

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 26	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2016 - * 153	Amendment No. (req. for Amendments *)
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Filing by NASDAQ Stock Market  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

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

A proposal to amend Nasdaq Rule 7014 and the Nasdaq Growth Program.

**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 * Andrew	Last Name * Madar
Title * Senior Associate General Counsel	
E-mail * andrew.madar@nasdaq.com	
Telephone * (301) 978-8420	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.

(Title \*)

Date 11/01/2016	Executive Vice President and General Counsel
By Edward S. Knight	
(Name *)	

edward.knight@nasdaq.com

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.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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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 \***

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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 \***

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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**

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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**

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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**

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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**

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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**

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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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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 and the Nasdaq Growth Program.

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.

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

Andrew Madar  
Senior Associate General Counsel  
Nasdaq, Inc.  
(301) 978-8420

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<sup>1</sup> 15 U.S.C. § 78s(b)(1).

<sup>2</sup> 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 7014, Market Quality Incentive Programs, to modify the volume threshold for the method under which members may currently qualify for the Program. The Exchange also proposes to add another method through which members may qualify for the Nasdaq Growth Program ("Program"), and to modify the manner in which a member's Growth Baseline is updated.

Nasdaq recently introduced the Nasdaq Growth Program.<sup>3</sup> The purpose of the Program is to provide a credit per share executed for members that meet certain growth criteria. The credit is designed to provide an incentive to members that do not qualify for other credits under Rule 7018 in excess of the Program credit to increase their participation on the Exchange. The Program will provide a member a \$0.0025 per share executed credit in securities priced \$1 or more per share if the member meets certain criteria. The credit will be provided in lieu of other credits provided to the member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity under Rule 7018, if the credit under the Nasdaq Growth Program is greater than the credit attained under Rule 7018. To be eligible for the credit a member must: (i) add greater than 750,000 shares a day on average during the month through one or more of its Nasdaq Market Center MPIDs; and (ii) increase its shares of liquidity

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<sup>3</sup> See Securities Exchange Act Release No. 78977 (September 29, 2016), 81 FR 69140 (October 5, 2016) (SR-NASDAQ-2016-132).

provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 25% versus the member's Growth Baseline.<sup>4</sup>

Rule 7014 defines the Growth Baseline as the member's shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percentage of Consolidated Volume during the last month a member qualified for the Program. If a member has not qualified for a credit under the Program, its August 2016 share of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume will be used to establish a baseline.

As noted above, Nasdaq is proposing to modify the volume requirement that members must satisfy in order to qualify for the Program under the current method. Nasdaq also proposes to add another method through which members may qualify for the Program. Nasdaq is therefore re-numbering Rule 7014(j)(ii) as Rule 7014(j)(ii)(A) and (B) accordingly.

Accordingly, Rule 7014(j)(ii)(A) will now state that, in order to be eligible for the rebate, the member must increase its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 20% versus the member's Growth Baseline. Nasdaq notes that the purpose of the Program is to increase participation on the Exchange by incentivizing members to transact more volume on the Exchange. Nasdaq believes that changing the volume requirement from 25% to 20% will make it easier for members to qualify for the Program, thereby creating a greater incentive for members to increase their activity on the Exchange.

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<sup>4</sup> As part of this proposed rule change, Nasdaq is amending the rule text to add the conjunctive "and" between these two conditions to make clear that a member must satisfy both conditions in order to qualify for the Program.

New Rule 7014(j)(ii)(B) provides that a member may qualify for the Program if it met the criteria set forth in Rule 7014(j)(ii)(A) in the preceding month and maintained or increased its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume compared to the preceding month.

Previously, a member would have been required to increase its shares of liquidity by 25% (now 20%) each month versus the member's Growth Baseline in order to qualify for the Program. Assuming the member satisfied the criteria set forth in Rule 7014(j)(ii)(A) in the previous month, Rule 7014(j)(ii)(B) will allow a member to continue to qualify for the program as long as it maintains or increases its shares of liquidity in the current month. Since Rule 7014(j)(ii)(B) requires that the member met the criteria in Rule 7014(j)(ii)(A) in the preceding month, a member would not be able to use Rule 7014(j)(ii)(B) in successive months.

Third, Nasdaq proposes to modify the calculation of a member's baseline. As noted above, the Growth Baseline is defined as the member's shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume during the last month a member qualified for the Nasdaq Growth Program. If a member has not qualified for a credit under the Program, its August 2016 share of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume will be used to establish a baseline. Once the member qualifies for the Program, the August 2016 baseline is replaced by the volume of that qualifying month, which becomes the member's updated baseline.

Nasdaq is proposing to add language to the definition of the Growth Baseline to reflect the fact that a member's baseline will only be updated when a member qualifies

for the rebate under Rule 7014(j)(ii)(A). A member may only qualify for the rebate under Rule 7014(j)(ii)(A) if it increases its volume by 20% over its baseline, whereas a member would qualify for the rebate under Rule 7014(j)(ii)(B) if it maintained or increased its volume in comparison to the previous month. Nasdaq believes that adjusting the member's baseline when the growth of the member's monthly volume meets or exceeds 20% is appropriate because this is a clearly defined threshold. Nasdaq also notes that members cannot qualify for the rebate under Rule 7014(j)(ii)(B) in successive months, so Nasdaq does not anticipate a scenario where a member qualifies for a rebate for several months without having its baseline adjusted accordingly.

The following example illustrates the proposed changes:

- In August 2016, the firm's shares of liquidity as a percentage of Consolidated Volume is 0.03%. This is the firm's Growth Baseline.
- In September 2016, the firm's shares of liquidity as a percentage of Consolidated Volume is 0.035%. The member does not qualify for an applicable rebate, and the member's Growth Baseline remains 0.03% (its August 2016 volume).
- In October 2016, the firm's shares of liquidity as a percentage of Consolidated Volume is 0.04%. Since the firm has increased its volume by more than 20% in comparison to its Growth Baseline, the firm qualifies for the credit. Since the firm has qualified for the credit, its Growth Baseline is now 0.04%.
- In November 2016, the firm's shares of liquidity as a percentage of Consolidated Volume is 0.041%. Although the firm did not increase its

volume by 20% in comparison to its Growth Baseline, it still qualifies for the credit, since Rule 7014(j)(ii)(B) allows a member to continue to qualify for the Program if it met the criteria in Rule 7014(j)(ii)(A) in the previous month, and if it maintains or increases its shares of liquidity in the current month. Since the firm qualified for the credit under Rule 7014(j)(ii)(B), the Growth Baseline does not update.

- A member may only qualify for the rebate under Rule 7014(j)(ii)(B) if it satisfied the criteria of Rule 7014(j)(ii)(A) in the preceding month. In order to be eligible for the December 2016 rebate, the firm would therefore have to increase its volume by more than 20% in comparison to its Growth Baseline (which is October 2016).

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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<sup>5</sup> 15 U.S.C. § 78f(b).

<sup>6</sup> 15 U.S.C. § 78f(b)(4) and (5).



The Exchange notes that the amount of the credits provided under the Program is unchanged.<sup>7</sup> Nasdaq believes that the proposed changes are equitably allocated among members, and are not designed to permit unfair discrimination. Nasdaq notes that, in decreasing the volume threshold from 25% to 20% in order to qualify for the Program under Rule 7014(j)(ii)(A), and in proposing an alternate method under which members may qualify for the Program, Nasdaq is making the Program and its associated credits more accessible to members. At the same time, the purpose of the Program is to increase members' participation on the Exchange by offering a credit to members that meet the volume requirements. Nasdaq believes that the proposed changes strike an appropriate and equitable balance by expanding the number of members that may be eligible for the Program while continuing to incentivize other members that may not currently qualify for the Program to transact greater volume in order to become eligible for the Program.

In amending Rule 7014(j)(ii)(A) so that members may qualify for the Program by increasing their volume in a given month by 20% over their baseline, Nasdaq also notes that this proposed change merely changes the member's trading volume necessary to qualify for the program under Rule 7014(j)(ii)(A), and does not otherwise differentiate among members who may qualify for the Program.

Nasdaq also believes that Rule 7014(j)(ii)(B) is equitably allocated and not unfairly discriminatory. In adopting Rule 7014(j)(ii)(B), Nasdaq is providing all members that otherwise qualify for the Program with an alternate way in which they may qualify for the Program's rebate in a given month by permitting members to either

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<sup>7</sup> See Securities Exchange Act Release No. 78977 (September 29, 2016), 81 FR 69140 (October 5, 2016) (SR-NASDAQ-2016-132) (establishing the Nasdaq Growth Program and its credit structure).

maintain or increase their volume in comparison to the preceding month. Given, however, that the purpose of the Program is to increase a member's trading activity on the Exchange, Nasdaq believes that it is equitable and not unfairly discriminatory to only permit members to qualify for the rebate in this manner if they have qualified for the rebate in the preceding month under Rule 7014(j)(ii)(A) (increasing their volume by 20% or more in comparison to the Growth Baseline). Similarly, the member will be required to satisfy the criteria in Rule 7014(j)(ii)(A) in order to qualify for the rebate in the following month, which means that it will be required to increase its volume by 20% in comparison to its Growth Baseline. Nasdaq believes this requirement is equitable and not unfairly discriminatory because it furthers the aims of the Program by encouraging increased volume on the Exchange. Nasdaq also notes that these requirements will apply equally to all members.

Nasdaq believes that updating a member's Growth Baseline when the member has qualified for the rebate pursuant to Rule 7014(j)(ii)(A) by increasing its volume by 20% over its previous Growth Baseline is equitable and not unfairly discriminatory because this is a clearly defined threshold that applies equally to all members that qualify for the rebate under Rule 7014(j)(ii)(A). Nasdaq also notes that members cannot qualify for the rebate under Rule 7014(j)(ii)(B) in successive months, so Nasdaq does not anticipate a scenario where a member qualifies for a rebate for several months without having its baseline adjusted accordingly.

Finally, Nasdaq notes that participation in the Program is voluntary, and that the proposed changes apply to all members that otherwise qualify for the Program, e.g.,

members that add greater than 750,000 shares a day on average during the month through one or more of its Nasdaq Market Center MPIDs.

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.<sup>8</sup> 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 addition, 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 this instance, participation in the Program is voluntary. The proposed changes will lower the volume threshold for the current method of qualifying for the Program, and will provide members with another way in which they may qualify for the Program. These changes will apply equally to all members who otherwise qualify for the Program.

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<sup>8</sup> 15 U.S.C. § 78f(b)(8).

Similarly, the proposed method of updating the Growth Baseline will be uniformly applied across members.

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,<sup>9</sup> 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

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<sup>9</sup> 15 U.S.C. § 78s(b)(3)(A)(ii).

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

5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2016-153)

November \_\_, 2016

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 1, 2016, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Nasdaq Rule 7014, Market Quality Incentive Programs, to modify the volume threshold for the method under which members may currently qualify for the Nasdaq Growth Program (“Program”). The Exchange also proposes to add another method through which members may qualify for the Program, and to modify the manner in which a member’s Growth Baseline is updated.

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

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

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Nasdaq Rule 7014, Market Quality Incentive Programs, to modify the volume threshold for the method under which members may currently qualify for the Program. The Exchange also proposes to add another method through which members may qualify for the Nasdaq Growth Program ("Program"), and to modify the manner in which a member's Growth Baseline is updated.

Nasdaq recently introduced the Nasdaq Growth Program.<sup>3</sup> The purpose of the Program is to provide a credit per share executed for members that meet certain growth criteria. The credit is designed to provide an incentive to members that do not qualify for other credits under Rule 7018 in excess of the Program credit to increase their participation on the Exchange. The Program will provide a member a \$0.0025 per share

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<sup>3</sup> See Securities Exchange Act Release No. 78977 (September 29, 2016), 81 FR 69140 (October 5, 2016) (SR-NASDAQ-2016-132).

executed credit in securities priced \$1 or more per share if the member meets certain criteria. The credit will be provided in lieu of other credits provided to the member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity under Rule 7018, if the credit under the Nasdaq Growth Program is greater than the credit attained under Rule 7018. To be eligible for the credit a member must: (i) add greater than 750,000 shares a day on average during the month through one or more of its Nasdaq Market Center MPIDs; and (ii) increase its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 25% versus the member's Growth Baseline.<sup>4</sup>

Rule 7014 defines the Growth Baseline as the member's shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percentage of Consolidated Volume during the last month a member qualified for the Program. If a member has not qualified for a credit under the Program, its August 2016 share of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume will be used to establish a baseline.

As noted above, Nasdaq is proposing to modify the volume requirement that members must satisfy in order to qualify for the Program under the current method. Nasdaq also proposes to add another method through which members may qualify for the Program. Nasdaq is therefore re-numbering Rule 7014(j)(ii) as Rule 7014(j)(ii)(A) and (B) accordingly.

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<sup>4</sup> As part of this proposed rule change, Nasdaq is amending the rule text to add the conjunctive "and" between these two conditions to make clear that a member must satisfy both conditions in order to qualify for the Program.



Accordingly, Rule 7014(j)(ii)(A) will now state that, in order to be eligible for the rebate, the member must increase its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 20% versus the member's Growth Baseline. Nasdaq notes that the purpose of the Program is to increase participation on the Exchange by incentivizing members to transact more volume on the Exchange. Nasdaq believes that changing the volume requirement from 25% to 20% will make it easier for members to qualify for the Program, thereby creating a greater incentive for members to increase their activity on the Exchange.

New Rule 7014(j)(ii)(B) provides that a member may qualify for the Program if it met the criteria set forth in Rule 7014(j)(ii)(A) in the preceding month and maintained or increased its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume compared to the preceding month.

Previously, a member would have been required to increase its shares of liquidity by 25% (now 20%) each month versus the member's Growth Baseline in order to qualify for the Program. Assuming the member satisfied the criteria set forth in Rule 7014(j)(ii)(A) in the previous month, Rule 7014(j)(ii)(B) will allow a member to continue to qualify for the program as long as it maintains or increases its shares of liquidity in the current month. Since Rule 7014(j)(ii)(B) requires that the member met the criteria in Rule 7014(j)(ii)(A) in the preceding month, a member would not be able to use Rule 7014(j)(ii)(B) in successive months.

Third, Nasdaq proposes to modify the calculation of a member's baseline. As noted above, the Growth Baseline is defined as the member's shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of

Consolidated Volume during the last month a member qualified for the Nasdaq Growth Program. If a member has not qualified for a credit under the Program, its August 2016 share of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume will be used to establish a baseline. Once the member qualifies for the Program, the August 2016 baseline is replaced by the volume of that qualifying month, which becomes the member's updated baseline.

Nasdaq is proposing to add language to the definition of the Growth Baseline to reflect the fact that a member's baseline will only be updated when a member qualifies for the rebate under Rule 7014(j)(ii)(A). A member may only qualify for the rebate under Rule 7014(j)(ii)(A) if it increases its volume by 20% over its baseline, whereas a member would qualify for the rebate under Rule 7014(j)(ii)(B) if it maintained or increased its volume in comparison to the previous month. Nasdaq believes that adjusting the member's baseline when the growth of the member's monthly volume meets or exceeds 20% is appropriate because this is a clearly defined threshold. Nasdaq also notes that members cannot qualify for the rebate under Rule 7014(j)(ii)(B) in successive months, so Nasdaq does not anticipate a scenario where a member qualifies for a rebate for several months without having its baseline adjusted accordingly.

The following example illustrates the proposed changes:

- In August 2016, the firm's shares of liquidity as a percentage of Consolidated Volume is 0.03%. This is the firm's Growth Baseline.
- In September 2016, the firm's shares of liquidity as a percentage of Consolidated Volume is 0.035%. The member does not qualify for an

applicable rebate, and the member's Growth Baseline remains 0.03% (its August 2016 volume).

- In October 2016, the firm's shares of liquidity as a percentage of Consolidated Volume is 0.04%. Since the firm has increased its volume by more than 20% in comparison to its Growth Baseline, the firm qualifies for the credit. Since the firm has qualified for the credit, its Growth Baseline is now 0.04%.
- In November 2016, the firm's shares of liquidity as a percentage of Consolidated Volume is 0.041%. Although the firm did not increase its volume by 20% in comparison to its Growth Baseline, it still qualifies for the credit, since Rule 7014(j)(ii)(B) allows a member to continue to qualify for the Program if it met the criteria in Rule 7014(j)(ii)(A) in the previous month, and if it maintains or increases its shares of liquidity in the current month. Since the firm qualified for the credit under Rule 7014(j)(ii)(B), the Growth Baseline does not update.
- A member may only qualify for the rebate under Rule 7014(j)(ii)(B) if it satisfied the criteria of Rule 7014(j)(ii)(A) in the preceding month. In order to be eligible for the December 2016 rebate, the firm would therefore have to increase its volume by more than 20% in comparison to its Growth Baseline (which is October 2016).

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes that the amount of the credits provided under the Program is unchanged.<sup>7</sup> Nasdaq believes that the proposed changes are equitably allocated among members, and are not designed to permit unfair discrimination. Nasdaq notes that, in decreasing the volume threshold from 25% to 20% in order to qualify for the Program under Rule 7014(j)(ii)(A), and in proposing an alternate method under which members may qualify for the Program, Nasdaq is making the Program and its associated credits more accessible to members. At the same time, the purpose of the Program is to increase members' participation on the Exchange by offering a credit to members that meet the volume requirements. Nasdaq believes that the proposed changes strike an appropriate and equitable balance by expanding the number of members that may be eligible for the Program while continuing to incentivize other members that may not currently qualify for the Program to transact greater volume in order to become eligible for the Program.

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<sup>5</sup> 15 U.S.C. § 78f(b).

<sup>6</sup> 15 U.S.C. § 78f(b)(4) and (5).

<sup>7</sup> See Securities Exchange Act Release No. 78977 (September 29, 2016), 81 FR 69140 (October 5, 2016) (SR-NASDAQ-2016-132) (establishing the Nasdaq Growth Program and its credit structure).

In amending Rule 7014(j)(ii)(A) so that members may qualify for the Program by increasing their volume in a given month by 20% over their baseline, Nasdaq also notes that this proposed change merely changes the member's trading volume necessary to qualify for the program under Rule 7014(j)(ii)(A), and does not otherwise differentiate among members who may qualify for the Program.

Nasdaq also believes that Rule 7014(j)(ii)(B) is equitably allocated and not unfairly discriminatory. In adopting Rule 7014(j)(ii)(B), Nasdaq is providing all members that otherwise qualify for the Program with an alternate way in which they may qualify for the Program's rebate in a given month by permitting members to either maintain or increase their volume in comparison to the preceding month. Given, however, that the purpose of the Program is to increase a member's trading activity on the Exchange, Nasdaq believes that it is equitable and not unfairly discriminatory to only permit members to qualify for the rebate in this manner if they have qualified for the rebate in the preceding month under Rule 7014(j)(ii)(A) (increasing their volume by 20% or more in comparison to the Growth Baseline). Similarly, the member will be required to satisfy the criteria in Rule 7014(j)(ii)(A) in order to qualify for the rebate in the following month, which means that it will be required to increase its volume by 20% in comparison to its Growth Baseline. Nasdaq believes this requirement is equitable and not unfairly discriminatory because it furthers the aims of the Program by encouraging increased volume on the Exchange. Nasdaq also notes that these requirements will apply equally to all members.

Nasdaq believes that updating a member's Growth Baseline when the member has qualified for the rebate pursuant to Rule 7014(j)(ii)(A) by increasing its volume by 20%

over its previous Growth Baseline is equitable and not unfairly discriminatory because this is a clearly defined threshold that applies equally to all members that qualify for the rebate under Rule 7014(j)(ii)(A). Nasdaq also notes that members cannot qualify for the rebate under Rule 7014(j)(ii)(B) in successive months, so Nasdaq does not anticipate a scenario where a member qualifies for a rebate for several months without having its baseline adjusted accordingly.

Finally, Nasdaq notes that participation in the Program is voluntary, and that the proposed changes apply to all members that otherwise qualify for the Program, e.g., members that add greater than 750,000 shares a day on average during the month through one or more of its Nasdaq Market Center MPIDs.

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.<sup>8</sup> 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

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<sup>8</sup> 15 U.S.C. § 78f(b)(8).

Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In addition, 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 this instance, participation in the Program is voluntary. The proposed changes will lower the volume threshold for the current method of qualifying for the Program, and will provide members with another way in which they may qualify for the Program. These changes will apply equally to all members who otherwise qualify for the Program. Similarly, the proposed method of updating the Growth Baseline will be uniformly applied across members.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>9</sup>

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2016-153 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-2016-153. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2016-153 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.<sup>10</sup>

Robert W. Errett  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**The NASDAQ STOCK Market Rules**

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**7014. Market Quality Incentive Programs**

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**Nasdaq Growth Program**

(j) Nasdaq will provide a credit per share executed in securities priced at \$1 or more per share for members meeting certain growth criteria.

This credit will be provided in lieu of Credit to member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity under rule 7018 if the credit under this program is greater than the credit attained under 7018. The credit under this program will be \$0.0025 per share executed. To be eligible for the rebate a member must:

- (i) Add greater than 750,000 shares a day on average during the month through one or more of its Nasdaq Market Center MPIDs; and
- (ii) (A) Increase its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 20[5]% versus the member's Growth Baseline or (B) have met the criteria in Rule 7014(j)(ii)(A) in the preceding month and maintained or increased its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume compared to the preceding month.

The Growth Baseline will be defined as the member's shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume during the last month a member qualified for the Nasdaq Growth Program under Rule 7014(j)(ii)(A). If a member has not qualified for a credit under this program, its August 2016 share of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume will be used to establish a baseline.

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