

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71279; File No. SR-NASDAQ-2013-166]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Modifications to Fees and Credits Under Rules 7014 and 7018

January 9, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 30, 2013, The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASDAQ is proposing to make changes to its schedule of fees and credits applicable to execution of orders under Rule 7018, and its Investor Support Program (“ISP”) of credits under Rule 7014. NASDAQ proposes to implement the proposed rule change on January 2, 2014. The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

##### 1. Purpose

NASDAQ is proposing to make two pricing changes, effective January 2, 2014. First, NASDAQ is modifying the ISP by eliminating one of the set of criteria under which a member may qualify for a \$0.0001 credit under the program; the change reflects the fact that members have not, in the recent past, qualified for the program under the set of criteria that is being eliminated, and therefore the change will not affect ISP participants in any respect. The ISP enables NASDAQ members to earn a monthly fee credit for providing additional liquidity to NASDAQ and increasing the NASDAQ-traded volume of what are generally considered to be retail and institutional investor orders in exchange-traded securities (“targeted liquidity”). Participants in the ISP are required to designate specific NASDAQ order entry ports for use under the ISP and to meet specified criteria focused on market participation, liquidity provision, and high rates of order execution. Currently, a member that participates in the ISP receives a credit of \$0.00005, \$0.0001, or \$0.0002 per share with respect to the number of shares of displayed liquidity provided by the member that execute at \$1 or more per share.<sup>3</sup> The precise credit rate is determined by factors designed to measure the degree of the member’s participation in the Nasdaq Market Center and the percentage of orders that it enters that execute—its “ISP Execution Ratio”—which is seen as indicative of retail or institutional participation.

Under the set of criteria that is being eliminated, a member might qualify for a credit of \$0.0002 per share with respect to shares of displayed liquidity executed at a price of \$1 or more and entered through ISP-designated ports, and \$0.00005 per share with respect to all other shares of displayed liquidity executed at a price of \$1 or more, if the following conditions were met:

(1) The member’s Participation Ratio<sup>4</sup> for the month exceeds its Baseline

<sup>3</sup> A participant in the ISP must designate specific order-entry ports for use in tabulating certain requirements under the program.

<sup>4</sup> “Participation Ratio” is defined as follows: “[F]or a given member in a given month, the ratio of (A) the number of shares of liquidity provided in orders entered by the member through any of its Nasdaq ports and executed in the Nasdaq Market Center during such month to (B) the Consolidated Volume.” “Consolidated Volume” is defined as follows: “[T]he total consolidated volume reported to all consolidated transaction reporting plans by all

Participation Ratio<sup>5</sup> by at least 0.30%. The requirement reflects the expectation that in order to earn a higher rebate under the program, a member participating in the program must increase its participation in NASDAQ as compared with an historical baseline.

(2) The member’s “ISP Execution Ratio” for the month must be less than 10. The ISP Execution Ratio is defined as “the ratio of (A) the total number of liquidity-providing orders entered by a member through its ISP-designated ports during the specified time period to (B) the number of liquidity-providing orders entered by such member through its ISP-designated ports and executed (in full or partially) in the Nasdaq Market Center during such time period; provided that: (i) No order shall be counted as executed more than once; and (ii) no Pegged Orders, odd-lot orders, or MIOC or SIOC orders shall be included in the tabulation.”<sup>6</sup> Thus, the definition requires a ratio between the total number of orders that post to the NASDAQ book and the number of such orders that actually execute that is low, a characteristic that NASDAQ believes to be reflective of retail and institutional order flow.

(3) The shares of liquidity provided through ISP-designated ports during the month are equal to or greater than 0.2% of Consolidated Volume during the month, reflecting the ISP’s goals of encouraging higher levels of liquidity provision.

(4) At least 80% of the liquidity provided by the member during the month is provided through ISP-designated ports. This requirement is designed to mitigate “gaming” of the program by firms that do not generally represent retail or institutional order flow but that nevertheless are able to channel a portion of their orders that

exchanges and trade reporting facilities during a month, excluding executed orders with a size of less than one round lot.”

<sup>5</sup> “Baseline Participation Ratio” is defined as follows: “[W]ith respect to a member, the lower of such member’s Participation Ratio for the month of August 2010 or the month of August 2011, provided that in calculating such Participation Ratios, the numerator shall be increased by the amount (if any) of the member’s Indirect Order Flow for such month, and provided further that if the result is zero for either month, the Baseline Participation Ratio shall be deemed to be 0.485% (when rounded to three decimal places).” “Indirect Order Flow” is defined as follows: “[F]or a given member in a given month, the number of shares of liquidity provided in orders entered into the Nasdaq Market Center at the member’s direction by another member with minimal substantive intermediation by such other member and executed in the Nasdaq Market Center during such month.”

<sup>6</sup> These terms have the meanings assigned to them in Rule 4751. MIOC and SIOC orders are forms of “immediate or cancel” orders and therefore cannot be liquidity-providing orders.

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

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

they intend to execute through ISP-designated ports and thereby receive a credit with respect to those orders.

(5) The member has an average daily volume during the month of more than 100,000 contracts of liquidity provided through one or more of its Nasdaq Options Market MPIDs, provided that such liquidity is provided through Public Customer Orders, as defined in Chapter I, Section 1 of the Nasdaq Options Market rules.

(6) The ratio between shares of liquidity provided through ISP-designated ports and total shares accessed, provided or routed through ISP-designated ports during the month is at least 0.70.

As noted above, no member has met these criteria in the recent past. Moreover, a member may qualify for an ISP credit at identical rates if it meets the following criteria:

(1) The member's Participation Ratio for the month exceeds its Baseline Participation Ratio by at least 0.43% (slightly higher than under the set of criteria this is being eliminated).

(2) The member's "ISP Execution Ratio" for the month must be less than 10 (identical to the set of criteria that is being eliminated).

(3) The shares of liquidity provided through ISP-designated ports during the month are equal to or greater than 0.2% of Consolidated Volume during the month (identical to the set of criteria that is being eliminated).

(4) At least 40% of the liquidity provided by the member during the month is provided through ISP-designated ports (lower than under the set of criteria that is being eliminated). This set of criteria contains no requirement with respect to usage of the Nasdaq Options Market or the ratio of shares of liquidity provided through ISP-designated ports to total shares entered through ISP-designated ports.

Second, NASDAQ is eliminating a special reduced fee that has applied to QDRK and QCST orders when they access liquidity on NASDAQ.<sup>7</sup>

<sup>7</sup> QDRK is a routing option under which orders check the Nasdaq Market Center for available shares and simultaneously route the remaining shares to destinations on the applicable routing table that are not posting Protected Quotations within the meaning of Regulation NMS. If shares remain un-executed after routing, they are posted on the book. Once on the book, if the order is subsequently locked or crossed by another market center, NASDAQ will not route the order to the locking or crossing market center. QCST is a routing option under which orders check the Nasdaq Market Center for available shares and simultaneously route the remaining shares to destinations on the applicable routing table that are not posting Protected Quotations within the meaning of Regulation NMS and to certain, but not all, exchanges. If shares remain un-executed after

Currently, the fee for such orders is \$0.0029 per share executed, but NASDAQ is increasing the fee to \$0.0030 per share executed. As a result, the fee charged will be identical to the fee charged to all other liquidity-accessing orders (other than orders entered by a member qualifying for a volume-based discount that will remain on the fee schedule). The reduced fee had been adopted as a promotional discount when QDRK and QCST were first introduced in early 2013. With usage of the routing strategies now established, NASDAQ has concluded that the continuation of the promotional discount is no longer warranted.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>9</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 any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The change with respect to the ISP are reasonable because no member currently qualifies or has recently qualified for the set of criteria that is being eliminated; accordingly, the change will have no impact on credits received by members. The change is consistent with an equitable allocation of fees and is not unfairly discriminatory because members may continue to qualify for the ISP under other sets of criteria, including a set of criteria that results in identical credits to the set of criteria that is being eliminated and that features requirements that are likely to be easier to achieve that [sic] those contained in the set that is being eliminated.

The change with respect to QDRK and QCST is reasonable because the resulting fee of \$0.0030 per share executed is identical to the fee charged with respect to most other orders that access liquidity at NASDAQ. Such fee is consistent with the requirements of Rule 610 under Regulation NMS<sup>10</sup> with respect to the permissible level of access fees. The change is consistent with an equitable allocation of fees and is not unfairly discriminatory because it will

routing, they are posted on the book. Once on the book, if the order is subsequently locked or crossed by another market center, NASDAQ will not route the order to the locking or crossing market center.

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>10</sup> 17 CFR 242.610.

make the fees charged for accessing liquidity through QCST and QDRK consistent with the fees charged for other orders.

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

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees and rebates 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 rebates in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee or rebate changes in this market may impose any burden on competition is extremely limited. In this instance, the change to the ISP is unlikely to have any effect on competition, since no member currently qualifies for the set of criteria that is being eliminated. However, the continuation of the ISP reflects the ongoing importance of incentive programs in the current competitive environment as mechanisms for ensuring that fees and credits are set at levels that attracts [sic] order flow. Similarly, the change with respect to fees for QDRK and QCST does not have the potential to impair competition since the routing services offered by NASDAQ are optional and are replicated by routing services offered by others; thus, members are free to use other means of routing orders if they believe that the fees associated with NASDAQ's services are too high. Thus, because members and competing order execution venues remain free to adopt competitive responses, the changes do not impair the ability of markets or market participants 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) of the Act<sup>11</sup> and paragraph (f) of Rule 19b-4<sup>12</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

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

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-166 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2013-166. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549-1090, 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 NASDAQ. 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-2013-166, and should be submitted on or before February 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71265; File No. SR-FICC-2013-10]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Establish the Minimum Financial Requirements for the Existing Membership Category of Registered Investment Company Netting Members in the Government Securities Division

January 9, 2014.

#### I. Introduction

On November 12, 2013, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-FICC-2013-10 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> The proposed rule change was published for comment in the **Federal Register** on November 29, 2013.<sup>3</sup> The Commission received one comment letter in response to the proposed rule change.<sup>4</sup> For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description

The purpose of this rule filing is to amend the Rulebook ("Rules") of the Government Securities Division ("GSD") of FICC to establish the

minimum financial requirements for the existing membership category of Registered Investment Company Netting Members ("RIC").<sup>5</sup> Historically, the GSD has served the "sell-side" community (which primarily consists of entities such as banks and broker-dealers). FICC believes the participation of RICs as guaranteed service members will contribute to the safety, efficiency, and transparency of the market by allowing FICC to capture a greater part of the activity of its existing members and by introducing activity of current non-members to FICC. FICC also believes that RICs will benefit from the GSD netting service and the associated operational efficiencies of a central counterparty service. RICs will not be permitted to use the GCF Repo<sup>®</sup> service.

Currently, RICs are already a permitted category in the GSD Rules; the rule as amended establishes minimum financial requirements for RICs.<sup>6</sup> Specifically, Rule 2A ("Initial Membership Requirements") of the GSD Rules provides that the minimum financial requirement for RICs is \$100 million in net asset value.

Currently, GSD Rule 3, "Ongoing Membership Requirements," permits GSD to assess a premium against a netting member whose Clearing Fund requirement exceeds its specified regulatory capital figure.<sup>7</sup> Pursuant to this rule change, GSD will now be permitted to assess RICs in the same manner as other members.

Pursuant to GSD Rules, Tier One Netting Members are subject to potential loss mutualization and Tier Two Netting Members are not. Pursuant to this rule change, RICs will be Tier Two Netting

<sup>5</sup> Pursuant to GSD Rule 1, the term "Registered Investment Company Netting Member" is an Investment Company (1) that is registered with the Commission, (2) admitted to membership in GSD's Netting System pursuant to the GSD Rules, and (3) whose membership in the Netting System has not been terminated.

<sup>6</sup> The membership requirements for RICs will be the same as those already in place for RICs at FICC's Mortgage-Backed Securities Division ("MBS").

<sup>7</sup> By way of example, under GSD Rule 4, if a member has a Clearing Fund requirement of \$11.4 million and excess net capital of \$10 million, its "ratio" is 1.14 (or 114 percent), and the applicable collateral premium would be 114 percent of \$1.4 million (which is equal to the amount by which the member's Clearing Fund requirement exceeds its excess net capital), or \$1,596,000. The current GSD Rules provide that FICC has the right to: (i) Apply a lesser collateral premium (including no premium) based on specific circumstances (such as a member being subject to an unexpected haircut or capital charge that does not fundamentally change its risk profile), and (ii) return all or a portion of the collateral premium amount if it believes that the member's risk profile does not require the maintenance of that amount.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Securities Exchange Act Release No. 70925 (Nov. 22, 2013), 78 FR 71702 (Nov. 29, 2013) (SR-FICC-2013-09).

<sup>4</sup> Letter from Peter Nowicki (December 5, 2013) (expressing general support for allowing Registered Investment Companies to participate in netting and clearing).