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Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2016 - * 020
Amendment No. (req. for Amendments *)

Filing by NASDAQ Stock Market

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☐	☑	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
☑ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *	Section 806(e)(2) *
☐	☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
☐	☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A Proposed Rule Change to Amend Nasdaq Rule 7014 and Nasdaq Rule 7018.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Jonathan Last Name * Cayne
Title * Senior Associate General Counsel
E-mail * jonathan.cayne@nasdaq.com
Telephone * (301) 978-8493 Fax (301) 978-8472

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 02/10/2016
By Edward S. Knight
(Name *)

(Title *)
Executive Vice President and General Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

edward.knight@nasdaq.com

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”)[1] and Rule 19b-4 thereunder,[2] The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Nasdaq Rule 7014(g) concerning the national best bid or best offer (“NBBO”) Program and Nasdaq Rule 7018(a), governing fees and credits assessed for execution and routing of securities.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1 and the text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on July 1, 2015. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

Jonathan F. Cayne
Senior Associate General Counsel
Nasdaq, Inc.
(301) 978-8493

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1 15 U.S.C. § 78s(b)(1).

2 17 C.F.R. § 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to amend the NBBO Program in Nasdaq Rule 7014(g) and to amend Nasdaq Rule 7018(a), governing fees and credits assessed for execution and routing of securities listed on Nasdaq,[3] listed on the New York Stock Exchange ("NYSE")[4] and listed on exchanges other than Nasdaq and NYSE[5] ("Tape B") (collectively, the "Tapes").

Specifically, Nasdaq Rule 7014(g) will be amended to add a new credit and to clarify the NBBO Program language to indicate that this new credit will be in addition to any rebate or credit payable under Nasdaq Rule 7018(a) or the Investor Support Program ("ISP"), Qualified Market Maker ("QMM") Program and NBBO Program under Nasdaq Rule 7014. A member will qualify for the additional $0.0001 per share executed credit for displayed quotes/orders (other than supplemental orders or designated retail orders) that provide liquidity priced at $1 or more if the member qualifies for the (i) NBBO Program and (ii) has a ratio of at least 25% NBBO liquidity provided[6] to liquidity provided during the month.

For example, if a member provided liquidity of 0.55% total consolidated volume ("TCV") during the month and provided NBBO liquidity of 0.15% TCV during the

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3 Nasdaq Rule 7018(a)(1).

4 Nasdaq Rule 7018(a)(2).

5 Nasdaq Rule 7018(a)(3).

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

month, the member's ratio would equal 27.27%. The member would meet the NBBO Program criteria (since it was greater than 0.5% TCV threshold set forth in Nasdaq Rule 7014(g)(1)) and because the ratio is greater than the proposed 25% threshold of NBBO liquidity provided to liquidity provided during the month. Therefore, the member would also qualify for the additional $0.0001 per share executed credit. This credit will be in addition to any rebate or credit payable under Rule 7018(a) and the ISP, QMM Program, and NBBO Program under Rule 7014.

Nasdaq also proposes to amend across all three Tapes (Nasdaq Rules 7018(a)(1), (2) and (3)) one of the two criteria that a member must satisfy to qualify for the $0.0030 per share executed credit for adding displayed liquidity. The first prong of the criteria will remain the same and requires that a member must have shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.575% or more of consolidated volume ("Consolidated Volume") during the month. The second prong of the criteria will be amended. Specifically, the second prong requires that 0.15% or more of Consolidated Volume during the month must include shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE. The percentage of shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE will be reduced from 0.15% to 0.10% or more of Consolidated Volume, thus reducing the required activity to achieve the credit. The amended criteria will read for all three Tapes as "member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.575% or more of Consolidated Volume during the month, including shares of liquidity provided with respect to securities that are listed on exchanges other than NASDAQ or NYSE that represent 0.10% or more of Consolidated Volume".

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] 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 its facilities which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[9] Likewise, in NetCoalition v. Securities and Exchange Commission[10] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based

7 15 U.S.C. § 78f(b).

8 15 U.S.C. § 78f(b)(4) and (5).

9 Securities Exchange Act Release No. 34-51808 (June 9, 2005) ("Regulation NMS Adopting Release").

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

approach.[11] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."[12]

Further, "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[13]

The NBBO Program is intended to encourage members to add liquidity at prices that benefit all Nasdaq market participants and the Nasdaq market itself, and to enhance price discovery, by establishing a new NBBO.[14] Specifically, Nasdaq believes that the proposed rule change to Nasdaq Rule 7014(g) that provides for an additional $0.0001 per share executed credit[15] for displayed quotes/orders (other than supplemental orders or designated retail orders) that provide liquidity priced at $1 or more is reasonable because it is in line with other credits provided on Nasdaq, as well as on other exchanges. For

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11 Id. at 534-535.

12 Id. at 537.

13 Id. at 539 (quoting ArcaBook Order, 73 FR at 74782-74783).

14 See Securities Exchange Act Release No. 68209 (November 9, 2012), 77 FR 69519 (November 19, 2012) (SR-NASDAQ-2012-126).

15 The member will receive this additional credit if the member qualifies for the (i) NBBO Program and (ii) has a ratio of at least 25% NBBO liquidity provided of the liquidity provided during the month.

example, both the QMM Program[16] and the ISP[17] have credits of $0.0001 per share executed. The Exchange also believes that the proposed additional credit will serve as an effective incentive to members to provide more liquidity provided from orders (other than Designated Retail Orders, as defined in Nasdaq Rule 7018), that establish the NBBO, and displayed a quantity of at least one round lot at the time of execution. Increasing such liquidity is reflective of the Exchange's desire to improve liquidity and strengthen the NBBO Program.

The Exchange also believes that choosing the ratio of at least 25% NBBO liquidity provided of the liquidity provided during the month will incentivize participants to more aggressively pursue adding liquidity at the NBBO while still offering an attainable goal. This may focus participants on meeting the criteria in a way that relying on solely NBBO specific rebates has not. This proposed change is similar to other market incentive programs that require a certain level of activity in order to be eligible to receive a particular credit. For example, to receive an ISP credit a member is already required to provide a 40% of their liquidity through ISP designated ports (among other criteria).[18]

Additionally, minimum standards of specific activity (e.g., non-display activity and other performance requirements) are also sometimes required to be eligible to receive a particular credit. One example of this is in Nasdaq Rule 7018(a)(1), which states that a member seeking to receive the particular available credit must provide shares of liquidity

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16 See Nasdaq Rule 7014(e) Tier 1.

17 See Nasdaq Rule 7014(c)(2).

18 See Nasdaq Rule 7014(c)(2)(C).

in all securities through one or more of its Nasdaq Market Center MPIDs of more than 0.75% of Consolidated Volume during the month, as well as provide a daily average of at least 5 million shares of non-displayed liquidity.

Also, the clarifying language added to the NBBO Program under Nasdaq Rule 7014(g) regarding the applicability of this new credit is reasonable because it will lessen participant confusion as to how these additional rebates/credits apply. The Exchange believes that the proposed changes to the NBBO Program overall will improve market quality and thus benefits all members.

Nasdaq believes that the proposed rule change is equitable and not unfairly discriminatory because the additional $0.0001 per share executed credit for displayed quotes/orders that provide liquidity priced at $1 or more under the NBBO Program is available to all members on an equal basis and provides an additional credit for activity that improves the Exchange's market quality through increased activity at the NBBO. In this regard, the NBBO Program encourages higher levels of liquidity provision into the price discovery process and is consistent with the overall goals of enhancing market quality. Also, this new credit will be in addition to any rebate or credit payable under Nasdaq Rule 7018(a) or the ISP, QMM Program, and NBBO Program under Nasdaq Rule 7014.

Nasdaq believes that the proposed rule change to Nasdaq Rule 7018(a)(1), (2) and (3) is reasonable because it will further encourage market participant activity and will also support liquidity provision across all three Tapes by making it easier for members to satisfy one of the two criteria to qualify for the $0.0030 per share executed credit for adding displayed liquidity. Specifically, by amending one prong of the criteria to reduce the percentage requirement from 0.15% to 0.10% of shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE. The Exchange believes this will allow more members to receive this credit and thereby incentivize the enhancement of liquidity with regard to displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) on Nasdaq. This, in turn, should positively impact market quality and benefit other Nasdaq members.

The Exchange also believes that the proposed rule change is an equitable allocation and is not unfairly discriminatory because it is reducing across all three Tapes one of the two criteria that a member must satisfy to qualify for the $0.0030 per share executed credit for adding displayed liquidity. Additionally, members who currently qualify for the credit will continue to do so.

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

Nasdaq does not believe that the proposed rule change will result in a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[19] 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 credit opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and credits 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 and credits in response, and because market participants

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[19] 15 U.S.C. § 78f(b)(8).

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 additional $0.0001 per share executed credit for displayed quotes/orders that provide liquidity priced at $1 or more in connection with the NBBO Program under Nasdaq Rule 7014(g), as well as the easing of the criteria under Nasdaq Rule 7018(a) to receive a $0.0030 executed rebate for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity, do not impose a burden on competition because the Exchange's execution services are voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The Exchange believes that the competition among exchanges and other venues will help to drive price improvement and overall execution quality higher for investors.

In sum, if the rule change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[20] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of proposed rule change for publication in the Federal Register.

5. Text of the proposed rule change.

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[20] 15 U.S.C. § 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASDAQ-2016-020)

February __, 2016

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

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 February 10, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 changes to amend Nasdaq Rule 7014(g) concerning the national best bid or best offer ("NBBO") Program and Nasdaq Rule 7018(a), governing fees and credits assessed for execution and routing of securities.

The text of the proposed rule change is available at nasdaq.cchwallstreet.com, at Nasdaq's principal office, and at the Commission's Public Reference Room.

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1 15 U.S.C. § 78s(b)(1).

2 17 C.F.R. § 240.19b-4.

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

In its filing with the Commission, 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

The purpose of the proposed rule change is to amend the NBBO Program in Nasdaq Rule 7014(g) and to amend Nasdaq Rule 7018(a), governing fees and credits assessed for execution and routing of securities listed on Nasdaq,[3] listed on the New York Stock Exchange ("NYSE")[4] and listed on exchanges other than Nasdaq and NYSE[5] ("Tape B") (collectively, the "Tapes").

Specifically, Nasdaq Rule 7014(g) will be amended to add a new credit and to clarify the NBBO Program language to indicate that this new credit will be in addition to any rebate or credit payable under Nasdaq Rule 7018(a) or the Investor Support Program ("ISP"), Qualified Market Maker ("QMM") Program and NBBO Program under Nasdaq Rule 7014. A member will qualify for the additional $0.0001 per share executed credit for displayed quotes/orders (other than supplemental orders or designated retail orders)

3 Nasdaq Rule 7018(a)(1).

4 Nasdaq Rule 7018(a)(2).

5 Nasdaq Rule 7018(a)(3).

that provide liquidity priced at $1 or more if the member qualifies for the (i) NBBO Program and (ii) has a ratio of at least 25% NBBO liquidity provided[6] to liquidity provided during the month.

For example, if a member provided liquidity of 0.55% total consolidated volume ("TCV") during the month and provided NBBO liquidity of 0.15% TCV during the month, the member's ratio would equal 27.27%. The member would meet the NBBO Program criteria (since it was greater than 0.5% TCV threshold set forth in Nasdaq Rule 7014(g)(1)) and because the ratio is greater than the proposed 25% threshold of NBBO liquidity provided to liquidity provided during the month. Therefore, the member would also qualify for the additional $0.0001 per share executed credit. This credit will be in addition to any rebate or credit payable under Rule 7018(a) and the ISP, QMM Program, and NBBO Program under Rule 7014.

Nasdaq also proposes to amend across all three Tapes (Nasdaq Rules 7018(a)(1), (2) and (3)) one of the two criteria that a member must satisfy to qualify for the $0.0030 per share executed credit for adding displayed liquidity. The first prong of the criteria will remain the same and requires that a member must have shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.575% or more of consolidated volume ("Consolidated Volume") during the month. The second prong of the criteria will be amended. Specifically, the second prong requires that 0.15% or more of Consolidated Volume during the month must include shares of liquidity provided with respect to securities that are listed on exchanges other than

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

Nasdaq or NYSE. The percentage of shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE will be reduced from 0.15% to 0.10% or more of Consolidated Volume, thus reducing the required activity to achieve the credit. The amended criteria will read for all three Tapes as "member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.575% or more of Consolidated Volume during the month, including shares of liquidity provided with respect to securities that are listed on exchanges other than NASDAQ or NYSE that represent 0.10% or more of Consolidated Volume".

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] 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 its facilities which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the

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[7] 15 U.S.C. § 78f(b).

[8] 15 U.S.C. § 78f(b)(4) and (5).

market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[9] Likewise, in NetCoalition v. Securities and Exchange Commission[10] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[11] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."[12]

Further, "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[13]

The NBBO Program is intended to encourage members to add liquidity at prices that benefit all Nasdaq market participants and the Nasdaq market itself, and to enhance

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9 Securities Exchange Act Release No. 34-51808 (June 9, 2005) ("Regulation NMS Adopting Release").

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

11 Id. at 534-535.

12 Id. at 537.

13 Id. at 539 (quoting ArcaBook Order, 73 FR at 74782-74783).

price discovery, by establishing a new NBBO.[14] Specifically, Nasdaq believes that the proposed rule change to Nasdaq Rule 7014(g) that provides for an additional $0.0001 per share executed credit[15] for displayed quotes/orders (other than supplemental orders or designated retail orders) that provide liquidity priced at $1 or more is reasonable because it is in line with other credits provided on Nasdaq, as well as on other exchanges. For example, both the QMM Program[16] and the ISP[17] have credits of $0.0001 per share executed. The Exchange also believes that the proposed additional credit will serve as an effective incentive to members to provide more liquidity provided from orders (other than Designated Retail Orders, as defined in Nasdaq Rule 7018), that establish the NBBO, and displayed a quantity of at least one round lot at the time of execution. Increasing such liquidity is reflective of the Exchange's desire to improve liquidity and strengthen the NBBO Program.

The Exchange also believes that choosing the ratio of at least 25% NBBO liquidity provided of the liquidity provided during the month will incentivize participants to more aggressively pursue adding liquidity at the NBBO while still offering an attainable goal. This may focus participants on meeting the criteria in a way that relying on solely NBBO specific rebates has not. This proposed change is similar to other market incentive programs that require a certain level of activity in order to be eligible to

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14 See Securities Exchange Act Release No. 68209 (November 9, 2012), 77 FR 69519 (November 19, 2012) (SR-NASDAQ-2012-126).

15 The member will receive this additional credit if the member qualifies for the (i) NBBO Program and (ii) has a ratio of at least 25% NBBO liquidity provided of the liquidity provided during the month.

16 See Nasdaq Rule 7014(e) Tier 1.

17 See Nasdaq Rule 7014(c)(2).

receive a particular credit. For example, to receive an ISP credit a member is already required to provide a 40% of their liquidity through ISP designated ports (among other criteria).[18]

Additionally, minimum standards of specific activity (e.g., non-display activity and other performance requirements) are also sometimes required to be eligible to receive a particular credit. One example of this is in Nasdaq Rule 7018(a)(1), which states that a member seeking to receive the particular available credit must provide shares of liquidity in all securities through one or more of its Nasdaq Market Center MPIDs of more than 0.75% of Consolidated Volume during the month, as well as provide a daily average of at least 5 million shares of non-displayed liquidity.

Also, the clarifying language added to the NBBO Program under Nasdaq Rule 7014(g) regarding the applicability of this new credit is reasonable because it will lessen participant confusion as to how these additional rebates/credits apply. The Exchange believes that the proposed changes to the NBBO Program overall will improve market quality and thus benefits all members.

Nasdaq believes that the proposed rule change is equitable and not unfairly discriminatory because the additional \$0.0001 per share executed credit for displayed quotes/orders that provide liquidity priced at \$1 or more under the NBBO Program is available to all members on an equal basis and provides an additional credit for activity that improves the Exchange's market quality through increased activity at the NBBO. In this regard, the NBBO Program encourages higher levels of liquidity provision into the price discovery process and is consistent with the overall goals of enhancing market

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[18] See Nasdaq Rule 7014(c)(2)(C).

quality. Also, this new credit will be in addition to any rebate or credit payable under Nasdaq Rule 7018(a) or the ISP, QMM Program, and NBBO Program under Nasdaq Rule 7014.

Nasdaq believes that the proposed rule change to Nasdaq Rule 7018(a)(1), (2) and (3) is reasonable because it will further encourage market participant activity and will also support liquidity provision across all three Tapes by making it easier for members to satisfy one of the two criteria to qualify for the $0.0030 per share executed credit for adding displayed liquidity. Specifically, by amending one prong of the criteria to reduce the percentage requirement from 0.15% to 0.10% of shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE. The Exchange believes this will allow more members to receive this credit and thereby incentivize the enhancement of liquidity with regard to displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) on Nasdaq. This, in turn, should positively impact market quality and benefit other Nasdaq members.

The Exchange also believes that the proposed rule change is an equitable allocation and is not unfairly discriminatory because it is reducing across all three Tapes one of the two criteria that a member must satisfy to qualify for the $0.0030 per share executed credit for adding displayed liquidity. Additionally, members who currently qualify for the credit will continue to do so.

B. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

Nasdaq does not believe that the proposed rule change will result in a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[19] 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 credit opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and credits 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 and credits 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 additional $0.0001 per share executed credit for displayed quotes/orders that provide liquidity priced at $1 or more in connection with the NBBO Program under Nasdaq Rule 7014(g), as well as the easing of the criteria under Nasdaq Rule 7018(a) to receive a $0.0030 executed rebate for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity, do not impose a burden on competition because the Exchange's execution services are voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The Exchange believes that the competition among exchanges and other venues will help to drive price improvement and overall execution quality higher for investors.

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[19] 15 U.S.C. § 78f(b)(8).

In sum, if the rule change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change 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.

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)(ii) of the Act[20]. 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

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20 15 U.S.C. § 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2016-020 on the subject line.

  Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2016-020. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room 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-NASDAQ-2016-020, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett
Deputy Secretary

[21] 17 C.F.R. § 200.30-3(a)(12).

EXHIBIT 5

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

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7014. Market Quality Incentive Programs

Investor Support Program

(a) – (g) No change.

NBBO Program

(g) Nasdaq will provide a rebate per share executed with respect to all other displayed orders (other than Designated Retail Orders, as defined in Rule 7018) in securities priced at $1 or more per share that provide liquidity, establish the NBBO, and displayed a quantity of at least one round lot at the time of execution. The rebate will be in addition to any rebate or credit payable under Rule 7018(a) and the ISP,[and] QMM Program, and NBBO Program under Rule 7014.

To qualify for the $0.0004 per share executed NBBO Program rebate in NYSE-listed securities and in Securities Listed on Exchanges other than Nasdaq and NYSE and the $0.0002 per share executed NBBO Program rebate in Nasdaq-listed Securities, a member must either:

(1) Execute shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represents 0.5% or more of Consolidated Volume during the month, or

(2) Add NOM Market Maker liquidity, as defined in Chapter XV, Section 2 of the Nasdaq Options Market rules, in Penny Pilot Options and/or Non-Penny Pilot Options above 0.90% of total industry customer equity and ETF option ADV contracts per day in a month.

In addition, if a member qualifies for the (i) NBBO Program and (ii) has a ratio of at least 25% NBBO liquidity provided* to liquidity provided during the month, the member will receive an additional $0.0001 per share executed credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity priced at $1 or more. This rebate will be in addition to any rebate or credit payable under Rule 7018(a) and the ISP, QMM Program, and NBBO Program under Rule 7014.

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

(h) – (i) No change.

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7018. Nasdaq Market Center Order Execution and Routing

(a) The following charges shall apply to 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. For purposes of determining a member's shares of liquidity routed, TFTY, MOPB, MOPP, SAVE, SOLV, CART, QDRK, QCST and directed orders are not counted. As used in this rule, the term "Consolidated Volume" shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity.

(1) Fees for Execution and Routing of Orders in Nasdaq-Listed Securities

Charge to enter orders that execute in the Nasdaq Market Center:	
member that executes against resting midpoint liquidity:	$0.0030 per share executed
all other orders that execute in the Nasdaq Market Center:	$0.0030 per share executed
Charge to member entering RTFY order that executes in the Nasdaq Market Center:	$0.0000 per share executed
Charge to member entering RTFY order that executes in a venue other than the Nasdaq Market Center:	$0.0000 per share executed

Charge to member entering STGY, SCAN, SKNY, or SKIP order that executes in a venue other than the Nasdaq Market Center and charge to member entering a LIST order that executes in a venue other than the Nasdaq Market Center, but not in an opening, re-opening, or closing process:	$0.0030 per share executed
Charge or credit to member entering TFTY, MOPB, MOPP, SAVE, SOLV, CART, QDRK, QCST or directed order that executes in a venue other than the Nasdaq Market Center:	Charge of $0.0035 per share executed for directed orders Charge of $0.0030 per share executed for TFTY orders that execute at NASDAQ OMX PSX Charge of $0.0030 per share executed for CART orders that execute at NASDAQ OMX PSX No charge or credit for TFTY, SOLV, CART, or SAVE orders that execute at NASDAQ OMX BX Charge of $0.0030 per share executed for SAVE or SOLV orders that execute at venues other than NASDAQ OMX BX Charge of $0.0035 per share executed for a MOPB or MOPP order Charge of $0.0007 per share executed for TFTY orders that execute on venues other than NASDAQ OMX BX or NASDAQ OMX PSX Charge of $0.0007 per share executed for QCST and QDRK orders, except no charge or credit for QCST orders that execute on NASDAQ OMX BX
Credit to member for displayed quotes/orders (other than Supplemental Orders or Designated	

Retail Orders) that provide liquidity:

Adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 1.15% or more of total industry ADV in the customer clearing range for Equity and ETF option contracts per day in a month on the Nasdaq Options Market	$0.00295 per share executed
member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.575% or more of Consolidated Volume during the month, including shares of liquidity provided with respect to securities that are listed on exchanges other than NASDAQ or NYSE that represent 0.1[5]0% or more of Consolidated Volume:	$0.0030 per share executed

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(2) Fees for Execution and Routing of Securities Listed on NYSE

Charge to enter orders that execute in the Nasdaq Market Center:	
all other orders that execute in the Nasdaq Market Center:	$0.0030 per share executed
firms that execute against resting midpoint liquidity:	$0.0030 per share executed

Charge to member entering RTFY order that executes in the Nasdaq Market Center:	$0.0000 per share executed
Charge to member entering RTFY order that executes in a venue other than the Nasdaq Market Center:	$0.0000 per share executed
Charge to member entering STGY, SCAN, SKNY, or SKIP order that executes in a venue other than the Nasdaq Market Center and charge to member entering a LIST order that executes in a venue other than the Nasdaq Market Center, but not in an opening, re-opening, or closing process:	$0.0030 per share executed
Charge or credit to member entering DOTI, STGY, SCAN, SKNY, or SKIP order that executes in a venue other than the Nasdaq Market Center, and charge to member entering a LIST order that executes in a venue other than the Nasdaq Market Center, but not in an opening, closing, or reopening process:	No charge or credit for DOTI orders that execute in NASDAQ OMX BX $0.0015 per share executed credit for orders that add liquidity at the NYSE after routing $0.0030 fee per share executed for other orders
Charge or credit to member entering TFTY, MOPB, MOPP, SAVE, SOLV, CART, QCST, QDRK or directed order that executes in a venue other than the Nasdaq Market Center:	Charge of $0.0035 per share executed for directed orders Charge of $0.0030 per share executed for CART orders that executed at NASDAQ OMX PSX No charge or credit for TFTY, SOLV, CART, or SAVE orders that execute at NASDAQ OMX BX Charge of $0.0035 per share executed for a MOPB or MOPP

	order For TFTY orders that execute: (i) at venues other than NYSE, NASDAQ OMX BX or NASDAQ OMX PSX, charge of $0.0007 per share executed; or (ii) at the NYSE or NASDAQ OMX PSX, charge of $0.0030 per share executed For SAVE or SOLV orders that execute: (i) at venues other than NASDAQ OMX BX, charge of $0.0030 per share executed Charge of $0.0007 per share executed for QCST and QDRK orders, except no charge or credit for QCST orders that execute on NASDAQ OMX BX
Credit to member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity:	
Adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 1.15% or more of total industry ADV in the customer clearing range for Equity and ETF option contracts per day in a month on the Nasdaq Options Market	$0.00295 per share executed
member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.575% or more of Consolidated Volume during the month, including shares of liquidity provided with respect to securities that are listed on exchanges	$0.0030 per share executed

other than NASDAQ or NYSE that represent 0.1[5]0% or more of Consolidated Volume:	

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(3) Fees for Execution and Routing of Orders in Securities Listed on Exchanges other than Nasdaq and NYSE ("Tape B Securities")

Charge to member entering order that executes in the Nasdaq Market Center:	
all other orders that execute in the Nasdaq Market Center:	$0.0030 per share executed
firms that execute against resting midpoint liquidity:	$0.0030 per share executed
Charge to member entering RTFY order that executes in the Nasdaq Market Center:	$0.0000 per share executed
Charge to member entering RTFY order that executes in a venue other than the Nasdaq Market Center:	$0.0000 per share executed
Charge or credit to member entering DOTI, STGY, SCAN, SKNY, or SKIP order that executes in a venue other than the Nasdaq Market Center, and charge to member entering a LIST order that executes in a venue other than the Nasdaq Market Center, but not in an opening, closing or re-opening process:	No charge or credit for DOTI orders that execute in NASDAQ OMX BX For other orders, charge of $0.0030 per share executed

Charge or credit to member entering TFTY, MOPB, MOPP, SAVE, SOLV, CART, QDRK, QCST or directed order that executes in a venue other than the Nasdaq Market Center:	Charge of $0.0035 per share executed for directed orders Charge of $0.0030 per share executed for TFYY orders that execute at NASDAQ OMX PSX Charge of $0.0030 per share executed for CART orders that execute at NASDAQ OMX PSX No charge or credit for TFTY, SOLV, CART, or SAVE orders that execute at NASDAQ OMX BX Charge of $0.0030 per share executed for SAVE or SOLV orders that execute at venues other than NASDAQ OMX BX Charge of $0.0035 per share executed for a MOPB or MOPP order Charge of $0.0007 per share executed for TFTY orders that execute in venues other than NASDAQ OMX BX or NASDAQ OMX PSX Charge of $0.0007 per share executed for QCST and QDRK, except no charge or credit for QCST orders that execute on NASDAQ OMX BX
Credit to member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity:	
Adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 1.15% or more of total industry ADV in the customer clearing range for Equity and ETF option contracts per day in a month	$0.00295 per share executed

on the Nasdaq Options Market	
member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.575% or more of Consolidated Volume during the month, including shares of liquidity provided with respect to securities that are listed on exchanges other than NASDAQ or NYSE that represent 0.1[5]0% or more of Consolidated Volume:	$0.0030 per share executed

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(4) Fees and Credits for Execution of Orders in Select Symbols No Change

(b) – **(m)** No change.

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