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

File No.* SR - 2016 - * 027
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) *
☑	☐	☐	☐	☑	☐

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)

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

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 proposal to amend Nasdaq Rule 7018, governing fees and credits assessed for execution and routing of securities.

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 02/22/2016

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 7018, 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 Nasdaq pursuant to authority delegated by the Board of Directors of Nasdaq on July 1, 2015. Nasdaq staff will advise the Board of Directors of Nasdaq of any action taken pursuant to delegated authority. No other action by Nasdaq is necessary for the filing of the rule change.

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 CFR § 240.19b-4.

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

a. Purpose

The Exchange proposes 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] (collectively, the "Tapes").

Specifically, the purpose of the proposed rule change is to indicate that Nasdaq will not charge a fee for the use of its recently approved routing option, the Retail Order Process ("RTFY"),[6] regardless of where the execution occurs.[7] The RTFY order routing option is designed to enhance execution quality and benefit retail investors by providing price improvement opportunities to retail order flow.

Members entering RTFY orders, regardless of where the orders execute will not incur a fee if they use this optional routing strategy. Currently, unless the member is eligible for a lower charge to enter orders that execute in the Nasdaq Market Center

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3 Nasdaq Rule 7018(a)(1).

4 Nasdaq Rule 7018(a)(2).

5 Nasdaq Rule 7018(a)(3).

6 See Securities Exchange Act Release No. 76335 (Nov. 3, 2015), 80 FR 69256 (Nov. 9, 2015) (SR-NASDAQ-2015-112).

7 The Exchange proposed RTFY because retail order firms often send non-marketable order flow (i.e., orders that are not executable against the best prices available in the market place based on their limit price) to post and display on exchanges. Some of the orders that have been deemed to be non-marketable by the entering firm become marketable by the time the exchange receives them and ultimately remove liquidity from the exchange order book.

("remove liquidity fee" or "remove rate"),[8] all routing strategies that execute on Nasdaq are charged $0.0030 per share executed. Therefore, the proposed $0.0000 per share executed for orders electing to use RTFY is a reduction from the standard remove rate of $0.0030 per share executed that orders with routing instructions currently face.

The Exchange does not expect an order using RTFY to execute on the Exchange, but Nasdaq will cover this atypical scenario by specifically stating that no fee will be assessed if the order ultimately executes on the Exchange. Currently, if an order removes liquidity from the Exchange, unless specifically exempted in a Nasdaq rule, the standard remove rate applies. In sum, this proposed rule change reduces the remove rate from $0.0030 to $0.0000 per share executed for orders electing to use RTFY and establishes routing fees for RFTY as $0.0000 per share executed.

Members using TFTY, in contrast to RTFY, which is a comparable routing strategy, incurs fees for routing. Members using TFTY are assessed a charge of $0.0030 per share executed for orders that execute at NASDAQ OMX PSX and are assessed a charge of $0.0007 per share executed for orders that execute on venues other than BX or NASDAQ OMX PSX. Orders using TFTY on the Exchange also incur remove liquidity fees. In the case of RTFY, the Exchange intends to provide the RFTY routing option at no charge as an incentive for members to use this new routing strategy. No member that uses this new routing strategy to seek price improvement opportunities for the retail orders that it routes will incur a routing fee. A member that elects not to use this new routing strategy will be assessed the routing fee applicable to the strategy it selected and will be charged the remove rate the member otherwise qualifies for on Nasdaq.

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8 See Nasdaq Rule 7014(d).

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] 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."[11] Likewise, in NetCoalition v. Securities and Exchange Commission[12] ("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.[13] As the court emphasized, the Commission "intended in Regulation NMS that

9 15 U.S.C. § 78f(b).

10 15 U.S.C. § 78f(b)(4) and (5).

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

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

13 Id. at 534-535.

'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."[14]

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'…."[15]

Nasdaq believes that the proposed rule change to Nasdaq Rule 7018(a)(1), (2) and (3) is reasonable because it is an incentive for members to select RTFY and a price reduction versus other order types, routing strategies and services offered by the Exchange and other away venues. Additionally, the new fees of $0.0000 per share executed will apply equally to all members entering RTFY orders that execute in the Nasdaq Market Center, as well as in a venue other than the Nasdaq Market Center. A member that elects not to use this new routing strategy will be assessed charges the member otherwise qualifies for, often $0.0030 per share executed when executing on Nasdaq and ranging from a rebate to a fee when routing to venues other than Nasdaq.

The new fees are being proposed in connection with the recently approved RTFY order routing option under Nasdaq Rule 4758(a)(1)(A)(v) for Designated Retail Orders ("DROs").[16] If a DRO electing the RTFY routing option is not marketable, it will rest on

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14 Id. at 537.

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

16 Supra note 6.

the Exchange book and other Nasdaq members will have the opportunity to interact with the order at its limit price.[17] The RTFY order routing option is designed to enhance execution quality and benefit retail investors by providing price improvement opportunities to retail order flows. The Exchange believes that this new Exchange functionality will enhance coordination and cooperation with market participants and produce a more efficient market because the Exchange believes more retail investor orders will be sent to the Exchange to add liquidity or to obtain price improvement. Increasing retail activity on the Exchange, in turn, benefits all participants through more robust price discover opportunities on Nasdaq.

The lower cost ($0.0000 per share executed) of this routing strategy as compared with other existing routing strategies is reasonable because of the lower costs that Nasdaq is charged by the venues to which the RTFY orders are routed. For the majority of orders routed, Nasdaq believes it will not be charged a fee for the orders that become marketable and route to other market centers using this routing strategy.

Equally important, the $0.0000 per share executed is a fee reduction versus an assessed a charge of $0.0030 per share executed for a member who elects not to use this new routing strategy, as well as a fee reduction versus other choices currently available on Nasdaq. The Exchange believes that the lower cost of this routing strategy is reasonable since it is designed to act as an incentive to encourage members to try this new routing strategy. Members have a wide range of options of where to send their orders and the proposed pricing is influenced by these factors. While Nasdaq believes that this new functionality is novel and desired by market participants, Nasdaq equally

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17 Supra note 7.

believes that the proposed rate of $0.0000 per share executed is the appropriate incentive to encourage market participants to use this innovative order routing strategy in lieu of other choices in the market place. The practice of exchanges offering lower rates for new services or those geared toward investors or customers is not novel. For example, there are a variety of programs that exist today that offer incentives and execution opportunities for retail orders, as long as they use specific programs or functionality.

One such program is the retail price improvement ("RPI") programs that exist on the New York Stock Exchange LLC, NYSE ARCA, Inc., BATS Y-Exchange, Inc., and NASDAQ OMX BX, Inc. ("BX"). For example, on BX a retail order in the RPI program receives higher rebates than an otherwise situated order because of its use of the program's specific order types. Similar to how members currently take advantage of other price reductions, discounts or rebates via volume discounts and tiers, members may elect to use the RTFY routing strategy to receive a reduced fee, just as members may use RPI programs and various order types to receive enhanced rebates or reduced fees. Further, Chicago Board Options Exchange, Incorporated ("CBOE") and NASDAQ PHLX LLC ("Phlx") all offer inventive programs designed to attract customer orders.[18] While not identical to the CBOE and Phlx programs, the proposed rate is an incentive designed to attract member's that act as agent for retail orders to choose RTFY over all other alternatives in the market place in the same manner as the CBOE and Phlx supplemental rebates encourage members that rout customer order flow to choose their respective exchanges for execution. The Exchange believes that offering lower fees, even if for a new routing strategy, is consistent with the Exchange Act.

[18] See CBOE Fee Schedule, Volume Incentive Program; see also Section B of the Phlx Pricing Schedule, Customer Rebate Program.

The Exchange also believes that the proposed rule change is an equitable allocation and is not unfairly discriminatory because the new fees will be applied uniformly across all members that are willing to use Nasdaq's routing services and opt to use the RTFY routing strategy.[19] All members sending DROs may elect to use the RTFY routing strategy when sending orders. Moreover, assessing different rates when a member elects to use a routing strategy but executes on the venue where the order was originally entered in not novel. BX provided a higher rebate to remove liquidity for members if they elected to use specific routing strategies (the “BX filing”).[20] In the BX filing, a member using the BDRK or BCST routing strategy was able to receive a $0.0014 rebate for removing liquidity in the BX Equities System rather than the standard $0.0004 rebate for removing liquidity on the BX Equities System. Thus, the same order (apart from the routing strategy used) was eligible for a different rebate when removing liquidity on BX solely because of its routing strategy. This is similar to the proposed $0.0000 fee for RTFY orders that execute on the Nasdaq Market Center in that the member receives a different rate for an otherwise similar order, but by using a specific routing strategy.

Additionally, the proposed rule change also is not unfairly discriminatory because all members sending DROs to Nasdaq for execution are eligible to use RTFY. Each member may elect to use the RTFY routing strategy as they see fit.

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19 See Securities Exchange Act Release No. 66763 (April 6, 2012), 77 FR 22008 (April 12, 2012) (SR-EDGA-2012-13) (an example of another exchange using a proposed rate of $0.0000 per share executed that is an equitable allocation of reasonable dues, fees, and other charges).

20 See Securities Exchange Act Release No. 69053 (March 7, 2013), 78 FR 15999 (March 13, 2013) (SR-BX-2013-019).

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

The proposed rule change will not result in a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[21] 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 new fees applicable across the Tapes apply to member firms entering RTFY orders that execute in the Nasdaq Market Center, as well as in a venue other than the Nasdaq Market Center (although the proposed new fees are $0.0000 per share executed) 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 end retail investors.

[21] 15 U.S.C. § 78f(b)(8).

In sum, if the 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,[22] 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.

[22] 15 U.S.C. § 78s(b)(3)(A)(ii).

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

The proposed rule change is similar to the rule change covered in the BX filing discussed on page 10 of this filing.[23]

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. Completed notice of proposed rule change for publication in the Federal Register.

5. Text of the proposed rule change.

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[23] Supra note 20.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASDAQ-2016-027)

February __, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend 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 22, 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 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.

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

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1 15 U.S.C. § 78s(b)(1).

2 17 CFR § 240.19b-4.

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 Exchange proposes 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] (collectively, the "Tapes").

Specifically, the purpose of the proposed rule change is to indicate that Nasdaq will not charge a fee for the use of its recently approved routing option, the Retail Order Process ("RTFY"),[6] regardless of where the execution occurs.[7] The RTFY order routing option is designed to enhance execution quality and benefit retail investors by providing price improvement opportunities to retail order flow.

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3 Nasdaq Rule 7018(a)(1).

4 Nasdaq Rule 7018(a)(2).

5 Nasdaq Rule 7018(a)(3).

6 See Securities Exchange Act Release No. 76335 (Nov. 3, 2015), 80 FR 69256 (Nov. 9, 2015) (SR-NASDAQ-2015-112).

7 The Exchange proposed RTFY because retail order firms often send non-marketable order flow (i.e., orders that are not executable against the best prices available in the market place based on their limit price) to post and display on exchanges. Some of the orders that have been deemed to be non-marketable by the entering firm become marketable by the time the exchange receives them and ultimately remove liquidity from the exchange order book.

Members entering RTFY orders, regardless of where the orders execute will not incur a fee if they use this optional routing strategy. Currently, unless the member is eligible for a lower charge to enter orders that execute in the Nasdaq Market Center ("remove liquidity fee" or "remove rate"),[8] all routing strategies that execute on Nasdaq are charged $0.0030 per share executed. Therefore, the proposed $0.0000 per share executed for orders electing to use RTFY is a reduction from the standard remove rate of $0.0030 per share executed that orders with routing instructions currently face.

The Exchange does not expect an order using RTFY to execute on the Exchange, but Nasdaq will cover this atypical scenario by specifically stating that no fee will be assessed if the order ultimately executes on the Exchange. Currently, if an order removes liquidity from the Exchange, unless specifically exempted in a Nasdaq rule, the standard remove rate applies. In sum, this proposed rule change reduces the remove rate from $0.0030 to $0.0000 per share executed for orders electing to use RTFY and establishes routing fees for RFTY as $0.0000 per share executed.

Members using TFTY, in contrast to RTFY, which is a comparable routing strategy, incurs fees for routing. Members using TFTY are assessed a charge of $0.0030 per share executed for orders that execute at NASDAQ OMX PSX and are assessed a charge of $0.0007 per share executed for orders that execute on venues other than BX or NASDAQ OMX PSX. Orders using TFTY on the Exchange also incur remove liquidity fees. In the case of RTFY, the Exchange intends to provide the RFTY routing option at no charge as an incentive for members to use this new routing strategy. No member that uses this new routing strategy to seek price improvement opportunities for the retail

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8 See Nasdaq Rule 7014(d).

orders that it routes will incur a routing fee. A member that elects not to use this new routing strategy will be assessed the routing fee applicable to the strategy it selected and will be charged the remove rate the member otherwise qualifies for on Nasdaq.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] 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."[11] Likewise, in NetCoalition v. Securities and Exchange Commission[12] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of

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[9] 15 U.S.C. § 78f(b).

[10] 15 U.S.C. § 78f(b)(4) and (5).

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

[12] NetCoalition v. SEC. 615 F.3d 525 (D.C. Cir. 2010).

market data fees against a challenge claiming that Congress mandated a cost-based approach.[13] 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."[14]

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'…."[15]

Nasdaq believes that the proposed rule change to Nasdaq Rule 7018(a)(1), (2) and (3) is reasonable because it is an incentive for members to select RTFY and a price reduction versus other order types, routing strategies and services offered by the Exchange and other away venues. Additionally, the new fees of $0.0000 per share executed will apply equally to all members entering RTFY orders that execute in the Nasdaq Market Center, as well as in a venue other than the Nasdaq Market Center. A member that elects not to use this new routing strategy will be assessed charges the member otherwise qualifies for, often $0.0030 per share executed when executing on Nasdaq and ranging from a rebate to a fee when routing to venues other than Nasdaq.

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13 Id. at 534-535.

14 Id. at 537.

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

The new fees are being proposed in connection with the recently approved RTFY order routing option under Nasdaq Rule 4758(a)(1)(A)(v) for Designated Retail Orders ("DROs").[16] If a DRO electing the RTFY routing option is not marketable, it will rest on the Exchange book and other Nasdaq members will have the opportunity to interact with the order at its limit price.[17] The RTFY order routing option is designed to enhance execution quality and benefit retail investors by providing price improvement opportunities to retail order flows. The Exchange believes that this new Exchange functionality will enhance coordination and cooperation with market participants and produce a more efficient market because the Exchange believes more retail investor orders will be sent to the Exchange to add liquidity or to obtain price improvement. Increasing retail activity on the Exchange, in turn, benefits all participants through more robust price discover opportunities on Nasdaq.

The lower cost ($0.0000 per share executed) of this routing strategy as compared with other existing routing strategies is reasonable because of the lower costs that Nasdaq is charged by the venues to which the RTFY orders are routed. For the majority of orders routed, Nasdaq believes it will not be charged a fee for the orders that become marketable and route to other market centers using this routing strategy.

Equally important, the $0.0000 per share executed is a fee reduction versus an assessed a charge of $0.0030 per share executed for a member who elects not to use this new routing strategy, as well as a fee reduction versus other choices currently available on Nasdaq. The Exchange believes that the lower cost of this routing strategy is

16 Supra note 6.

17 Supra note 7.

reasonable since it is designed to act as an incentive to encourage members to try this new routing strategy. Members have a wide range of options of where to send their orders and the proposed pricing is influenced by these factors. While Nasdaq believes that this new functionality is novel and desired by market participants, Nasdaq equally believes that the proposed rate of $0.0000 per share executed is the appropriate incentive to encourage market participants to use this innovative order routing strategy in lieu of other choices in the market place. The practice of exchanges offering lower rates for new services or those geared toward investors or customers is not novel. For example, there are a variety of programs that exist today that offer incentives and execution opportunities for retail orders, as long as they use specific programs or functionality.

One such program is the retail price improvement ("RPI") programs that exist on the New York Stock Exchange LLC, NYSE ARCA, Inc., BATS Y-Exchange, Inc., and NASDAQ OMX BX, Inc. ("BX"). For example, on BX a retail order in the RPI program receives higher rebates than an otherwise situated order because of its use of the program's specific order types. Similar to how members currently take advantage of other price reductions, discounts or rebates via volume discounts and tiers, members may elect to use the RTFY routing strategy to receive a reduced fee, just as members may use RPI programs and various order types to receive enhanced rebates or reduced fees. Further, Chicago Board Options Exchange, Incorporated ("CBOE") and NASDAQ PHLX LLC ("Phlx") all offer inventive programs designed to attract customer orders.[18] While not identical to the CBOE and Phlx programs, the proposed rate is an incentive designed to attract member's that act as agent for retail orders to choose RTFY over all

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18 See CBOE Fee Schedule, Volume Incentive Program; see also Section B of the Phlx Pricing Schedule, Customer Rebate Program.

other alternatives in the market place in the same manner as the CBOE and Phlx supplemental rebates encourage members that rout customer order flow to choose their respective exchanges for execution. The Exchange believes that offering lower fees, even if for a new routing strategy, is consistent with the Exchange Act.

The Exchange also believes that the proposed rule change is an equitable allocation and is not unfairly discriminatory because the new fees will be applied uniformly across all members that are willing to use Nasdaq's routing services and opt to use the RTFY routing strategy.[19] All members sending DROs may elect to use the RTFY routing strategy when sending orders. Moreover, assessing different rates when a member elects to use a routing strategy but executes on the venue where the order was originally entered in not novel. BX provided a higher rebate to remove liquidity for members if they elected to use specific routing strategies (the "BX filing").[20] In the BX filing, a member using the BDRK or BCST routing strategy was able to receive a $0.0014 rebate for removing liquidity in the BX Equities System rather than the standard $0.0004 rebate for removing liquidity on the BX Equities System. Thus, the same order (apart from the routing strategy used) was eligible for a different rebate when removing liquidity on BX solely because of its routing strategy. This is similar to the proposed $0.0000 fee for RTFY orders that execute on the Nasdaq Market Center in that the

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19 See Securities Exchange Act Release No. 66763 (April 6, 2012), 77 FR 22008 (April 12, 2012) (SR-EDGA-2012-13) (an example of another exchange using a proposed rate of $0.0000 per share executed that is an equitable allocation of reasonable dues, fees, and other charges).

20 See Securities Exchange Act Release No. 69053 (March 7, 2013), 78 FR 15999 (March 13, 2013) (SR-BX-2013-019).

member receives a different rate for an otherwise similar order, but by using a specific routing strategy.

Additionally, the proposed rule change also is not unfairly discriminatory because all members sending DROs to Nasdaq for execution are eligible to use RTFY. Each member may elect to use the RTFY routing strategy as they see fit.

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

The proposed rule change will not result in a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[21] 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 new fees applicable across the Tapes apply to member firms entering RTFY orders that execute in the Nasdaq Market Center, as well as in a venue other than the Nasdaq Market Center (although the proposed new fees are

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[21] 15 U.S.C. § 78f(b)(8).

$0.0000 per share executed) 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 end retail investors.

In sum, if the 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[22]. 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

22 15 U.S.C. 78s(b)(3)(A)(ii).

the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2016-027 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-2016-027. 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-2016-027, 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.[23]

Robert W. Errett
Deputy Secretary

[23] 17 CFR § 200.30-3(a)(12).

EXHIBIT 5

The text of the proposed rule change is below. Proposed new language is underlined.

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
<u>Charge to member entering RTFY order that executes in the Nasdaq Market Center:</u>	<u>$0.0000 per share executed</u>
<u>Charge to member entering RTFY order that executes in a venue other than the Nasdaq Market Center:</u>	<u>$0.0000 per share executed</u>

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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
<u>Charge to member entering RTFY order that executes in the Nasdaq Market Center:</u>	<u>$0.0000 per share executed</u>
<u>Charge to member entering RTFY order that executes in a venue other than the Nasdaq Market Center:</u>	<u>$0.0000 per share executed</u>

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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

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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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