

### 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-ISE-2014-20. 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 office of the ISE. 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-ISE-2014-20 and should be submitted by May 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014-08417 Filed 4-14-14; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71919; File No. SR-FINRA-2014-018]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Establish a Fee Schedule for Alternative Trading System Volume Information

April 9, 2014.

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 April 4, 2014, Financial Industry Regulatory Authority, Inc. ("FINRA") 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 FINRA. 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

FINRA is proposing to adopt FINRA Rule 4553 (Fees for ATS Data) to establish a fee schedule for optional professional access to alternative trading system ("ATS") volume information published by FINRA on its Web site.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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#### 4000. FINANCIAL AND OPERATIONAL RULES

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#### 4500. BOOKS, RECORDS AND REPORTS

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#### 4550. ATS Reporting

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#### 4553. Fees for ATS Data

##### (a) General

*Fees are charged for ATS Data as set forth in this Rule. Professionals and Vendors must pay the subscription fee to receive ATS Data in accordance with this Rule and execute appropriate agreements with FINRA.*

##### (b) Professionals

*(1) Professionals may subscribe for the most currently published ATS Data and up to five years of historical ATS Data*

*in a downloadable, pipe delimited format for a twelve-month subscription fee of \$12,000. Such fee is not refundable or transferable.*

*(2) Payment of the Professional subscription fee described in this paragraph (b) provides the Professional with use of such ATS Data to generate Derived Data.*

*(3) Professionals may distribute ATS Data or Derived Data to their employees, affiliates, or employees of affiliates but are prohibited from providing ATS Data or Derived Data to any third party.*

##### (c) Vendors

*(1) Vendors may subscribe for access to the most currently published ATS Data and up to five years of historical ATS Data in a downloadable, pipe delimited format for a twelve-month subscription fee of \$18,000. Such fee is not refundable or transferable.*

*(2) Payment of the Vendor subscription fee described in this paragraph (c) provides the Vendor with use of such ATS Data to generate Derived Data.*

*(3) Vendors are prohibited from providing ATS Data to any third party unless a Professional subscription has been purchased for each such third party in accordance with paragraph (b) above.*

##### (d) Non-Professionals

*(1) There shall be no charge paid by a Non-Professional for access to the most recently published four weeks of ATS Data; however, such ATS Data will not be available in a downloadable format.*

*(2) A Non-Professional must agree to terms of use before accessing the ATS Data, including that he or she receives and uses the ATS Data solely for his or her personal, non-commercial use and will not otherwise distribute the ATS Data or Derived Data to other parties. The terms of use for Non-Professionals will be clearly posted on the FINRA.org Web site, and access to the non-fee liable ATS Data content will require a user to acknowledge the terms of use.*

##### (e) Definitions

*For purposes of this rule, the following terms have the meaning set forth:*

*(1) "ATS Data" means Trading Information published by FINRA on its Web site.*

*(2) "Derived Data" means data that is derived from ATS Data and that is not able to be (A) reverse engineered by a reasonably skilled user into ATS Data or (B) used as a surrogate for ATS Data.*

*(3) "Non-Professional" means a natural person who uses the ATS Data solely for his or her personal, non-commercial use. A "Non-Professional" is not:*

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

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

<sup>18</sup> 17 CFR 200.30-3(a)(12).

(A) registered nor qualified in any capacity with the SEC, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association, nor an employee of the above and, with respect to any person identified in this subparagraph (A), uses ATS Data for other than personal, non-commercial use;

(B) engaged as an “investment adviser” as that term is defined in Section 202(a)(11) of the Investment Advisers Act (whether or not registered or qualified under that Act), nor an employee of the above and, with respect to any person identified in this subparagraph (B), uses ATS Data for other than personal, non-commercial use;

(C) employed by a bank, insurance company or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt, nor any other employee of a bank, insurance company or such other organization referenced above and, with respect to any person identified in this subparagraph (C), uses ATS Data for other than personal, non-commercial use; nor

(D) engaged in, nor has the intention to engage in, any commercial redistribution of all or any portion of the ATS Data or Derived Data.

(4) “Professional” means any non-natural person or any natural person that does not meet the definition of “Non-Professional” in paragraph (3).

(5) “Trading Information” has the same meaning as set forth in Rule 4552.

(6) “Vendor” means a Professional who distributes ATS Data or Derived Data to any third party.

\* \* \* \* \*

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

In its filing with the Commission, FINRA 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. FINRA 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

On January 17, 2014, the SEC approved a proposed rule change to (i) adopt FINRA Rule 4552 (Alternative Trading Systems—Trading Information for Securities Executed Within the Alternative Trading System) to require ATSs<sup>3</sup> to report to FINRA weekly volume information and number of trades regarding securities transactions within the ATS; and (ii) amend FINRA Rules 6160, 6170, 6480, and 6720 to require each ATS to acquire and use a single, unique market participant identifier (“MPID”) when reporting information to FINRA (“MPID Requirement”).<sup>4</sup> The implementation date for the reporting requirements under Rule 4552 is May 12, 2014, and ATSs must comply with the MPID Requirement beginning November 10, 2014.<sup>5</sup> As part of these new requirements, and as described in the proposed rule change, FINRA will make the reported volume and trade count information for equity securities publicly available on its Web site.

Under Rule 4552, individual ATSs are required to submit weekly reports to FINRA regarding volume information within the ATS.<sup>6</sup> For equity securities, this information includes share volume and number of trades for both NMS

<sup>3</sup> Regulation ATS defines an “alternative trading system” as “any organization, association, person, group of persons, or system: (1) That constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of [Exchange Act Rule 3b–16]; and (2) That does not: (i) Set rules governing the conduct of subscribers other than the conduct of such subscribers’ trading on such organization, association, person, group of persons, or system; or (ii) Discipline subscribers other than by exclusion from trading.” 17 CFR 242.300(a). Rule 4552 and the other amendments in the proposed rule change apply to any alternative trading system, as that term is defined in Regulation ATS, that has filed a Form ATS with the Commission.

<sup>4</sup> See Securities Exchange Act Release No. 71341 (January 17, 2014), 79 FR 4213 (January 24, 2014). On April 3, 2014, FINRA amended Rules 4552, 6160, 6170, 6480, and 6720 to revise the reporting and MPID requirements applicable to ATSs. See SR-FINRA-2014-017. The amendments to Rules 6160, 6170, 6480, and 6720 permit an ATS that trades both debt securities reported to FINRA’s Trade Reporting and Compliance Engine (“TRACE”) and equity securities (OTC Equity Securities or NMS stocks) reported to a FINRA equity reporting facility (the Alternative Display Facility, the OTC Reporting Facility, the FINRA/Nasdaq TRF, or the FINRA/NYSE TRF) to use two MPIDs, rather than a single unique MPID, if each MPID is used exclusively for either debt or equity securities.

<sup>5</sup> See Regulatory Notice 14–07 (February 2014).

<sup>6</sup> See Rule 4552(a).

stocks and OTC equity securities.<sup>7</sup> The first reports pursuant to Rule 4552 are currently due to FINRA by May 28, 2014, covering the week beginning May 12, 2014.<sup>8</sup> After FINRA begins receiving the self-reported data from ATSs, FINRA will publish on its Web site, on a delayed basis, the reported information for each equity security for each ATS with appropriate disclosures that the published volume numbers are based on ATS-submitted reports and not reports produced or validated by FINRA.<sup>9</sup>

Under the MPID Requirement, beginning November 10, 2014, each individual ATS is required, with one exception, to use a unique MPID, which can be used only for activity on the ATS, for reporting trades and orders to FINRA.<sup>10</sup> If a firm operates multiple ATSs, each ATS is required to have its own MPID. After the MPID Requirement is implemented in November 2014, FINRA will be able to compare the trade reporting data to the data already being reported to FINRA by the ATSs pursuant to Rule 4552 to verify the consistency and accuracy of both. After FINRA confirms the MPID Requirement is functioning as intended, FINRA will determine whether to use trade reporting data to publish volume information for equity securities rather than requiring ATSs to continue to self-report volume information pursuant to Rule 4552. FINRA also will consider whether more frequent (e.g., daily) publication is appropriate.

As a result of these new requirements, FINRA will make available on its Web site weekly aggregate Trading Information on equity securities as reported by ATSs upon the implementation of Rule 4552 (“ATS Data”). Based on the information reported by the ATSs pursuant to Rule 4552, the ATS Data will consist of reports listing aggregate volume and number of trades by security for each ATS within the designated time period. The most recently published four weeks of reports will be accessible to Non-Professionals at no cost on FINRA’s Web site, and FINRA will provide a basic web display listing all reporting ATSs and aggregate volume and number of trades for each symbol in which a trade was reported by the ATS during the

<sup>7</sup> See Rule 4552(d).

<sup>8</sup> See Regulatory Notice 14–07 (February 2014).

<sup>9</sup> See Rule 4552(b).

<sup>10</sup> As noted above, an ATS that trades both debt securities reported to TRACE and equity securities (OTC Equity Securities or NMS stocks) reported to a FINRA equity reporting facility is permitted to use two MPIDs, rather than a single unique MPID, if each MPID is used exclusively for either debt or equity securities.

designated time period. As described below, in addition to viewing the ATS Data via FINRA's Web site, Professionals and Vendors, as defined in the proposed rule, will have the ability to download reports electronically for their internal use or, in the case of Vendors, for external redistribution. The downloadable reports will provide the same data as the web-based reports but in pipe delimited format, and historical reports of up to five years will be available.<sup>11</sup> The proposed rule change establishes a fee schedule for access to and use of the ATS Data, and the proposed fees to be paid by Professionals and Vendors are intended to recover the costs associated with the collection and dissemination of ATS Data.

The proposed rule change establishes three categories of users of the ATS Data, each of which is entitled to different levels and use of data and is subject to a different fee structure: (i) Non-Professionals; (ii) Professionals; and (iii) Vendors.

#### Non-Professionals

Under the proposed rule change, Non-Professionals will be able to access, at no cost, the most recent four weeks of ATS Data in a viewable, but not downloadable, format. As used in proposed Rule 4553, a "Non-Professional"<sup>12</sup> is generally a natural person who uses the ATS Data solely for his or her personal, non-commercial use and is not: (i) Registered or qualified in any capacity with the SEC, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association, nor an employee of the above; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisers Act<sup>13</sup> (whether or not registered or qualified under that Act), nor an employee of the above; (iii) employed by a bank, insurance company or other organization exempt from registration under federal or state securities laws to

<sup>11</sup> There will be no reports for time periods before the implementation of Rule 4552. In addition to weekly reports, FINRA intends to produce quarterly reports summarizing the information. The quarterly reports would be publicly available for no charge on FINRA's Web site.

<sup>12</sup> FINRA notes that the proposed definition of "Non-Professional" is substantially the same as the one used under the TRACE data dissemination rules. See Rule 7730(f) (Definitions). Generally, non-commercial requests from regulators, academics, and ad hoc requests from media reporters would be considered non-professional usage under this definition.

<sup>13</sup> See 15 U.S.C. 80b-2(a)(11).

perform functions that would require registration or qualification if such functions were performed for an organization not so exempt, nor any other employee of a bank, insurance company or such other organization referenced above; or (iv) engaged in, or has the intention to engage in, any commercial redistribution of all or any portion of the ATS Data or Derived Data.<sup>14</sup> Any individual seeking access to the ATS Data must confirm that he or she is either (i) a Non-Professional or (ii) a Professional (or an affiliate or employee thereof) that has a current Professional or Vendor subscription. A Non-Professional will be required to certify that he or she is a "Non-Professional" within the meaning of proposed Rule 4553 and agree to certain terms of use of the ATS Data, including that he or she receives and uses the ATS Data solely for his or her personal, non-commercial use, and conditions regarding use of the data and prohibiting redistribution of the data.

#### Professionals

A "Professional" is defined as any non-natural person or any natural person that does not meet the definition of "Non-Professional." Under the proposed rule change, to access the ATS Data, Professionals are required to pay an annual, enterprise-wide subscription fee of \$12,000 that is non-transferable and renewable annually. A Professional who has paid the subscription fee will have access to the ATS Data available to Non-Professionals, as well as access to up to five years of historical ATS Data, in a downloadable format. The Professional subscription allows an unlimited number of users within the firm to access the ATS Data. Thus, regardless of the size of the entity in question, the subscription fee for the entity would be \$12,000 for a twelve-month subscription. Professionals are not permitted to redistribute ATS Data or Derived Data outside of the enterprise (e.g., to their customers); however, Professionals are permitted to distribute ATS Data and Derived Data within the enterprise (including the firm, any affiliates of the firm, and employees thereof). Professionals will be required to agree to the terms of FINRA's ATS Data Subscriber Agreement, which establishes the terms and conditions of access to the ATS Data. If the Professional is a FINRA member, the member will have access to the ATS Data so that all of the member's entitled

<sup>14</sup> The proposed rule change defines "Derived Data" as data that is derived from ATS Data and that is not able to be (A) reverse engineered by a reasonably skilled user into ATS Data or (B) used as a surrogate for ATS Data.

users can access the ATS Data under the member's Central Registration Depository number. Professionals that are not FINRA members will be provided with a single logon that may be shared within the entity and its affiliates and employees, but may not be used outside of the entity, its affiliates, and their employees.

#### Vendors

The proposed rule change also includes a Vendor subscription fee of \$18,000 per year. A Vendor is defined as a Professional that redistributes ATS Data or Derived Data to third parties. A Vendor license permits a Vendor to redistribute the ATS Data or Derived Data in any form (or in exactly the form FINRA provides to the Vendor). In addition to the Vendor subscription fee, a Vendor may provide ATS Data to a third party only if a yearly, non-transferable, enterprise-wide Professional Subscriber license has been purchased for each such third party. Vendors must track specific users and their entitlements (and annual commitment term) and will be subject to regular audits to ensure accurate and timely compliance with re-dissemination reporting and payment. As with TRACE data, Vendors would be responsible for reporting entity usage as a result of their redistribution of the data.

As noted in Item 2 of this filing, FINRA is proposing that the proposed rule change be effective upon Commission approval.

#### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>15</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

FINRA believes that, as described below, the proposed fee is reasonable when compared to existing fees for similar data products. Currently, there are several offerings of ATS volume data available to the public. FINRA understands anecdotally that the most prevalent dark pool volume data product currently offered in the marketplace has a base cost that is significantly higher than the proposed FINRA fee. FINRA understands that this report provides monthly aggregate volume figures by ATS based on voluntarily submitted dark pool ATS

<sup>15</sup> 15 U.S.C. 78o-3(b)(5).

data and estimated data. It also provides commentary and analysis regarding the data and volume trends.

In addition, the NASDAQ OMX Group, Inc. (“NASDAQ OMX”) also offers a Daily Share Volume (“DSV”) product that provides some market transparency by MPID, rather than by ATS, with respect to aggregate volume executed through the NASDAQ OMX equity exchange facilities.<sup>16</sup> The DSV product provides end-of-day aggregate volume by MPID and by symbol for those members that opt into the program. On an end-of-month basis, the DSV product provides for aggregate volume by symbol for all members unless they explicitly opt out. The monthly fee for the DSV product is \$2,500 per user or \$5,000 per month on an enterprise basis (or \$54,000 for an annual subscription).

The ATS Data to be provided by FINRA differs in significant respects from those described above. For example, the ATS Data provided by FINRA will include all ATS volume (regardless of the FINRA Trade Reporting Facility to which ATS trades are reported) and will offer more granular data by providing aggregate volume by ATS and by symbol. In addition, after the MPID Requirement is implemented, the ATS Data will include data that is calculated and validated by FINRA through the submission of trades for each ATS broken out by MPID.<sup>17</sup> Currently, available ATS-specific data is voluntarily submitted and not otherwise validated. Moreover, because the submission of data for the currently available reports is voluntary, certain ATSS may choose not to submit volume reports. The ATS data FINRA will provide will offer more granular data in that the current reports provide aggregate level volume by ATS, while FINRA will provide aggregate level volume by ATS and by symbol. FINRA will also provide ATS data on a weekly basis (with the delay period prior to publication specified in Rule 4552), while the current reports are made available on a monthly basis. FINRA believes the ATS data it will provide will deliver significant benefits to the marketplace overall by increasing transparency and providing additional tools for market participants to engage in better, more timely and more reliable analysis regarding ATS trade volume trends. FINRA further believes the proposed fee schedule is fair and

equitable in light of what comparable data is currently available in the marketplace and the price at which it is currently available.

FINRA is proposing to establish a fee for professional access to the data in order to recover the costs associated with collecting, formatting, and disseminating the data. In setting the amount of the fee, however, FINRA does not have an exact estimate as to how many subscribers will ultimately pay the proposed fee to access ATS Data. Thus, as discussed above, FINRA is proposing to set the fee at a level significantly below the fees that currently are in place for comparable products in the marketplace. As noted, FINRA believes this fee proposal is fair and reasonable in light of the fact that the level of data to be provided by the FINRA product will be materially more granular than the level of data provided by the comparable products currently available.

FINRA intends to reassess the fairness and reasonableness of the proposed fee once it has more experience with the actual usage and ultimate fees paid to access ATS Data, and, if appropriate, may adjust the fee accordingly. Any changes to the fees would be subject to a separate proposed rule change by FINRA with the SEC.

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

FINRA 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. Although several organizations currently provide ATS volume reports to the public, FINRA will provide raw data only and will not be providing any value-added analysis to the data. Moreover, FINRA believes that any burden on competition is outweighed by the benefits to market transparency provided by the proposed rule change, such that any burden is necessary and appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Although written comments were not solicited regarding the specific fee provisions in the proposed rule change, nine comments were received on the proposed rule change adopting Rule 4552 and the MPID Requirement (“Proposal”) that addressed charging a fee for ATS Data.<sup>18</sup> A list of those

comment letters received in response to SR-FINRA-2013-042 that addressed a subscription fee is attached as Exhibit 2a. Copies of the comment letters are attached in Exhibit 2b.

Many of the commenters objected, on some level, to FINRA charging a fee for some of the ATS Data that will be made available; however, the details of the proposed fee were not included in the Proposal. These comments ranged from asserting that the information should be provided free of charge to requesting more information on the fee itself. Several commenters asserted that a fee conflicts with the principles of accessibility of information and transparency.<sup>19</sup> One commenter asserted possible legal consequences with reporting and selling ATS data.<sup>20</sup> Some commenters noted that free information may better facilitate analysis and market transparency and is consistent with the SEC’s publication of market information.<sup>21</sup> One commenter suggested that, given the delayed and limited scope of data, the effort to establish entitlements and fees was not justified,<sup>22</sup> while another stated that since FINRA is not producing or validating the information, a fee is unnecessary.<sup>23</sup>

As previously stated, FINRA believes that establishing a fee for Professionals and Vendors to access ATS Data is appropriate to help FINRA recover the costs associated with collecting, formatting, and disseminating the data. Moreover, as noted above, following the

Trading, Barclays Capital Inc., dated November 12, 2013 (“Barclays”); Letter to Elizabeth M. Murphy, Secretary, SEC, from Scott C. Goebel, Senior Vice President and Deputy General Counsel, Fidelity Investments, dated November 12, 2013 (“Fidelity”); Letter to Elizabeth M. Murphy, Secretary, SEC, from Manisha Kimmel, Executive Director, Financial Information Forum, dated November 12, 2013 (“FIF”); Letter to Elizabeth M. Murphy, Secretary, SEC, from Ari Burstein, Senior Counsel, Investment Company Institute, dated November 12, 2013 (“ICI”); Letter to Elizabeth M. Murphy, Secretary, SEC, from Donald Bollerman, Head of Market Operations, IEX Services LLC, dated November 11, 2013 (“IEX”); Letter to Elizabeth M. Murphy, Secretary, SEC, from Howard Meyerson, General Counsel, Liquidnet, Inc., dated November 12, 2013 (“Liquidnet”); Letter to Elizabeth M. Murphy, Secretary, SEC, from Thomas M. Carter, Chairman of the Board and James Toes, President & Chief Executive Officer, Security Traders Association, dated November 12, 2013 (“STA”); Letter to Elizabeth M. Murphy, Secretary, SEC, from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated November 11, 2013 (“SIFMA”) and Letter to Elizabeth M. Murphy, Secretary, SEC, from Timothy Quast, President and Founder, ModernIR, dated February 1, 2014 (“ModernIR”).

<sup>19</sup> See Barclays, Fidelity, Liquidnet.

<sup>20</sup> See ModernIR.

<sup>21</sup> See Barclays, Fidelity, FIF.

<sup>22</sup> See FIF.

<sup>23</sup> See Fidelity.

<sup>16</sup> See Securities Exchange Act Release No. 59580 (March 13, 2009), 74 FR 12169 (March 23, 2009).

<sup>17</sup> As noted above, until the MPID Requirement is implemented, FINRA will be providing data that is self-reported by ATSS and not validated by FINRA.

<sup>18</sup> See Letter to Elizabeth M. Murphy, Secretary, SEC, from William White, Head of Electronic

implementation of the MPID Requirement, FINRA will be calculating and validating the information rather than relying on ATSs to self-report data to FINRA. FINRA further believes that the level of the fee is fair and reasonable considering it is substantially lower than fees charged for less granular ATS data products currently offered in the marketplace. As noted, FINRA intends to reassess the amount of the fee after it has more experience with the ATS Data usage and actual fees paid. Any proposed changes to the fee will be submitted to the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>24</sup> and subject to public comment.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-FINRA-2014-018 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-FINRA-2014-018. 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 FINRA. 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-FINRA-2014-018, and should be submitted on or before May 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2014-08421 Filed 4-14-14; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71925; File No. SR-NASDAQ-2014-031]

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

April 10, 2014.

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 April 2, 2014 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.

<sup>25</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.

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 make changes to the Qualified Market Maker ("QMM") Incentive Program under Rule 7014, and the schedule of fees and rebates for execution and routing of orders under Rule 7018. The changes will be implemented effective April 2, 2014.

The text of the proposed rule change is available at [nasdaq.cchwallstreet.com](http://nasdaq.cchwallstreet.com), at NASDAQ's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

NASDAQ is proposing several changes to the QMM Incentive Program under Rule 7014 and to the schedule of fees and credits applicable to execution and routing of orders under Rule 7018, which are described in detail below.

#### QMM Incentive Program

NASDAQ is adding a new QMM eligibility requirement to the QMM Incentive Program under Rule 7014(d). A QMM is a member that makes a significant contribution to market quality by providing liquidity at the National Best Bid or 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

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A)(ii).