

• Send an email to rule-comments@sec.gov. Please include File Number SR-PHLX-2016-93 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-PHLX-2016-93. 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-PHLX-2016-93 and should be submitted on or before October 26, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴³

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78977; File No. SR-NASDAQ-2016-132]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq's Fees and Credits at Rules 7014 and 7018

September 29, 2016.

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 28, 2016, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's fees and credits at Rules 7014 and 7018.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on September 1, 2016.³

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

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

In its filing with the Commission, the 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The proposed fees were initially filed with the Commission as an immediately effective and operative rule change on September 1, 2016. See SR-NASDAQ-2016-125. On September 16, 2016 the Exchange withdrew SR-NASDAQ-2016-125 and replaced it with SR-NASDAQ-2016-128. To correct a technical issue with the filing, on September 16, 2016 the Exchange replaced SR-NASDAQ-2016-128 with SR-NASDAQ-2016-129. This filing replaces SR-NASDAQ-2016-129.

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

The purpose of the proposed rule change is to amend Rule 7014 to: (i) Add a new charge of \$0.0029 assessed Qualified Market Makers ("QMMs") for orders in securities listed on exchanges other than Nasdaq priced at \$1 or more; (ii) amend the requirement to qualify for a rebate under the NBBO program; and (iii) add the new Nasdaq Growth Program. The Exchange is also proposing to amend Rule 7018 to: (i) Replace an existing \$0.0001 per share executed credit tier with two new credit tiers providing \$0.0001 and \$0.0002 per share executed, respectively; (ii) amend the criteria and fees assessed for transactions in the Closing Cross; and (iii) amend the criteria and fees assessed for transactions in the opening cross, and make a clarifying change to the opening cross rules.

First Change

The purpose of the first change is to increase incentives provided by the Exchange under Rule 7014(e) by providing a new \$0.0029 per share executed fee to QMMs that, in addition to meeting the Tier 2 eligibility criteria also have a combined Consolidated Volume of at least 3.5%. A QMM is a member that makes a significant contribution to market quality by providing certain levels of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs. In return, a QMM receives rebates 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 and were for securities listed on NYSE ("Tape A"), securities listed on exchanges other than NYSE or Nasdaq ("Tape B"), or securities listed on Nasdaq ("Tape C"). There are currently two Tiers of rebates provided, which are based on the amount of shares of liquidity provided a QMM executes in all securities through one or more of its Nasdaq Market Center MPIDs that represent certain levels of Consolidated Volume.⁴

⁴ Tier 1 requires a QMM to provide above 0.70% up to and including 0.90% of Consolidated Volume during the month, and Tier 2 requires above 0.90% of Consolidated Volume.

⁴³ 17 CFR 200.30-3(a)(12).

The Exchange further provides reduced charges to QMMs for removing liquidity from the Exchange in securities priced at \$1 or more if the QMM's volume of liquidity added through one or more of its Nasdaq Market Center MPIDs during the month (as a percentage of Consolidated Volume) is no less than 0.80%. The Exchange is proposing to assess a new \$0.0029 per share executed fee, assessed on a QMM that meets the Tier 2 criteria, for orders in Tape A and B securities priced at \$1 or more per share that access liquidity on the Nasdaq Market Center, if the QMM also has a combined Consolidated Volume (adding and removing liquidity) of at least 3.5%. Thus, in addition to providing at least the minimum level of Consolidated Volume in adding liquidity as required by Tier 2, the QMM must also have a significant level of combined Consolidated Volume, *i.e.*, both adding and removing liquidity.

Second Change

The purpose of the second change is to amend the requirement to qualify for a rebate under the NBBO program. The NBBO Program provides members with per share executed rebates with respect to all other displayed orders (other than Designated Retail Orders) in securities priced at \$1 or more per share that provide liquidity and establish the NBBO. First, the Exchange is proposing to limit eligibility for the credit provided by the program to executions from orders originating on ports that have a ratio of at least 25% NBBO liquidity provided to liquidity provided during the month. As described in the rule, NBBO liquidity provided means liquidity provided from orders (other than Designated Retail Orders, as defined in Rule 7018), that establish the NBBO, and displayed a quantity of at least one round lot at the time of execution. Under the NBBO program, the Exchange provides a \$0.0004 per share executed rebate in Tape A and B securities if a member executes shares of liquidity provided in all securities through one or more Nasdaq Market Center MPIDs that represents 1.0% or more of Consolidated Volume during the month. The Exchange also provides an additional \$0.0002 per share executed rebate for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity priced at \$1 or more, if the member meets certain criteria, including having a ratio of at least 25% NBBO liquidity provided to liquidity provided during the month. The Exchange is now proposing to extend the 25% NBBO liquidity provided

requirement to the ports used by the member to qualify for the \$0.0004 per share executed rebate, in addition to applying the current Consolidated Volume eligibility requirement that the member must execute shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represents 1% or more of Consolidated Volume during the month.

Third Change

The Exchange is proposing to adopt the new Nasdaq Growth Program under Rule 7014(j). The Nasdaq Growth Program will provide a member a \$0.0025 per share executed credit in securities priced \$1 or more per share if it meets certain criteria. The proposed credit will be provided in lieu of other credits provided to the member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity under Rule 7018, if the credit under the Nasdaq Growth Program is greater than the credit attained under Rule 7018. To be eligible for the credit a member must: (i) Add greater than 750,000 shares a day on average during the month through one or more of its Nasdaq Market Center MPIDs; and (ii) increase its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 25% versus the member's Growth Baseline. The Exchange is defining Growth Baseline as the member's shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percentage of Consolidated Volume during the last month a member qualified for the Nasdaq Growth Program. If a member has not qualified for a credit under this program, its August 2016 share of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume will be used to establish a baseline. Thus, the purpose of the credit is to provide an incentive to members that do not qualify for other credits under Rule 7018 in excess of the Nasdaq Growth Program credit to increase their participation on the Exchange.

Fourth Change

The Exchange is proposing to amend Rule 7018(a)(3), which provides the fees and credits for execution and routing of orders in Tape B securities priced \$1 or greater. Currently, the Exchange provides a \$0.0001 per share executed credit to a member for displayed quotes and orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to a member with

shares of liquidity provided in all securities during the month representing at least 0.2% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs. The credit is provided in addition to the credits provided for displayed quotes and orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity. The Exchange is proposing to eliminate this credit tier and replace it with two new credit tiers that provide \$0.0001 and \$0.0002 per share executed, respectively. First, the Exchange is proposing to adopt a \$0.0001 per share executed credit available to a member with shares of liquidity provided in securities that are listed on exchanges other than Nasdaq or NYSE (*i.e.*, Tape B) during the month representing at least 0.045% but less than 0.075% of Consolidated Volume during the month through one or more of its Nasdaq Market Center MPIDs. The Exchange is also proposing to adopt a \$0.0002 per share executed credit to a member with shares of liquidity provided in securities that are listed on exchanges other than Nasdaq or NYSE (*i.e.*, Tape B) during the month representing at least 0.075% of Consolidated Volume during the month through one or more of its Nasdaq Market Center MPIDs. Thus, the Exchange is focusing the required shares of liquidity required to qualify for the credit on Tape B securities and reducing the level of Consolidated Volume required to qualify for either of the new credits in contrast to the existing credit. Like the current \$0.0001 per share executed credit that is being replaced, the proposed new credits are provided in addition to the credits provided for displayed quotes and orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity.

Fifth Change

The Exchange is proposing to amend the criteria and fees assessed for transactions in the Closing Cross under Rule 7018(d). First, the Exchange is proposing to increase the fee assessed members for all quotes and orders (other than Market-on-Close and Limit-on-Close orders) executed in the Nasdaq Closing Cross from \$0.0008 to \$0.00085 per share executed. Second, the Exchange is proposing to increase the level of Consolidated Volume required to qualify for the lowest fee assessed for Market-on-Close ("MOC") and Limit-on-Close ("LOC") orders under Tier A from 1.4% to 1.8%. As a consequence, the Exchange is also proposing to amend Tier B to reflect the increase range of Consolidated Volume required to

qualify under the tier. Third, the Exchange is proposing to increase the Tier D fee from \$0.0013 to \$0.00135 per share executed, the Tier E fee from \$0.00135 to \$0.00145 per share executed, and the Tier F fee from \$0.0015 to \$0.0016 per share executed.

Sixth Change

The Exchange is proposing to amend the criteria and fees assessed for transactions in the Opening Cross, and make a clarifying change to the opening cross rules under Rule 7018(e). First, the Exchange is proposing to increase the fee assessed members under paragraph (1) of the rule for all quotes and orders (other than Market-on-Open, Limit-on-Open, Good-till-Cancelled, and Immediate-or-Cancel orders) executed in the Nasdaq Opening Cross from \$0.0008 to \$0.00085 per share executed. Second, the Exchange is proposing to increase the monthly fee cap provided under paragraph (2) of the rule from \$30,000 to \$35,000. Last, the Exchange is proposing to clarify the qualification criteria of the fee cap under paragraph (2) to make it clear that a member must add at least one million shares of liquidity, on average *per day*, per month, which is how the criteria is currently applied and how it was announced to market participants when it was adopted.⁵ As it is currently written, the criteria is vague on the time period over which a member must have one million shares of liquidity.

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 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 designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to

permit unfair discrimination between customers, issuers, brokers, or dealers.

First Change

The Exchange believes that assessing a new \$0.0029 fee under the QMM Program is reasonable because it is set at a level that is lower than the standard removal fee of \$0.0030 per share executed, thereby providing an incentive to market participants, and it is also based on the Exchange's analysis of the cost to the Exchange of offering a lower fee, thereby decreasing the revenue derived from transactions by members that qualify for the new fee, and the desired benefit to the market provided by the members that meet the new fee's qualification criteria. In this case, the criteria provides an incentive to members to increase their participation in the market as measured by Consolidated Volume, which benefits all market participants. Currently, members may qualify for a \$0.00295 per share executed fee for removing liquidity in Tape A or B securities priced at \$1 or more if the member's volume of liquidity added through one or more of its Nasdaq Market Center MPIDs during the month (as a percentage of Consolidated Volume) is not less than 0.80%. The Exchange is proposing a similar fee for removing liquidity in Tape A or B securities priced at \$1 or more if the member qualifies under the Tier 2 criteria that requires the member to execute shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.90% of Consolidated Volume during the month, and the member must also have a combined Consolidated Volume (adding and removing liquidity) of at least 3.5%. Thus, to qualify for a lower transaction fee for removing liquidity in Tape A or B securities under the QMM Program, the member must both provide greater Consolidated Volume through adding liquidity during the month (*i.e.*, 0.90% versus 0.80%) and provide a certain level of combined Consolidated Volume, which accounts for both adding liquidity and removing liquidity. The Exchange believes that the new fee is an equitable allocation and is not unfairly discriminatory because all members that participate on the Exchange may qualify for the proposed reduced Tape A and B removal fee if they elect to provide the Consolidated Volume required. The Exchange uses Consolidated Volume as a measure of the member's activity in comparison to that of the market as a whole. Thus, the proposed fee and criteria required to qualify for the fee does not discriminate unfairly and is

equitably allocated, as eligibility for the fee is tied to the member's performance in comparison to other participants in aggregate.

Second Change

The Exchange believes that the \$0.0004 per share executed rebate of the NBBO Program to executions from orders originating on a port that has a ratio of at least 25% NBBO liquidity provided to liquidity provided is reasonable because it is the same rebate that the Exchange currently applies under the program and is based on the Exchange's continued belief that it is the appropriate level of rebate provided in return for the market-improving liquidity required to receive the rebate. The Exchange believes that tying eligibility for the \$0.0004 per share executed rebate of the NBBO Program to executions from orders originating on a port that has a ratio of at least 25% NBBO liquidity provided to liquidity provided is an equitable allocation and is not unfairly discriminatory because the measurement criteria is identical to the criteria used to qualify for the \$0.0002 per share executed rebate, although the \$0.0002 rebate is measured across one or more of a members Nasdaq Market Center MPIDs. NBBO liquidity provided to liquidity provided is a ratio of the member's liquidity provided that establishes the NBBO and displayed at a quantity of at least one round lot as compared to all liquidity provided by the member. Thus, the Exchange is making a member provide more market-improving activity (in addition to the Consolidated Volume requirement) to receive the rebate. The Exchange believes that limiting the NBBO liquidity provided to executions from orders on that port is an equitable allocation and is not unfairly discriminatory because it directly ties the member's beneficial activity to the ports through which the rebate is applied. The Exchange believes this will create greater incentive for firms to establish the NBBO while more closely tying the credit to the market improving behavior the Exchange is trying to incentivize.

Thus, any member may choose to participate in the market in a manner to meet the NBBO liquidity criteria.

Third Change

The Exchange believes that the \$0.0025 per share executed credit provided by the Nasdaq Growth Program is reasonable because it is set at a level that the Exchange believes will provide adequate incentive to market participants to improve their participation on the Exchange. The

⁵ See Securities Exchange Act Release No. 71925 (April 10, 2014), 79 FR 21328 (April 15, 2014) (SR-NASDAQ-2014-031); see also <http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2014-28>.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

credit is also based on the Exchange's analysis of the cost to the Exchange of providing credits to members that qualify for the new credit and the desired benefit to the market provided by the members that meet the new fee's qualification criteria and thereby increase liquidity on the Exchange. The Exchange believes that the Nasdaq Growth Program is an equitable allocation and is not unfairly discriminatory because it is designed to improve the market for all market participants on the Exchange, even though not all members will be eligible for the new credit. The Exchange is targeting members that may not have adequate participation to qualify for certain credits under Rule 7018(a), and who may be significantly far from reaching a level of participation to qualify for such credits. The Exchange believes it is important to provide such members incentive to incrementally increase their participation in the market, which will benefit all market participants. The Exchange is proposing to achieve this by requiring a member to both add greater than 750,000 shares a day on average during the month through one or more of its Nasdaq Market Center MPIDs and increase its share of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 25% versus the member's Growth Baseline. The Exchange believes that this criteria is an equitable allocation and is not unfairly discriminatory because it requires a minimum level of participation in the market and it ensures that members meaningfully remain in the market. There are tiers under Rule 7018 that afford members a \$0.0025 per share executed credit, for example, member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.10% of Consolidated Volume during the month, and the growth program aims to provide a path for firms to hit the Rule 7018 thresholds by receiving benefits as they continue to grow. The Exchange is also proposing to require a member to increase its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 25% versus the member's Growth Baseline. The Growth Baseline will be defined as the member's shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume during the last month a member qualified for the Nasdaq Growth Program. As a

consequence, although any member may qualify under the program if it meets the criteria, members that currently qualify for higher credits under Rule 7018(a) will not receive the proposed credit. The Exchange believes that this is an equitable allocation and is not unfairly discriminatory because such members are receiving higher credits in lieu of the lower proposed credit, and the increased liquidity provided by the members that qualify under the new program benefit all market participants. Moreover, the program is designed to provide incentive to members to continue to increase their participation until such time that they qualify for other, higher credits under Rule 7018(a). If a member has not qualified for a credit under this program, its August 2016 share of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume will be used to establish a baseline. Thus, the second criteria requires a certain level of increased participation in the market. The Exchange believes that the program is an equitable allocation and is not unfairly discriminatory because members must continue to improve their participation in the market month over month in order to continue receiving the credit until such a time that it qualifies for a higher credit under Rule 7018(a). As a consequence, a member that qualifies for the new credit will eventually become ineligible for the credit by either failing to grow its shares of liquidity or graduating to a higher credit in lieu of proposed new credit. The Exchange chose to use August 2016 as the initial baseline since it was the last month of activity prior to the start of the program and there were no market holidays in the month.

Fourth Change

The Exchange believes that eliminating the \$0.0001 per share executed credit under Rule 7018(a)(3) provided to a member with shares of liquidity provided in all securities of at least 0.2% of Consolidated Volume during the month in the securities of any Tape, and replacing it with two new credits of \$0.0001 and \$0.0002 per share executed that are based on certain levels of Consolidated Volume in Tape B securities during the month is reasonable because the level of credit provided is identical to, or very close to, the current credit provided. The Exchange believes that the two credits are sufficient to provide incentive to members to meet the criteria. Moreover, the credit is based on the Exchange's analysis of the cost to the Exchange of providing credits to members that

qualify for the new credit and the desired benefit to the market provided by the members that meet the new fee's qualification criteria and thereby increase liquidity on the Exchange.

The Exchange believes that eliminating the \$0.0001 per share executed credit under Rule 7018(a)(3) provided to a member with shares of liquidity provided in all securities of at least 0.2% of Consolidated Volume during the month in the securities of any Tape, and replacing it with two new credits that are based on certain levels of Consolidated Volume in Tape B securities during the month is an equitable allocation and is not unfairly discriminatory because it more closely ties the criteria to improving the market on the Exchange in Tape B securities. Currently, members are provided the \$0.0001 per share executed credit for displayed quotes and orders (other than Supplemental Orders or Designated Retail Orders) in Tape B securities if the member provides the required Consolidated Volume. In lieu of the current criteria, the Exchange is requiring a member provide at least 0.045% but less than 0.075% of Consolidated Volume in Tape B securities to receive a \$0.0001 per share executed credit, and is requiring a member provide at least 0.075% of Consolidated Volume in Tape B securities during the month to receive a \$0.0002 per share executed credit. Thus, the Exchange is reducing the level of Consolidated Volume required to receive either of the proposed credits in comparison to the current credit, which is reflective of limiting the Consolidated Volume considered for the credits to Tape B securities. The Exchange believes that the proposed \$0.0002 per share credit is an equitable allocation and is not unfairly discriminatory because it requires significantly greater Consolidated Volume in Tape B securities during the month than the proposed \$0.0001 eligibility criteria. The Exchange also believes that the proposed change is an equitable allocation and is not unfairly discriminatory because a member is free to choose which securities it transacts in and may choose to increase its level of activity in Tape B securities to qualify for the proposed credits. The Exchange notes that some members may continue to qualify for the credit because the Exchange has proposed reduced levels of Consolidated Volume, which members may already provide. To the extent that a member qualified for the current credit based largely on its activity in Tape A and C securities, it may have to increase its activity in Tape

B securities to receive one of the new credits. The Exchange is not proposing similar credits for transactions in Tape C and A securities under Rules 7018(a)(1) and (2), respectively, because it must balance its desire to provide incentives to market participants to improve the market where it deems it is most needed against the cost to the Exchange in providing such incentives. Thus, the Exchange believes that focusing the changes on activity in Tape B securities is an equitable allocation and is not unfairly discriminatory because it will provide further incentive to members to participate in Tape B securities, the market in which the Exchange is seeking to further improve.

Fifth Change

The Exchange believes that increasing the fees under Rule 7018(d), including the changes to the criteria for certain fees that make it more difficult to qualify for a lower fee, are reasonable because the Exchange notes that the fees assessed for participation in the Closing Cross are significantly less than the fees assessed for participation in regular market hours trading. From time to time the Exchange must assess the level of fees collected in comparison to the costs associated with offering services, such as the Closing Cross. In this case, the Exchange has determined that raising the fees for use of the Closing Cross is appropriate. The Exchange believes that the proposed changes to fees assessed under Rule 7018(d) for participation in the Closing Cross is an equitable allocation and is not unfairly discriminatory because it is increasing the fees and criteria to qualify for the lowest fee to better align the fees collected for participation in the Closing Cross with the costs associated with operating the Closing Cross. As noted, the fees assessed for participation in the Closing Cross are significantly less than the fees assessed for participation in regular market hours trading. Also as noted, from time to time the Exchange must assess the level of fees collected in comparison to the costs associated with offering services, such as the Closing Cross. In this case, the Exchange is proposing the increased fees and more stringent criteria to increase revenue provided by the Closing Cross to cover the costs associated with offering the service. The Exchange does not believe that the proposed changes will affect participation in the Closing Cross, but to the extent the Exchange realizes less participation in the Closing Cross as a result of the fee increases and change to the Tier A criteria, it may realize a reduction in revenue. The Exchange notes that, in addition to increasing the

fee assessed for quotes and orders (other than Market-on-Close and Limit-on-Close orders) executed in the Closing Cross, it is increasing fees for MOC and LOC orders under Tiers D, E and F, which may provide incentive to market participants in these tiers to increase their shares of liquidity provided to qualify for a Tier with a lower fee. In this regard, the Exchange has observed that most members qualify under Tiers D, E and F, and consequently increasing the fee may incentivize members to increase the level of shares of liquidity provided to qualify for a lower fee. The Exchange is increasing the level of Consolidated Volume required to qualify for the lowest fee under Tier A, which will make qualifying for the credit more difficult to the extent a member does not qualify under the alternative MOC/LOC volume standard. In lieu of increasing the fee, the Exchange has determined to increase the level of Consolidated Volume in all securities to make the tier more meaningful.

Thus, the Exchange believes that increasing the criteria required to qualify for Tier A and increasing the fees assessed for Tiers D, E and F is an equitable allocation and is not unfairly discriminatory because the Exchange has observed the most members qualifying under these tiers. Accordingly, the Exchange believes that the changes to these tiers, and not the remaining tiers is appropriate.

Sixth Change

The Exchange believes that increasing the fee assessed for transactions in the Opening Cross and the fee cap thereon is reasonable because it better aligns the fees collected for participation in the Opening Cross with the costs associated with operating the Opening Cross. The Exchange notes that the fee assessed for participation in the Opening Cross is significantly less than the fees assessed for participation in regular market hours trading. From time to time the Exchange must assess the level of fees collected in comparison to the costs associated with offering services, such as the Opening Cross. In this case, the Exchange is proposing the increased fee and increased fee cap to increase revenue provided by the Opening Cross to cover the costs associated with offering the service. The Exchange does not believe that the proposed changes will affect participation in the Opening Cross, but to the extent the Exchange realizes less participation in the Opening Cross as a result of the fee increase and increased fee cap, it may realize a reduction in revenue.

The Exchange believes that the increased fee assessed for all quotes and orders executed in the Nasdaq Opening Cross, other than Market-on-Open, Limit-on-Open, Good-till-Cancelled, and Immediate-or-Cancel orders, is an equitable allocation and is not unfairly discriminatory because even with the increase this fee is lower than the other opening cross fees assessed under Rule 7018(e)(1), and thus continues to promote entry of orders covered by the fee. The Exchange believes that increasing the fee cap is an equitable allocation and is not unfairly discriminatory because those members that are most impacted by the fee cap increase are also the heaviest users of the cross and receive the most benefit from its use.

Last, the Exchange believes that the new clarifying language it is proposing to add to the fee cap eligibility criteria under Rule 7018(e)(2) removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest because it clarifies the level of shares of liquidity added that a member must have to qualify for the fee cap, which is currently unclear in the current rule text.

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 charges assessed and credits available to member firms for execution of securities in securities of all three Tapes 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. In this instance, changes to the incentive fees and rebates provided under Rule 7014 are reflective of the Exchange's need to balance the incentives provided and the resulting beneficial market behavior with the cost of such incentives to the Exchange and their effectiveness. The Exchange is both offering new incentives and strengthening criteria for other incentives. Similarly, the changes to the credits and fees assessed for the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at \$1 or more that it trades are reflective of the same analysis of the benefits versus costs incurred by the Exchange in offering execution and routing services. In this present case, the Exchange is modifying and adding new credits while also increasing fees assessed for use of the Nasdaq Opening and Closing Crosses. All of the proposed changes are subject to intense competition among trading venues, which are free to make changes to their fees and credits that they provide as a competitive response to the Exchange's proposed changes. Moreover, the proposed changes do not impose a burden on competition because Exchange membership and participation is optional and is also the subject of competition from other trading venues. A member may elect to participate on another exchange to extent it believes that fees assessed by Nasdaq are too high, or credits and rebates provided are too low. For these reasons, the Exchange does not believe that any of the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Last, because there are numerous competitive alternatives to the use of the Exchange, it is likely that the Exchange will lose market share as a result of the changes if they are unattractive to market participants.

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.⁸

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 email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2016-132 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-2016-132. 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.,

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

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 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-2016-132, and should be submitted on or before October 26, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78979; File No. SR-NASDAQ-2016-127]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend the By-Laws of Nasdaq, Inc. To Implement Proxy Access

September 29, 2016.

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 15, 2016, 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 is filing this proposed rule change with respect to amendments of the By-Laws (the "By-Laws") of its parent corporation, Nasdaq, Inc. ("Nasdaq" or the "Company"), to implement proxy access. The proposed amendments will be implemented on a date designated by the Company following approval by the Commission.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.