17A(b)(3)(A) of the Exchange Act,[38] facilitate the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds under FICC's custody or control or for which FICC is responsible.

V. Conclusion

On the basis of the foregoing, the Commission finds that the amended proposed rule change is consistent with the requirements of the Exchange Act and in particular Section 17A of the Exchange Act and the rules and regulations thereunder.[39]

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (File No. SR–FICC–2008–01) be, and hereby is, approved.[40]

By the Commission.

Dated: March 9, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6187 Filed 3–13–12; 8:45 am]

BILLING CODE 8011–01–P

[38] 15 U.S.C. 78q–1(b)(3)(A).

[39] 15 U.S.C. 78q–1.

[40] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66544; File No. SR–NASDAQ–2012–032]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ's Investor Support Program

March 8, 2012.

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 27, 2012, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. 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 proposes to modify the Investor Support Program (the "ISP") under Rule 7014 to introduce an additional method for members to earn an enhanced rebate under the ISP. NASDAQ will implement the proposed change on March 1, 2012. The text of the proposed rule change is available at *http://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 received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to modify the Investor Support Program (the "ISP") under Rule 7014 to introduce an additional method for members to earn an enhanced rebate under the ISP. 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").[3] The goal of the ISP is to incentivize members to provide such targeted liquidity to the NASDAQ Market Center.[4] The Exchange noted in the ISP Filing that maintaining and increasing the proportion of orders in exchange-listed securities executed on a registered exchange (rather than relying on any of the available off-exchange execution methods) would help raise investors' confidence in the fairness of their transactions and would benefit all investors by deepening NASDAQ's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Without modifying any existing aspects of the ISP, the Exchange now proposes to provide an additional method for members to qualify for an ISP rebate that includes a new criterion focused on liquidity provision through Public Customer Orders in the NASDAQ Options Market. The change recognizes the extent to which members that represent retail and/or institutional investors are active in trading both cash equities and options on behalf of such customers. In fact, to an increasing extent the customers that such members represent simultaneously trade different asset classes within a single investment strategy. NASDAQ also notes that cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other. Accordingly, pricing incentives that encourage market participant activity in both markets recognize that activity in the options markets also supports price discovery and liquidity provision in the NASDAQ Market Center. The NASDAQ Market Center fee schedule for order execution and routing in Rule 7018 already recognizes the convergence between cash equities and options trading through liquidity provider rebate tiers available to members active in both the NASDAQ Market Center and the NASDAQ Options Market.

Participants in the ISP are required to designate specific NASDAQ order entry

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For a detailed description of the Investor Support Program as originally implemented, see Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ–2010–141) (notice of filing and immediate effectiveness) (the "ISP Filing"). See also Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (NASDAQ–2010–153) (notice of filing and immediate effectiveness); 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ–2010–154) (notice of filing and immediate effectiveness); 63891 (February 11, 2011), 76 FR 9384 (February 17, 2011) (NASDAQ–2011–022) (notice of filing and immediate effectiveness); 64050 (March 8, 2011), 76 FR 13694 (March 14, 2011) (SR–NASDAQ–2011–034); 65717 (November 9, 2011), 76 FR 70784 (November 15, 2011) (SR–NASDAQ–2011–150) (notice of filing and immediate effectiveness).

[4] The Commission has recently expressed its concern that a significant percentage of the orders of individual investors are executed at over the counter ("OTC") markets, that is, at off-exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, "Concept Release"). In the Concept Release, the Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. The Commission published the Concept Release to invite public comment on a wide range of market structure issues, including high frequency trading and un-displayed, or "dark," liquidity. See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) ("Schapiro Speech," available on the Commission Web site) (comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

ports for use under the ISP and to meet specified criteria focused on market participation, liquidity provision, and high rates of order execution. For members qualifying for the new ISP tier, NASDAQ will pay a credit of $0.0003 per share with respect to shares of displayed liquidity executed at a price of $1 or more and entered through ISP-designated ports, and $0.0001 per share with respect to all other shares of displayed liquidity executed at a price of $1 or more. The specific criteria for the proposed new ISP tier are as follows:

(1) The member's Participation Ratio [5] for the month exceeds its Baseline Participation Ratio [6] by at least 0.30%. In general terms, the Baseline Participation Ratio is the ratio of shares of liquidity provided by the member in NASDAQ for the month of August 2010 or August 2011 (whichever is lower) to the total consolidated volume for that month. To the extent that a member's participation in NASDAQ equals or exceeds its Baseline Participation Ratio (*i.e.,* to the extent that the member at least matches its participation in NASDAQ during the lower of August 2010 or August 2011), the member may be eligible for the program. Exceeding the Baseline Participation Ratio by specified amounts may qualify the member for higher credits under the ISP. The requirement reflects the expectation that a member participating in the program must maintain or increase its participation in NASDAQ as compared with an historical baseline. All of the ISP's existing tiers have a criterion focused on the member's Participation Ratio.

(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.'' [7] 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. All of the ISP's existing tiers have a criterion focused on the member's ISP Execution Ratio.

(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 goals of encouraging higher levels of liquidity provision. All of the ISP's existing tiers have a criterion focused on the liquidity provided through ISP-designated ports as a percentage of Consolidated Volume.

(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 they intend to execute through ISP-designated ports and thereby receive a credit with respect to those orders. All of the ISP's existing tiers have a criterion requiring the member to provide a specified percentage of liquidity through ISP-designated ports.

In addition to these criteria, which are similar or identical to criteria for existing ISP tiers, members seeking to qualify for the new tier would also be required to satisfy the following criteria:

(5) The member has an average daily volume during the month of 100,000 or more contracts of liquidity provided through one or more of its Nasdaq Option Market market participant identifiers (''MPIDs''), provided that such liquidity is provided through Public Customer Orders, as defined in Chapter I, Section 1 of the Nasdaq Options Market Rules. That rule defines Public Customer Order as an order for the account of a person that is not a broker or a dealer. Thus, in keeping with the goal of the ISP to encourage participation by retail and institutional investors and the members that represent them in exchange markets, the new criterion focused on options would require a specified level of liquidity provision through orders that are directly identified under Nasdaq Options Market rules as having characteristics consistent with this goal.

(6) The member's 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 0.80. This additional criterion reflects a goal of ensuring that the qualifying member is using its ISP-designated ports substantially for liquidity provision, in keeping with the ISP's overall goal of drawing liquidity-providing orders to exchange markets. A similar criterion is applicable to NASDAQ's Extended Hours Investor Program (the ''EHIP''), which is also provided for under Rule 7014.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[9] 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 ISP encourages members to add targeted liquidity that is executed in the NASDAQ Market Center. The primary objective in making the enhancements to the ISP reflected in the proposed rule change is to add an even greater amount of targeted liquidity to the NASDAQ Market Center and also the NASDAQ Options Market by adding an additional method by which members may qualify for the ISP, but without eliminating or modifying any of the existing methods.

The rule change proposal, like the original ISP, is not designed to permit unfair discrimination, but rather is intended to promote submission of liquidity—providing orders to NASDAQ, which benefits all NASDAQ members and all investors. The change recognizes the extent to which members that represent retail and/or institutional investors are active in trading both cash

[5] ''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: ''[F]or a given member in a given month, the consolidated volume of shares of System Securities in executed orders reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during such month.'' ''System Securities'' means all securities listed on NASDAQ and all securities subject to the Consolidated Tape Association Plan and the Consolidated Quotation Plan.

[6] ''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).''

[7] 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.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4) and (5).

equities and options on behalf of such customers. In fact, to an increasing extent the customers that such members represent simultaneously trade different asset classes within a single strategy. NASDAQ also notes that cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other. Accordingly, pricing incentives that encourage market participant activity in both markets recognize that activity in the options markets also supports price discovery and liquidity provision in the NASDAQ Market Center. Thus, the new tier, like existing tiers, is designed to benefit all market participants by encouraging submission of liquidity—providing orders to the NASDAQ Market Center, and further broadens this incentive by encouraging the submission of liquidity—providing options contracts to the NASDAQ Options Market.

Likewise, the proposal, like the ISP, is consistent with the Act's requirement for the equitable allocation of reasonable dues, fees, and other charges. Members who choose to significantly increase the volume of liquidity—providing orders that they submit to the NASDAQ Market Center and the NASDAQ Options Market in order to qualify for the new tier, or existing tiers, would be benefitting all investors, and therefore providing credits to them, as contemplated by the ISP, is equitable. Moreover, NASDAQ believes that the level of the credit available through the new tier—$0.0003 per share for displayed liquidity provided through ISP-designated ports and $0.0001 per share for other displayed liquidity—is reasonable, in that it is comparable to the added rebates of $0.0001, $0.0003, or $0.0004 per share executed already provided under other ISP tiers, and does not reflect a disproportionate increase above the rebates provided to all members with respect to provision of displayed liquidity under Rule 7018, which range from $0.0020 to $0.00295 per share executed. NASDAQ further notes that by adding an additional tier to the ISP without altering any of the existing tiers, NASDAQ is effectively reducing fees for members qualifying for the new tier without making any offsetting fee increases.

Finally, 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 to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that the proposed rule change reflects this competitive environment because the changes to the ISP are designed to increase the credits provided to members that enhance NASDAQ's market quality through liquidity provision.

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. Because the market for order execution is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. In fact, because it institutes a reduction in fees, NASDAQ believes that the proposed rule change will enhance the degree of competition between NASDAQ and other trading venues.

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 rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and subparagraph (f)(2) of Rule 19b–4 thereunder.[11] 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–032 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–2012–032. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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–2012–032 and should be submitted on or before April 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6186 Filed 3–13–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66543; File No. SR–Phlx–2012–25]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees Applicable to the Trading of NMS Stocks Through NASDAQ OMX PSX

March 8, 2012.

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 27, 2012, NASDAQ OMX PHLX LLC (''Phlx'' 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 modify the fees applicable to trading on the NASDAQ OMX PSX system (''PSX''). The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* 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 the Statutory Basis for, the Proposed Rule Change

Phlx is amending its fee and credit schedule for transaction executions on PSX. Specifically, Phlx is introducing reduced fees for accessing liquidity in securities listed on the New York Stock Exchange (''Tape A Securities''), along with correspondingly reduced rebates for liquidity provision in Tape A Securities.[3] Currently, PSX charges $0.0027 per share executed to members accessing liquidity in any security traded by the Exchange. Under the proposed rule change, the fee will be reduced to $0.0019 per share executed for Tape A Securities. However, to keep the Exchange's rebates for liquidity provision in line with the reduced fee to access liquidity, the Exchange will also make reductions in the rebates for Tape A Securities. Currently, the liquidity provider rebate is $0.0026 per share executed with respect to orders with an original displayed size of 2,000 or more shares, and is also $0.0026 with respect to liquidity provided by minimum life orders.[4] Under the proposed rule change, this rebate will be reduced to $0.0018 per share executed for Tape A Securities. The rebate for orders with an original displayed size of less than 2,000 shares is currently $0.0024 per share executed, and will be reduced to $0.0016 per share executed for Tape A Securities. The rebate for non-displayed orders is currently $0.0010 per share executed, and will be reduced to $0.0005 per share executed for Tape A Securities.

The change is designed to encourage greater use of PSX for the purpose of trading Tape A Securities. Specifically, although PSX has market participants that post liquidity in Tape A Securities with regularity, Phlx believes that the extent to which market participants direct liquidity-seeking orders to PSX may be limited by its current fees. Accordingly, Phlx believes that a reduction in the fee to access liquidity will encourage more market participants to seek available liquidity at PSX. Moreover, Phlx further believes that any disincentive to post liquidity caused by a reduction in the rebates for Tape A Securities will be offset by a heightened expectation of prompt execution created by the reduced fee for liquidity-accessing orders.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(4) and (5) of the Act,[6] 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 Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. All similarly situated members are subject to the same fee structure, and access to Phlx is offered on fair and non-discriminatory terms.

The proposed new fee and rebate structure for members that use Phlx to trade Tape A Securities is reasonable because it will result in a reduction of fees for members that access liquidity, which in turn will benefit members that post liquidity by providing greater certainty of execution for their posted orders. Phlx believes that this increased certainty of execution will continue to encourage members to post liquidity at PSX, notwithstanding the associated reduction in liquidity provider rebates. Moreover, because the fee charged to access liquidity funds the payment of a rebate to liquidity providers, Phlx does not believe that it would be reasonable to require an exchange that opts to reduce access fees to maintain pre-existing higher rebates.

Moreover, the proposed change is consistent with an equitable allocation of fees because it is designed to promote a more active market for Tape A Securities on PSX, thereby benefitting all members that seek to trade such securities through the Exchange. Specifically, the change is equitable to members that seek to access liquidity because it will reduce the fees that they pay, and equitable to members that provide liquidity because it will increase the likelihood of posted orders executing. Similarly, to the extent that the proposed change is successful in encouraging greater use of PSX for trading Tape A Securities, it will enhance market quality for all market participants. Finally, Phlx believes that the change is not unfairly discriminatory because the price reduction offered is available to all members that access liquidity in Tape A Securities. Similar pricing incentives that focus on securities listed on particular listing venues are not

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The changes apply to executions priced at $1 or more. Fees and rebates applicable to executions of securities priced below $1 remain unchanged.

[4] Minimum life orders are orders that may not be cancelled for a period of 100 milliseconds following entry.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4) and (5).