a ratio of at least 25% NBBO liquidity provided⁵ to liquidity provided during the month. The Exchange has observed that no members have qualified for this credit and is consequently proposing to eliminate it.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in

⁴ Consolidated Volume is defined as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. See Rule 7018(a).

⁵ NBBO liquidity provided means liquidity provided from orders (other than Designated Retail Orders, as defined in Nasdaq Rule 7018), that establish the NBBO, and displayed a quantity of at least one round lot at the time of execution.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁸

Likewise, in NetCoalition v. Securities and Exchange Commission⁹ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹⁰ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹¹

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market

⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁹ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁰ See NetCoalition, at 534 - 535.

¹¹ Id. at 537.

share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'"¹²

First Change

The Exchange believes that the fees and credits of the QMM Program remain reasonable because the Exchange is not proposing to amend them. Thus, the basis set forth when the fees were adopted remain valid. The proposed elimination of the market maker requirement is reasonable, an equitable allocation and is not unfairly discriminatory because the Exchange seeks to broaden participation in the program. When the Exchange limited the QMM Program to market makers, it noted that market makers had provided the vast majority of participation in the program and were the only market participant utilizing the program at the time.¹³ The Exchange now seeks broader participation in the program by allowing any Nasdaq member to participate in the QMM Program that qualifies under the remaining criteria. The Exchange believes that circumstances have changed over the three years since it last allowed non-Nasdaq market makers to participate in the program, such that non-market makers may have interest in meeting the criteria required to receive the fees and credits under the QMM Program. Allowing broader participation in the QMM Program may increase the market-improving participation in the QMM Program, to the extent the number of members participating in the program increase. As a consequence, the proposed change is reasonable, an equitable allocation and will not discriminate in any way.

¹² Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹³ Supra note 3.

Second Change

The Exchange believes that elimination of the \$0.0002 per share executed NBBO credit is reasonable because it eliminates a credit that the Exchange has determined to be unnecessary. In particular, the credit has not provided adequate incentive to members to meet the related qualifying requirements. The Exchange notes that the \$0.0004 per share executed NBBO Program rebate will remain, thus members will continue to have the opportunity to qualify for significant rebates under the NBBO Program.

The Exchange believes that elimination of the \$0.0002 per share executed NBBO credit is an equitable allocation and is not unfairly discriminatory because no member currently qualifies for the credit. Thus, eliminating the credit will not discriminate in any manner and the proposed change will be applied equitably among all members. Moreover, elimination of the credit from rule book will allow the Exchange to consider new incentives.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing

practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed changes to the incentive programs under Rule 7014 do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. Elimination of the market maker qualification requirement from the QMM Program may promote competition among trading venues to the extent that allowing broader participation in the program makes the Exchange a more attractive venue on which to participate. The proposed elimination of the \$0.0002 per share executed NBBO credit will not place any burden on competition because no members currently qualify for the credit. As noted above, the credit has not served its purpose of incentivizing members to provide the market-improving participation required by the credit's qualification criteria. Consequently, removal of the credit should not affect competition among market participants or market venues whatsoever.

5. 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.

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 the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. 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. _____ ; File No. SR-NASDAQ-2018-076)

September 13, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Fees at Rule 7014

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 September 13, 2018, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the its fees at Rule 7014 to: (i) eliminate the requirement that a member be a market maker to participate in the Qualified Market Maker (“QMM”) Program; and (ii) eliminate the additional \$0.0002 per share executed credit under the NBBO Program.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaq.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Rule 7014 provides various Market Quality Incentive Programs available to members. The purpose of the proposed rule change is to amend Rule 7014 to: (i) eliminate the requirement that a member be a market maker to participate in the QMM Program; and (ii) eliminate the additional \$0.0002 per share executed credit under the NBBO Program.

The Exchange initially filed the proposed pricing changes on September 4, 2018 (SR-NASDAQ-2018-071). On September 13, 2018, the Exchange withdrew that filing and submitted this filing, which makes a technical change to the proposed rule text.

First Change

The purpose of the first proposed rule change is to eliminate the requirement that a member be a market maker to participate in the QMM Program. A QMM is a member that makes a significant contribution to market quality by providing liquidity at the national best bid and offer ("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. The designation reflects 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. In return for its contributions, certain financial benefits are provided to a QMM with respect to its order activity, as described under Rule 7014(e). These benefits include a lower rate charged for executions of orders in securities priced at \$1 or more per share that access liquidity on the Nasdaq Market Center.

Rule 7014(d) provides the qualification criteria a member must meet to be eligible for the QMM Program. Specifically, to be designated a QMM, a member must meet the following criteria: (1) the member is not assessed any "Excess Order Fee" under Rule 7018 during the month; (2) 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; and (3) the member is a registered Nasdaq market maker.³ The Exchange is proposing to eliminate the requirement that a member be a Nasdaq market maker to be designated as a QMM. As a consequence, any member may participate in the program if it meets the other qualification criteria of the rule.

Second Change

The purpose of the second proposed rule change is to eliminate the additional \$0.0002 per share executed credit under the NBBO Program at Rule 7014(g). The

³ In 2015, the Exchange adopted the requirement under Rule 7014(d) that a member must be a market maker to be designated a QMM. *See* Securities Exchange Act Release No. 74725 (April 14, 2015), 80 FR 21778 (April 20, 2015) (SR-NASDAQ-2015-032). Prior to the change, a QMM need not have been a Nasdaq market maker. 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. This is currently the case and it will continue to be the case with the elimination of the market maker requirement.

NBBO Program provides two rebates per share executed. The Exchange is proposing to eliminate the \$0.0002 per share executed credit, which is provided to a member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity priced at \$1 or more. Under Rule 7014(g), to qualify for the additional \$0.0002 per share executed credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity priced at \$1 or more, a member must (i) execute shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represents 0.5% or more of Consolidated Volume⁴ during the month, and (ii) has a ratio of at least 25% NBBO liquidity provided⁵ to liquidity provided during the month. The Exchange has observed that no members have qualified for this credit and is consequently proposing to eliminate it.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ in

⁴ Consolidated Volume is defined as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. See Rule 7018(a).

⁵ NBBO liquidity provided means liquidity provided from orders (other than Designated Retail Orders, as defined in Nasdaq Rule 7018), that establish the NBBO, and displayed a quantity of at least one round lot at the time of execution.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁸

Likewise, in NetCoalition v. Securities and Exchange Commission⁹ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹⁰ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹¹

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and

⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁹ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁰ See NetCoalition, at 534 - 535.

¹¹ Id. at 537.

the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹²

First Change

The Exchange believes that the fees and credits of the QMM Program remain reasonable because the Exchange is not proposing to amend them. Thus, the basis set forth when the fees were adopted remain valid. The proposed elimination of the market maker requirement is reasonable, an equitable allocation and is not unfairly discriminatory because the Exchange seeks to broaden participation in the program. When the Exchange limited the QMM Program to market makers, it noted that market makers had provided the vast majority of participation in the program and were the only market participant utilizing the program at the time.¹³ The Exchange now seeks broader participation in the program by allowing any Nasdaq member to participate in the QMM Program that qualifies under the remaining criteria. The Exchange believes that circumstances have changed over the three years since it last allowed non-Nasdaq market makers to participate in the program, such that non-market makers may have interest in meeting the criteria required to receive the fees and credits under the QMM Program. Allowing broader participation in the QMM Program may increase the market-improving participation in the QMM Program, to the extent the number of members participating in

¹² Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹³ Supra note 3.

the program increase. As a consequence, the proposed change is reasonable, an equitable allocation and will not discriminate in any way.

Second Change

The Exchange believes that elimination of the \$0.0002 per share executed NBBO credit is reasonable because it eliminates a credit that the Exchange has determined to be unnecessary. In particular, the credit has not provided adequate incentive to members to meet the related qualifying requirements. The Exchange notes that the \$0.0004 per share executed NBBO Program rebate will remain, thus members will continue to have the opportunity to qualify for significant rebates under the NBBO Program.

The Exchange believes that elimination of the \$0.0002 per share executed NBBO credit is an equitable allocation and is not unfairly discriminatory because no member currently qualifies for the credit. Thus, eliminating the credit will not discriminate in any manner and the proposed change will be applied equitably among all members. Moreover, elimination of the credit from rule book will allow the Exchange to consider new incentives.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory

standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed changes to the incentive programs under Rule 7014 do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. Elimination of the market maker qualification requirement from the QMM Program may promote competition among trading venues to the extent that allowing broader participation in the program makes the Exchange a more attractive venue on which to participate. The proposed elimination of the \$0.0002 per share executed NBBO credit will not place any burden on competition because no members currently qualify for the credit. As noted above, the credit has not served its purpose of incentivizing members to provide the market-improving participation required by the credit's qualification criteria. Consequently, removal of the credit should not affect competition among market participants or market venues whatsoever.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁴

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2018-076 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2018-076. 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, 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-2018-076 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

Eduardo A. Aleman
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

The Nasdaq Stock Market Rules

* * * * *

7014. Market Quality Incentive Programs

(a) Reserved.

(b) Reserved.

(c) Reserved.

Qualified Market Maker (“QMM”) Program

(d) A member may be designated as a QMM if:

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

(2) 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 is considered to be quoting at the NBBO if one of its MPIDs has a displayed order (other than a Designated Retail 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 each of a member's MPIDs satisfied the 25% NBBO requirement. Nasdaq will aggregate all of a member's MPIDs to determine the number of securities for purposes of the 25% NBBO requirement. To qualify for QMM designation, the member must meet the requirement for an average of 1,000 securities per day over the course of the month.

[(3) the member is a registered Nasdaq market maker.]

(e) - (f) No change.

* * * * *

NBBO Program

(g) Nasdaq will provide a rebate per share executed with respect to all other displayed orders (other than Designated Retail Orders, as defined in Rule 7018) in securities priced at \$1 or more per share that provide liquidity, establish the NBBO, and displayed a

quantity of at least one round lot at the time of execution. The rebate will be in addition to any rebate or credit payable under Rule 7018(a) and other programs under Rule 7014. This rebate will be provided to executions from orders originating on ports meeting the requirements below.

To qualify for the \$0.0004 per share executed NBBO Program rebate in NYSE-listed securities and in Securities Listed on Exchanges other than Nasdaq and NYSE a member must execute shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represents 1.0% or more of Consolidated Volume during the month and the order must have been entered on a port that has a ratio of at least 25% NBBO liquidity provided* to liquidity provided by displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) during the month.

[If a member (i) executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represents 0.5% or more of Consolidated Volume during the month, and (ii) has a ratio of at least 25% NBBO liquidity provided* to liquidity provided during the month, the member will receive an additional \$0.0002 per share executed credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity priced at \$1 or more. This rebate will be in addition to any rebate or credit payable under Rule 7018(a) and other programs under Rule 7014.]

*NBBO liquidity provided means liquidity provided from orders (other than Designated Retail Orders, as defined in Nasdaq Rule 7018), that establish the NBBO, and displayed a quantity of at least one round lot at the time of execution.

* * * * *