

Section b(b)(6)<sup>19</sup> of the Act to appropriately discipline Members of the Exchange's Rules, and Section 6(b)(7)<sup>20</sup> of the Act to provide a fair procedure of disciplining Members as the proposal will strengthen its ability to carry out its oversight responsibilities as a self-regulatory organization and reinforce its surveillance and enforcement functions. Additionally, this proposed rule change will promote consistency with rules of other exchanges.

#### *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. The proposal relates to the Exchange's role and responsibilities as a self-regulatory organization and the manner in which it disciplines its Members and associated persons for violations of its Rules. In the unlikely event that Members will determine where to send options orders based on the type of disciplinary program in place at an options exchange, the expansion of Exchange Rule 1014 will lessen the impact on competition by making Exchange Rule 1014 more consistent with rules at the other options exchanges.

#### *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**

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>21</sup> and Rule 19b-4(f)(6)<sup>22</sup> 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. 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2013-42 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-MIAX-2013-42. 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 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-MIAX-2013-42, and should be submitted on or before October 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-70361; File No. SR-NASDAQ-2013-114]**

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Qualified Market Maker Program Under Rule 7014, the Fees Assessed Under Rule 7015(g), and the Schedule of Fees and Rebates Under Rule 7018(a)**

September 10, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 29, 2013 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 to the Qualified Market Maker Program under Rule 7014, the fees assessed under Rule 7015(g), and the its schedule of fees and rebates for execution and routing of orders for securities priced at \$1 or more under Rule 7018(a). NASDAQ will begin assessing the fees effective September 1, 2013.

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.

<sup>23</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>19</sup> 15 U.S.C. 78f(b)(6).

<sup>20</sup> 15 U.S.C. 78f(b)(7).

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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

In its filing with the Commission, NASDAQ 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

##### QMM Incentive Program

In November 2012,<sup>3</sup> NASDAQ introduced a market quality incentive program under which a member may be designated as a QMM with respect to one or more of its market participant identifiers ("MPIDs") if:

- the member is not assessed any "Excess Order Fee" under Rule 7018 during the month;<sup>4</sup> and
- 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<sup>5</sup> in an average of at least 1,000 securities during the month.<sup>6</sup>

<sup>3</sup> Securities Exchange Act Release No. 68209 (November 9, 2012), 77 FR 69519 (November 19, 2012) (SR-NASDAQ-2012-126).

<sup>4</sup> Rule 7018(m). Last year, NASDAQ 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.

<sup>5</sup> 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).

<sup>6</sup> 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.

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 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.

Currently, a member that is a QMM with respect to a particular MPID (a "QMM MPID") is eligible to receive certain financial benefits. These benefits are described below:

- The QMM may 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)<sup>7</sup> and that are entered through the QMM MPID. In order to receive an NBBO Setter Incentive credit at the \$0.0005 rate, the QMM must also have a volume of liquidity provided through the QMM MPID (as a percentage of Consolidated Volume)<sup>8</sup> that exceeds the lesser of the volume of liquidity provided through such QMM MPID during the first month in which the MPID qualified as a QMM MPID (as a percentage of Consolidated

<sup>7</sup> See Rule 7014(f) and (g).

<sup>8</sup> "Consolidated Volume" is the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities.

Volume) or 1.0% of Consolidated Volume.<sup>9</sup> If a QMM does not satisfy these volume requirements, it will receive an NBBO Setter Incentive credit of \$0.0002 per share executed with respect to orders that qualify for the NBBO Setter Incentive Program.<sup>10</sup>

- The QMM receives a credit of \$0.0001 per share executed with respect to all other displayed orders in securities priced at \$1 or more per share that provide liquidity and that are entered through a QMM MPID (in addition to any credit payable under Rule 7018).<sup>11</sup> Designated Retail Orders are not eligible to receive this additional credit.

- For a number of shares not to exceed the lower of the number of shares of liquidity provided through a QMM MPID or 20 million shares per trading day (the "Numerical Cap"), NASDAQ has charged 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 have not counted toward the Numerical Cap; and provided further that after the first month in which an MPID becomes a QMM MPID, the QMM's volume of liquidity added, provided, and/or routed through the QMM MPID during the month (as a percentage of Consolidated Volume) is not less than 0.05% lower than the volume of liquidity added, provided, and/or routed through such QMM MPID during the first month in which the MPID qualified as a QMM MPID (as a percentage of Consolidated Volume). For shares above the Numerical Cap, NASDAQ has charged the rate otherwise applicable under Rule 7018.

With regard to the \$0.0028 per share executed access fee paid by QMMs, as described above, NASDAQ is proposing to eliminate the Numerical Cap and increase the charge for removing liquidity from NASDAQ from \$0.0028 to \$0.0029 per share executed for orders in securities priced at \$1 or more per share that access liquidity on the NASDAQ

<sup>9</sup> The QMM will also receive the \$0.0005 per share rate during the first month in which an MPID becomes a QMM MPID.

<sup>10</sup> Designated Retail Orders (as defined in Rule 7018) are not be eligible to receive an NBBO Setter Incentive credit.

<sup>11</sup> If the QMM also participates in NASDAQ 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.

Market Center and that are entered through a QMM MPID.

NASDAQ adopted the \$0.0028 access fee in March 2013.<sup>12</sup> The change reduced the rate QMMs were paying prior to the change from \$0.0030 or \$0.0029 per share executed but limited the number of shares on which the fee was calculated to a number of shares not to exceed the number of shares of liquidity provided through a QMM MPID.<sup>13</sup> In adopting the lower rate together with other new incentives, NASDAQ noted that the proposed changes to the program were 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. NASDAQ subsequently limited the number of shares eligible for the incentive program's access fee rate to the lower of a number of shares not to exceed the number of shares of liquidity provided through a QMM MPID or 20 million shares per trading day.<sup>14</sup>

NASDAQ is now proposing to increase the fee assessed to members, but no longer restrict the number of shares eligible for the lower rate. NASDAQ believes that eliminating the Numerical Cap will further incentivize members to participate in the program by eliminating any restriction on the total number of shares eligible for the program's lower fee. NASDAQ notes that the increase in the charge to \$0.0029 continues to represent a reduction in the access fees that most market participants are assessed under Rule 7018. NASDAQ will continue to require QMMs seeking to qualify for the \$0.0029 rate to have, after the first month in which an MPID becomes a QMM MPID, volume of liquidity added, provided, and/or routed through the QMM MPID during the month (as a percentage of Consolidated Volume) that is not less than 0.05% lower than the volume of liquidity added, provided, and/or routed through such QMM MPID during the first month in which the MPID qualified as a QMM MPID (as a percentage of Consolidated Volume).

<sup>12</sup> Securities Exchange Act Release No. 68905 (February 12, 2013), 78 FR 11716 (February 19, 2013) (SR-NASDAQ-2013-023).

<sup>13</sup> See Rules 7018(a)(1)-(3), which assess a fee of \$0.0030 or \$0.0029 per share executed for orders that access liquidity on the NASDAQ Market Center.

<sup>14</sup> Securities Exchange Act Release No. 69376 (April 15, 2013), 78 FR 23611 (April 19, 2013) (SR-NASDAQ-2013-063).

Amended Fees for TCP ITCH Data Feed Pairs

The Exchange is proposing to increase the fee assessed for use of TCP ITCH data feed pairs to connect to the NASDAQ System. TCP ITCH data feed pairs are a type of port pair<sup>15</sup> to which firms may subscribe to receive market data through a private (*i.e.*, not shared) connection to NASDAQ. By contrast, a firm may subscribe to a Multicast ITCH data feed pair,<sup>16</sup> which provides access to a shared distribution of market data, which is distributed to all subscribers simultaneously. NASDAQ assesses a fee of \$500 per month for each port pair used to connect to NASDAQ using protocols other than Multicast ITCH. Currently, subscription to a TCP ITCH data feed pair is covered by this fee. Unlike Multicast ITCH data, TCP ITCH data requires substantially greater hardware infrastructure to support subscribers because NASDAQ must support each individual TCP ITCH connection, including the transmission of the large volume of market data through each port. By contrast, NASDAQ transmits market data for Multicast ITCH through a single point, which is accessed by all subscribers. In light of increased costs resulting from a need to support the hardware and support demands of the service, the Exchange is proposing to increase the fees for subscription to a TCP ITCH data port from \$500 per month, per port pair to \$750 per month, per port pair.

Changes to NASDAQ Market Center Tiers

NASDAQ is proposing to modify several tiers under which members may receive credits with respect to orders that provide liquidity. First, under Rule 7018(a)(1), NASDAQ provides credits to member firms for their displayed quotes/orders that provide liquidity in securities listed on NASDAQ. The tiers are based on various measurements of providing liquidity. Currently, the lowest credit NASDAQ provides is \$0.0020 per share executed. This tier is the default if a member firm does not fall within any of the other tiers of the rule. NASDAQ is proposing to adopt a new default tier under which members would receive \$0.0015 per share executed, while imposing modest volume requirements with respect to the \$0.0020 tier. Specifically, to qualify for that tier, a member must have shares of

<sup>15</sup> NASDAQ uses the term "data feed pair" herein and in the rule as a more precise description of the intended use and functionality of the port pair.

<sup>16</sup> For a fee of \$1,000 per month for software-based TotalView-ITCH or \$2,500 per month for combined software- and hardware-based TotalView-ITCH.

liquidity provided in all securities during the month less than 0.10% of Consolidated Volume during the month,<sup>17</sup> through one or more of its Nasdaq Market Center MPIDs, including a daily average volume of shares of liquidity provided in securities listed on an exchange other than NASDAQ of at least 250,000. NASDAQ believes that the change to the \$0.0020 tier will provide an incentive for members that trade NASDAQ-listed securities on NASDAQ to also use NASDAQ to trade securities listed on other exchanges. In addition, the reduction in the level of the default credit will allow NASDAQ to reduce costs in a period of persistent low trading volumes in the cash equities markets.

NASDAQ is also eliminating several tiers under Rules 7018(a)(1)-(3), which are tied to activity on the NASDAQ Options Market and which are not used significantly by market participants. Specifically, NASDAQ is removing from each subparagraph of Rule 7018(a) the following credit tiers, together with associated credits:

- member with (i) shares of liquidity provided in all securities during the month representing more than 0.10% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) an average daily volume during the month of more than 100,000 contracts of liquidity accessed or provided through one or more of its Nasdaq Options Market MPIDs.

- member with (i) shares of liquidity provided in all securities during the month representing more than 1.0% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) an average daily volume during the month of more than 200,000 contracts of liquidity accessed or provided through one or more of its Nasdaq Options Market MPIDs.

- member (i) with shares of liquidity provided in all securities during the month representing at least 0.05% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) that qualifies for the Penny Pilot Tier 4 NOM Market Maker Rebate to Add Liquidity under Chapter XV, Section 2 of the Nasdaq Options Market rules during the month through one or more of its Nasdaq Options Market MPIDs.

- member (i) with shares of liquidity provided in all securities during the

<sup>17</sup> If the member has at least 0.10% of Consolidated Volume during the month through one or more of its Nasdaq Market Center MPIDs, it would qualify for a credit of \$0.0025 under Rule 7018(a)(1).

month representing at least 0.10% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) that qualifies for the Penny Pilot Tier 4 NOM Market Maker Rebate to Add Liquidity under Chapter XV, Section 2 of the Nasdaq Options Market rules during the month through one or more of its Nasdaq Options Market MPIDs.

NASDAQ is modifying the eligibility requirements for a tier found under each subparagraph of Rule 7018(a). Specifically, each of the identical tiers currently provides two means to qualify for a credit, which are based on the liquidity provided by a member's Designated Retail Orders. Currently, the tiers provide a:

- credit for displayed Designated Retail Orders, if entered through an MPID through which (i) at least 90% of the shares of liquidity provided during the month are provided through Designated Retail Orders, or (ii) the member provides shares of liquidity through Designated Retail Orders that represent at least 0.30% of Consolidated Volume during the month and the member qualifies for the Penny Pilot Tier 4 Customer and Professional Rebate to Add Liquidity under Chapter XV, Section 2 of the Nasdaq Options Market rules during the month through one or more of its Nasdaq Options Market MPIDs.

NASDAQ is removing the second criteria from each of the tiers, which ties eligibility for a credit to the volume of liquidity provided through Designated Retail Orders and the member's qualification for the Penny Pilot Tier 4 during the month through one or more of its Nasdaq Options Market MPIDs. A member will continue to qualify for the credit if it meets the remaining criteria focused on the extent to which the member uses an MPID for Designated Retail Orders.

NASDAQ is also clarifying language in two credit tiers under each subparagraph of Rule 7018(a). The language is designed to align the text of the tier with terms and definitions used in the NASDAQ Options Market rules, which are also referenced in the tiers. Specifically, NASDAQ is amending:

- the tier that provides a credit to members (i) with shares of liquidity provided in all securities during the month representing more than 0.15% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) an average daily volume during the month of more than 100,000 contracts of liquidity accessed or provided through one or more of its Nasdaq Option

Market MPIDs. NASDAQ is deleting language concerning the volume calculation and replacing it with more precise language that references the NASDAQ Option Market rules. NASDAQ is not changing how eligibility for the tier is calculated in any way.

- The tier that provides a credit to members (i) with shares of liquidity provided in all securities during the month representing at least 0.45% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) that qualifies for the Penny Pilot Tier 8 Customer and Professional Rebate to Add Liquidity under Chapter XV, Section 2 of the Nasdaq Options Market rules during the month through one or more of its Nasdaq Options Market MPIDs. NASDAQ is adding, deleting and rearranging language in the rule to use more precise terms in references to rebates under the NASDAQ Options Market rules. NASDAQ is not changing how eligibility for the tier is calculated in any way.

#### Amended Fees for Execution and Routing of Securities Listed on NYSE

NASDAQ is proposing to amend fees assessed for routing orders in New York Stock Exchange, Inc. ("NYSE") listed securities that execute at NYSE. Currently, NASDAQ assesses a charge of \$0.0025 per share executed for DOTI, STGY, SCAN, SKNY, SKIP, TFTY, SAVE or SOLV orders executed at NYSE, as well as LIST orders executed at NYSE outside of an opening, closing, or reopening process. NASDAQ generally assesses a charge of \$0.0030 per share executed for such orders executed elsewhere.<sup>18</sup> NASDAQ is proposing to increase the charge assessed for DOTI, STGY, SCAN, SKNY, SKIP, LIST, TFTY, SAVE and SOLV orders executed at NYSE to \$0.0030 so that it is consistent with the fee generally charged for such order routing.

NASDAQ is also proposing to increase the fee assessed for execution of MOPB and MOPP orders executed at NYSE. Currently, NASDAQ assesses a charge of \$0.0027 per share executed for MOPB or MOPP orders executed at

<sup>18</sup> Members are charged \$0.0005 per share executed for TFTY orders that execute at venues other than NYSE, NASDAQ OMX BX or NASDAQ OMX PSX. This rate reflects the fact that the routing table for TFTY orders is generally focused on low-cost execution venues. In addition, orders that execute at NASDAQ OMX BX or NASDAQ OMX PSX are generally assessed different fees than orders executed at other venues. NASDAQ also provides a credit of \$0.0015 per share executed for orders that add liquidity at the NYSE after routing. See Rule 7018(a)(2).

NYSE, and a charge of \$0.0035 per share executed for MOPB or MOPP orders executed at venues other than NYSE. NASDAQ is proposing to increase the charge assessed for execution of MOPB and MOPP orders executed at NYSE to \$0.0035 per share executed, so that it is consistent with the fee assessed for such orders executed at venues other than NYSE.

#### 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>19</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>20</sup> 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 changes to the QMM Program are reasonable because they serve to maintain an incentive structure designed to benefit all market participants by encouraging quoting at or near the NBBO in a wide range of securities. 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 eliminating the Numerical Cap, which limited the number of shares eligible for the reduced fee, while increasing the fee a modest amount to offset the now unlimited number of shares eligible for the lower fee of the program. Accordingly, NASDAQ hopes thereby to maintain the benefits associated with the QMM program while reducing its cost, thereby making the program sustainable in the longer term. In addition, the elimination of the Numerical Cap and the rate change are consistent with an equitable allocation of fees and not unfairly discriminatory because they do not alter the eligibility of QMMs to participate in the program and receive associated benefits.

The proposed fee increase to TCP ITCH data feed pairs under Rule 7015(g) is reasonable because it reflects the increased costs associated with offering the connectivity option. NASDAQ notes that it not raising the fee assessed for

<sup>19</sup> 15 U.S.C. 78f.

<sup>20</sup> 15 U.S.C. 78f(b)(4) and (5).

subscription to TCP ITCH to a level that equals or exceeds the subscription fee assessed for Multicast ITCH data subscription, which requires less hardware infrastructure and support than TCP ITCH. NASDAQ is taking a measured approach to increasing the fee and may further increase the fee in the future to more closely align the fee with costs. The proposed fee is equitable and not unfairly discriminatory because the Exchange is assessing the fee equally among subscribers to the service.

Moreover, the proposed fee is not unfairly discriminatory as it enables the Exchange to allocate the increased costs of the connectivity option to those who subscribe to the service. The Exchange believes that the proposed fee for TCP ITCH data port connectivity access services will enable it to cover its costs and earn an appropriate return on its investment in market technology and services.

The modified criteria for the \$0.0020 credit tier for members active in NASDAQ-listed securities is reasonable because it imposes a modest requirement to attain the credit. The change is also reasonable because it requires members that provide liquidity in securities listed on NASDAQ to also use NASDAQ for trading other securities, thereby promoting greater use of NASDAQ as a trading venue for such securities and potentially enhancing the level of liquidity provided in non-NASDAQ securities. The change is consistent with an equitable allocation of fees because the standards for the \$0.0020 credit tier requires a level of liquidity provision that is less rigorous than tiers that provide larger credits, yet provides incentive for members to provide liquidity sufficient to achieve a larger credit than is available under the new default \$0.0015 credit tier. The new criteria are not unreasonably discriminatory because NASDAQ believes that it will not be difficult for members currently receiving the \$0.0020 credit to continue to qualify for it if they wish to do so.

The new default tier of \$0.0015 per share executed is reasonable because although it will result in a reduction of credits for members not achieving other tiers, it will provide a means of reducing costs in a period of persistently low trading volumes. In addition, the new tier is consistent with an equitable allocation of fees and not unreasonably discriminatory because numerous tiers remain in effect through which members that support NASDAQ through more extensive levels of liquidity provision may receive higher credits. Accordingly, the lower tier is paid with respect to members whose participation

in NASDAQ as liquidity providers is limited. To the extent that such members have opted to be more active on other trading venues, it is likely that they are receiving higher credits from such venues and will therefore not be significantly affected by the change on NASDAQ.

The proposed deletions of the credit tiers under the subparagraphs of Rule 7018(a) are reasonable because they have not been significantly used by market participants, and therefore have not had the intended effect of attracting order flow to NASDAQ. Elimination of unused tiers is consistent with an equitable allocation of fees and is not unfairly discriminatory because no members will be impacted by the change.

Similarly, the elimination of the optional criteria of tiers under each of the subparagraphs Rule 7018(a), which are tied to providing a certain level of shares of liquidity through Designated Retail Orders and qualifying for the Penny Pilot Tier 4 during a given month through one or more of its Nasdaq Options Market MPIDs, is reasonable because the optional criteria are not significantly used by market participants to qualify under the tiers. As a consequence, the criteria have not had the intended effect of attracting order flow to NASDAQ. Therefore, elimination of the unused criteria is consistent with an equitable allocation of fees and is not unfairly discriminatory because no members will be impacted by the change.

The change with respect to the charges assessed for routing NYSE-listed securities executed at NYSE is reasonable because it harmonizes these fees with the fees generally assessed for routing to venues other than NYSE. NASDAQ does not believe at this juncture that fees assessed members for routing NYSE-listed securities to the NYSE should be lower than the fees assessed members for routing such securities to other markets other than NYSE. The change is consistent with an equitable allocation of fees because it is allocated solely to members that use NASDAQ's routing services and opt to use the specified routing strategies for accessing NYSE. The change is not unfairly discriminatory because it will make the economics applicable to executions on NYSE less disparate from the fees applicable to executions on other venues. Moreover, the change is not discriminatory because it applies equally to all members using the specified routing strategies.

### *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.<sup>21</sup> 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. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, although the change to the QMM program may limit the benefits of the program, the incentive program in question remain in place and is itself reflective of the need for exchanges to offer significant financial incentives to attract order flow. The changes to routing fees do not impose a burden on competition because NASDAQ's routing services are optional and are the subject of competition from other exchanges and broker-dealers that offer routing services, as well as the ability of members to develop their own routing capabilities. Finally, the changes to fee tiers and access services fees, although constituting fee increases, are being made with respect to basic trading services for which numerous substitutes exist. Accordingly, if the changes are unattractive to market participants, it is likely that NASDAQ will lose market share as a result. Accordingly, 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.

### *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.

<sup>21</sup> 15 U.S.C. 78f(b)(8).

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

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act,<sup>22</sup> and paragraph (f) <sup>23</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-114 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-2013-114. 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-2013-114 and should be submitted on or before October 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-22401 Filed 9-13-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70358; File No. SR-FINRA-2013-031]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Relating to Participation on the Alternative Display Facility

September 10, 2013.

On July 18, 2013, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend FINRA Rules 6271 and 6272 regarding the requirements for members seeking registration as FINRA Alternative Display Facility ("ADF") Market Participants. The proposed rule change was published for comment in the **Federal Register** on August 1, 2013.<sup>3</sup> The Commission received one comment letter in response to the proposed rule change.<sup>4</sup>

Section 19(b)(2) of the Act<sup>5</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its

reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is September 15, 2013. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change, comments received, and any response to comments submitted by FINRA.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> designates October 30, 2013 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-FINRA-2013-031).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-22399 Filed 9-13-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

Release No. 34-70364; File No. SR-EDGA-2013-26]

### Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

September 10, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 30, 2013, EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</sup> 17 CFR 200.30-3(a)(31).

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

<sup>24</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 70048 (July 26, 2013), 78 FR 46652.

<sup>4</sup> See Letter to Elizabeth M. Murphy, Secretary, Commission, from David Harris, Chairman and CEO, National Stock Exchange, Inc., dated September 9, 2013.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</sup> 17 CFR 240.19b-4(f).