However, four commenters asserted that the proposal places an undue burden on firms with processes that are manual in nature.[40] In response to this comment, in Amendment No. 1, FINRA stated that it will take such factors as the complexity and manual nature of the execution and reporting of the trade into consideration in determining whether ''reasonable justification'' exists for what otherwise might be deemed to be a pattern or practice of late trade reporting.[41] The Commission supports FINRA's expectation that members must periodically assess their reporting processes, manual or otherwise, to ensure that they implement the most efficient policies and procedures for trade reporting possible.[42]

Commenters also raised concerns on whether the benefits of the proposed rule change outweigh the costs associated with compliance.[43] In its filing with the Commission, FINRA stated its belief that the proposed rule change will enhance market transparency and price discovery, promote more consistent trade reporting by members and facilitate implementation and further the goals of the Single Stock Circuit Breaker trading pause rules and the Limit Up/Limit Down Plan. Although the Commission acknowledges the potential for firms covered by these new reporting requirements to incur additional compliance burdens and costs, the Commission believes that any such burdens are outweighed by the overall benefits of increased transparency and access to more comprehensive and accurately sequenced trade information in the OTC markets.

Two commenters raised potential queuing issues and question whether firms will be able to comply with the proposed 10-second reporting requirement during regularly occurring periods of high volume such as market open and close, during highly subscribed IPOs or when a firm is reporting basket trades with a large number of securities.[44] The Commission agrees with FINRA's response that under current rules, unusual market conditions, such as extreme volatility in a security or in the market as a whole, may be considered in determining whether reasonable justification or exceptional circumstances exists to explain late trade reporting.[45]

One commenter questioned whether firms will be able to comply with the proposed 10-second reporting requirement when reporting trades to the ORF following migration to FINRA's new MPP and asserted that introducing new trade reporting requirements before the migration is premature.[46] FINRA responded that it did not believe that the planned migration of the ORF to the new MPP infrastructure would affect the ability of a firm's automated trade reporting systems to ensure compliance with the proposed rule change and further elaborated on this justification.[47] The Commission believes that FINRA adequately responded to this concern and additionally notes that the proposed implementation period of 120 to 180 days following Commission approval will provide sufficient time for firms to make and test any systems changes that may be required to comply with the proposed rule change.

Moreover, the Commission shares FINRA's belief that the proposed rule change will enhance market transparency and price discovery, promote more consistent and accurately sequenced trade reporting by members and facilitate implementation and further the goals of the Single Stock Circuit Breaker trading pause rules and the Limit Up/Limit Down Plan. As FINRA stated in submitting its proposal, timely reporting has become even more critical with the implementation of Regulation NMS and these other regulatory initiatives. Additionally, the proposed rule change will lessen the ability of members to withhold important market information from investors and other market participants for competitive or other improper reasons. Going forward, the Commission expects FINRA to monitor the effect of this change and to consider the need to lower the time within which trades must be reported even further.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–FINRA–2013–013), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2013–11714 Filed 5–16–13; 8:45 am]

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[40] *See* note 17, *supra,* and accompanying text.

[41] The Commission notes that FINRA is not proposing a separate standard for designating manual trades as timely versus late for purposes of dissemination. All trades that are reported more than 10 seconds after execution, regardless of whether they are reported automatically or manually, would be identified as late for reporting and dissemination purposes and would not be considered ''last sale'' eligible under the CTA and UTP Plans. *See* FINRA Response and Amendment No. 1.

[42] *See* FINRA Response.

[43] *See* note 23 *supra,* and accompanying text.

[44] *See* note 28, *supra* and accompanying text.

[45] *See* FINRA Response.

[46] *See* note 33, *supra* and accompanying text.

[47] The Commission notes that FINRA has revised its migration schedule; this change will be implemented before the migration to the new platform.

[48] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69566; File No. SR–NASDAQ–2013–075]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Remove Pilot Restrictions From NASDAQ's Qualified Market Maker and NBBO Setter Incentive Programs, and To Make Other Changes to NASDAQ's Schedule of Fees and Credits

May 13, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on May 1, 2013, 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 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 is proposing to remove the pilot period restriction from its Qualified Market Maker (''QMM'') and NBBO Setter Incentive pricing incentive programs under Rule 7014, to make a minor modification to the QMM program, and to make other changes to NASDAQ's schedule of fees and credits applicable to execution and routing of orders in securities priced at $1 or more per share. The changes pursuant to this proposal are effective upon filing, and the Exchange will implement the proposed rule changes on May 1, 2013.

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.

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

[2] 17 CFR 240.19b–4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for 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

1. Purpose

QMM and NBBO Setter Incentive Programs

In November 2012,[3] NASDAQ introduced two new pricing programs designed to create incentives for members to improve market quality. The programs have been in effect on a pilot basis from November 1, 2012 until April 30, 2013. Effective April 1, 2013, NASDAQ filed several changes to the programs.[4] NASDAQ is now filing to remove the pilot limitation from the programs, while making a minor modification to the QMM Program.

Under the QMM Program, a member may be designated as a QMM with respect to one or more of its MPIDs if:

- The member is not assessed any ''Excess Order Fee'' under Rule 7018 during the month;[5] and
- Through such MPID the member quotes at the national best bid or best offer (''NBBO'') at least 25% of the time during regular market hours[6] in an average of at least 1,000 securities per day during the month.[7]

A member that is a QMM with respect to a particular MPID (a ''QMM MPID'') is eligible to receive certain financial benefits, as described below:

- The QMM may receive an NBBO Setter Incentive credit of $0.0005 with respect to orders that qualify for the NBBO Setter Incentive Program (*i.e.,* displayed orders with a size of at least one round lot that set the NBBO or join another trading center at the NBBO)[8] and that are entered through the QMM MPID; provided that the QMM also has a volume of liquidity provided through the QMM MPID (as a percentage of Consolidated Volume[9]) that exceeds *the lesser of* the volume of liquidity provided through such QMM MPID during the first month in which the MPID qualified as a QMM MPID (as a percentage of Consolidated Volume) *or* 1.0% of Consolidated Volume.[10] If a QMM does not satisfy these volume requirements, it will receive an NBBO Setter Incentive credit of $0.0002 per share executed with respect to orders that qualify for the NBBO Setter Incentive Program.[11]
- The QMM receives a credit of $0.0001 per share executed with respect to all other displayed orders in securities priced at $1 or more per share that provide liquidity and that are entered through a QMM MPID (in addition to any credit payable under Rule 7018).[12]
- The QMM may receive a discount on fees for ports used for entering orders for that MPID, equal to the lesser of the QMM's total fees for such ports or $5,000.[13] As provided in Rule 7015, the specific fees subject to this discount are: (i) all ports using the NASDAQ Information Exchange (''QIX'') protocol,[14] (ii) Financial Information Exchange (''FIX'') trading ports,[15] and (iii) ports using other trading telecommunications protocols.[16]
- For a number of shares not to exceed *the lower of* the number of shares of liquidity provided through a QMM MPID *or* 20 million shares per trading day (the ''Numerical Cap''), NASDAQ charges a fee of $0.0028 per share executed for orders in securities priced at $1 or more per share that access liquidity on the NASDAQ Market Center and that are entered through the same QMM MPID; provided, however, that orders that would otherwise be charged $0.0028 per share executed under Rule 7018 do not count toward the Numerical Cap. For shares above the Numerical Cap, NASDAQ charges the rate otherwise applicable under Rule 7018. Moreover, in order to be charged the execution rate of $0.0028 per share executed, the QMM's volume of liquidity added, provided, and/or routed through the QMM MPID during the month (as a percentage of Consolidated Volume) must be not less than 0.05% lower than the volume of liquidity added, provided, and/or routed through such QMM MPID during the first month in which the MPID qualified as a QMM MPID (as a percentage of Consolidated Volume).[17]

NASDAQ believes that the QMM pilot program has been successful in achieving its goals of improving market quality. Since the inception of the program, thirteen MPIDs have qualified. During April 2013, twelve MPIDs have qualified and have met the 25% quoting requirements of the program in over 4,700 securities. In recent months, NASDAQ's time at the NBBO has increased, with recent data showing NASDAQ at the inside 25% of the time in approximately 5,700 securities, 50% of the time in approximately 4,100 securities, and 75% of the time in approximately 2,100 securities. Moreover, the presence of even one QMM in a stock appears to decrease dramatically the average effective

[3] Securities Exchange Act Release No. 68209 (November 9, 2012), 77 FR 69519 (November 19, 2012) (SR–NASDAQ–2012–126).

[4] Securities Exchange Act Release No. 69376 (April 15, 2013), 78 FR 23611 (April 15, 2013) (SR–NASDAQ–2013–063).

[5] Rule 7018(m). Last year, NASDAQ introduced an Excess Order Fee, aimed at reducing inefficient order entry practices of certain market participants that place excessive burdens on the systems of NASDAQ and its members and that may negatively impact the usefulness and life cycle cost of market data. In general, the determination of whether to impose the fee on a particular MPID is made by calculating the ratio between (i) entered orders, weighted by the distance of the order from the NBBO, and (ii) orders that execute in whole or in part. The fee is imposed on MPIDs that have an ''Order Entry Ratio'' of more than 100.

[6] Defined as 9:30 a.m. through 4:00 p.m., or such shorter period as may be designated by NASDAQ on a day when the securities markets close early (such as the day after Thanksgiving).

[7] A member MPID is considered to be quoting at the NBBO if it has a displayed order at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, NASDAQ will determine the number of securities in which the member satisfied the 25% NBBO requirement. To qualify for QMM designation, the MPID must meet the requirement for an average of 1,000 securities per day over the course of the month. Thus, if a member MPID satisfied the 25% NBBO requirement in 900 securities for half the days in the month, and satisfied the requirement for 1,100 securities for the other days in the month, it would meet the requirement for an average of 1,000 securities.

[8] The NBBO Setter Incentive program is described in more detail below.

[9] ''Consolidated Volume'' means the consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month.

[10] The QMM will also receive the $0.0005 per share rate during the first month in which an MPID becomes a QMM MPID.

[11] Orders designated as Designated Retail Orders under Rule 7018(a) are not eligible to receive an NBBO Setter Incentive credit in addition to the credit provided with respect to such orders under Rule 7018(a).

[12] If the QMM also participates in NASDAQ Investor Support Program (the ''ISP'') NASDAQ will pay the greater of any applicable credit under the ISP or the QMM program, but not a credit under both programs. However, Designated Retail Orders are not eligible to receive an NBBO Setter Incentive credit in addition to the credit provided with respect to such orders under Rule 7018(a).

[13] The ports subject to the discount are not used for receipt of market data.

[14] The applicable undiscounted fees are $1,200 per month for a port pair or ECN direct connection port pair, and $1,000 per month for an unsolicited message port. *See* Rule 7015(a).

[15] The applicable undiscounted fee is $500 per port per month. *See* Rule 7015(b).

[16] The applicable undiscounted fee is $500 per port pair per month. *See* Rule 7015(g).

[17] This limitation will not apply during the first month in which an MPID becomes a QMM MPID.

spread in a security, with multiple QMMs increasing the effect. Specifically, the average effective spread of securities with no QMMs was approximately $0.0825 over the pilot period, decreasing to approximately $0.065 for securities with one QMM, approximately $0.0425 for securities with two QMMs, approximately $0.0325 for securities with three QMMs, approximately $0.020 for securities with four QMMs, and approximately $0.015 for securities with five or more QMMs.

In addition to removing the pilot limitation from the QMM Program, NASDAQ proposes to modify the requirement that a QMM must quote at the NBBO at least 25% of the time during regular marker hours in an average of at least 1,000 securities per day during the month. Beginning May 1, 2013, Designated Retail Orders will not be counted in determining whether a member satisfies this requirement. Under the terms of another NASDAQ financial incentive program, a Designated Retail Order is defined as an ''agency or riskless principal order that originates from a natural person and is submitted to Nasdaq by a member that designates it . . . , provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.'' [18] The Designated Retail Order Program is aimed at encouraging market participants that make routing decisions with respect to retail orders to send them to NASDAQ. Because of the origin of such orders, they do not represent market-making activity and the submitting member is not in a position to influence their price. The QMM Program, however, is aimed at encouraging members that submit quotes/orders as market makers or as proprietary traders to adhere to market quality standards by quoting at the NBBO. Accordingly, NASDAQ does not believe that the program's purposes are served by including Designated Retail Orders in the calculations to determine whether a member has satisfied these quoting standards.

Under the NBBO Setter Incentive program, NASDAQ provides an enhanced liquidity provider rebate with respect to displayed liquidity-providing orders that set the NBBO or cause NASDAQ to join another trading center with a protected quotation at the NBBO. The NBBO Setter Incentive credit is paid on a monthly basis, and the amount is determined by multiplying the applicable rate by the number of shares of displayed liquidity provided to which a particular rate applies.[19] A member receives an NBBO Setter Incentive credit at the $0.0001 rate with respect to all shares of displayed liquidity that are executed at a price of $1 or more in the Nasdaq Market Center during a given month if posted through an order that:

- displayed a quantity of at least one round lot at the time of execution; and
- either established the NBBO or was the first order posted on NASDAQ that had the same price as an order posted at another trading center with a protected quotation that established the NBBO.

If the member also provides a daily average volume of at least 5 million shares of liquidity through orders that satisfy the foregoing criteria (*i.e.,* that qualify for an NBBO Setter Incentive credit), it will receive a credit at the $0.0002 rate. Alternatively, a member may receive a credit at the $0.0002 per share executed rate if it is a QMM but does not satisfy certain volume criteria required for a QMM to receive a credit at the $0.0005 per share executed rate.

A member receives an NBBO Setter Incentive credit at the $0.0005 rate with respect to all shares of displayed liquidity that are executed at a price of $1 or more in the NASDAQ Market Center during a given month if posted through an order that:

- displayed a quantity of at least one round lot at the time of execution;
- either established the NBBO or was the first order posted on Nasdaq that had the same price as an order posted at another trading center with a protected quotation that established the NBBO;
- was entered through a QMM MPID; and
- the QMM has a volume of liquidity provided through the QMM MPID (as a percentage of Consolidated Volume) that exceeds the lesser of the volume of liquidity provided through such QMM MPID during the first month in which the MPID qualified as a QMM MPID (as a percentage of Consolidated Volume) or 1.0% of Consolidated Volume.

NASDAQ believes that the NBBO Setter incentive program has achieved its goal of increasing the extent to which NASDAQ sets the NBBO or joins another market that has set the NBBO. Specifically, while the results are subject to daily fluctuation, NASDAQ has seen an upward trend in the extent of quoting and executions at the NBBO as the program has gained traction. Thus, shares of liquidity that set or join the NBBO have increased from a range of approximately 325–400 million in January 2013, to a range of approximately 500–650 million in April 2013. Similarly, shares executed at the NBBO have increased from a range of approximately 105–130 million in January 2013, to a range of approximately 120–180 million in April 2013.

Pricing for Midpoint Orders and Other Non-Displayed Orders

NASDAQ is proposing to adopt a new pricing tier for midpoint pegged and midpoint post only orders (''midpoint orders''). Currently, NASDAQ pays a credit of $0.0017 per share executed for midpoint orders if the member provides an average daily volume of more than 3 million shares through midpoint order during the month and $0.0015 per share executed for midpoint orders if the member provides an average daily volume of 3 million or fewer shares through midpoint orders during the month. While modifying the text of the existing tiers slightly but without making substantive changes to them,[20] NASDAQ is proposing a new tier for members that provide an average daily volume of 5 million or more shares of liquidity through midpoint orders during the month, provided, however, that the member's average daily volume of liquidity provided through midpoint orders during the month is at least 2 million shares more than in April 2013. Thus, the tier includes a requirement for both absolute volume and an increase in volume over a past level. In this respect, the proposed tier is similar to the ''Step-Up'' pricing tier offered by NYSEArca, which requires market participants to exceed volumes during a specified benchmark month.[21]

With respect to non-displayed orders other than midpoint orders, NASDAQ currently provides a credit of $0.0010 per share executed. NASDAQ is proposing to require that members

[18] *See* Rule 7018.

[19] A member is not eligible to receive an NBBO Setter Incentive credit with respect to a Designated Retail Order.

[20] Specifically, NASDAQ is rearranging the location of pricing for midpoint orders and other forms of non-displayed orders to minimize repetition in the fee rule. In addition, NASDAQ is making the $0.0017 per share executed tier apply to members providing a daily average of ''3 million or more shares,'' rather than ''more than 3 million shares.'' NASDAQ does not view this change as substantive since the likelihood of a member providing exactly 3 million share of liquidity per day and thereby being affected by the change is extremely remote. Rather, the change is designed to provide for consistent drafting for all pricing tiers applicable to midpoint orders, including the newly introduced tier for members providing a daily average of 5 million or more shares of liquidity through midpoint orders.

[21] *http://usequities.nyx.com/markets/nyse-arca-equities/trading-fees.*

receiving this credit provide an average daily volume of 1 million or more shares per day through non-displayed orders (including midpoint orders) in order to receive the $0.0010 per share credit. Members not meeting this volume requirement will receive a credit of $0.0005 per share executed for non-displayed orders.[22]

Routing Fees

NASDAQ is proposing selected increases in its fees for routing orders to other trading venues. These changes are intended to ensure that NASDAQ's trading revenues are not unduly impacted by continued low volumes in the cash equities markets, and will primarily have the effect of making fees associated with routing to NASDAQ OMX BX (''BX'') and NASDAQ OMX PSX (''PSX''), NASDAQ's affiliated exchanges, somewhat higher than is currently the case. Specifically:

• NASDAQ currently provides a credit of $0.0005 per share executed for directed orders[23] routed to BX, which NASDAQ proposes to eliminate, such that no charge or credit will apply. Depending on volumes and the nature of the order accessed, BX provides a rebate of $0, $0.0004, $0.0010, or $0.0014 per share executed with respect to orders that access liquidity from its book.

• NASDAQ currently pays a credit of $0.0014 per share executed for TFTY, SOLV, CART, or SAVE[24] orders that execute at BX. NASDAQ proposes to reduce the applicable credit to $0.0004 per share executed.

• NASDAQ current charges $0.0029 per share executed with respect to directed orders that access liquidity at PSX. NASDAQ proposes to increase the charge to $0.0035 per share executed, a fee equal to NASDAQ's existing charge for directed orders that access liquidity on venues other than BX, PSX, or the New York Stock Exchange (''NYSE''). PSX currently charges of a fee of $0.0028 or $0.0030 per share executed with respect to orders that access liquidity on its book.

• NASDAQ currently charges $0.0029 per share executed for SAVE or SOLV orders that execute at venues other than BX, PSX, or NYSE. NASDAQ proposes to increase the applicable charge to $0.0030 per share executed.

• NASDAQ currently charges $0.0027 per share executed for directed orders that are designated as Intermarket Sweep Orders and that execute at NYSE. NASDAQ proposes raising the applicable fee to $0.0029 per share executed. NYSE currently charges NASDAQ $0.0025 per share executed for orders that access liquidity on its book, so the change increases the extent of the markup charged by NASDAQ for routing such orders to NYSE.

• For other directed orders that execute at NYSE, NASDAQ currently charges $0.0026 per share executed for a member that provides an average daily volume of more than 35 million shares of liquidity, and $0.0027 per share executed for other members. NASDAQ proposes raising the applicable fees to $0.0028 and $0.0029 per share executed, respectively.

• For TFTY orders that execute at NYSE, NASDAQ currently charges $0.0024 per share executed. NASDAQ proposes increasing the fee to $0.0025 per share executed.

For DOTI orders that execute at BX,[25] NASDAQ currently passes through applicable fees and/or credits. (As noted above, applicable credits currently range from $0 to $0.0014 per share executed.) NASDAQ proposes to pay a fixed credit of $0.0004 per share executed with respect to such orders.[26]

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[27] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[28] 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.

NASDAQ believes that the NBBO Setter Incentive program has been successful in encouraging members to add liquidity at prices that benefit all NASDAQ market participants and the NASDAQ market itself, and enhance price discovery, by establishing a new NBBO or allowing NASDAQ to join the NBBO established by another trading center. NASDAQ further believes that the proposal to remove the pilot limitation from the program is reasonable, consistent with an equitable allocation of fees, and not unfairly discriminatory. Specifically, NASDAQ believes that the level of the credits available through the program—$0.0001, $0.0002, or $0.0005 per share executed—is reasonable, in that it does not reflect a disproportionate increase above the rebates provided to all members with respect to the provision of displayed liquidity under Rule 7018. NASDAQ further notes that through the program, NASDAQ reduces fees for members that set the NBBO or join another market at the NBBO. The program is consistent with the Act's requirement for an equitable allocation of fees because members that establish the NBBO or cause NASDAQ to join another market at the NBBO benefit all investors by promoting price discovery and increasing the depth of liquidity available at the inside market. Such members also benefit NASDAQ itself by enhancing its competitiveness as a market that attracts marketable orders. Accordingly, NASDAQ believes that it is consistent with an equitable allocation of fees to pay an enhanced

[22] NASDAQ is also modifying the rule language pertaining to credits for non-displayed orders to remove references to a ''quote/order,'' since all quotes are displayed.

[23] Directed Orders are orders that are directed to an exchange other than NASDAQ, as directed by the entering party, without checking the NASDAQ book. If unexecuted, the order (or unexecuted portion thereof) is returned to the entering party.

[24] TFTY is a routing option under which orders check the NASDAQ System for available shares only if so instructed by the entering firm and are thereafter routed to destinations on the applicable routing table. If shares remain un-executed after routing, they are posted to the book. Once on the book, if the order subsequently is locked or crossed by another market center, the System will not route the order to the locking or crossing market center. SOLV is a routing option under which orders may either (i) route to BX and PSX, check the NASDAQ System, and then route to other destinations on the applicable routing table, or (ii) may check the NASDAQ System first and then route to destinations on the applicable routing table. If shares remain un-executed after routing, they are posted to the book. Once on the book, if the order subsequently is locked or crossed by another accessible market center, the System routes the order to the locking or crossing market center. CART is a routing option under which orders route to BX and PSX and then check the NASDAQ System. If shares remain un-executed, they are posted to the book or cancelled. Once on the book, if the order subsequently is locked or crossed by another market center, the System will not route the order to the locking or crossing market center. SAVE is a routing option under which orders may either (i) route to BX and PSX, check the NASDAQ System, and then route to other destinations on the applicable routing table, or (ii) may check the NASDAQ System first and then route to destinations on the applicable routing table. If shares remain un-executed after routing, they are posted to the book. Once on the book, if the order subsequently is locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

[25] DOTI is a routing option for orders that the entering firm wishes to direct to the NYSE or NYSE MKT without returning to NASDAQ. DOTI orders check the NASDAQ System for available shares and then are sent to destinations on the applicable routing table before being sent to NYSE or NYSE MKT, as appropriate. DOTI orders do not return to the NASDAQ book after routing. The entering firm may alternatively elect to have DOTI orders check the NASDAQ System for available shares and thereafter be directly sent to NYSE or NYSE MKT as appropriate.

[26] NASDAQ is also adding some clarifying language to the rule text relating to fees for DOTI orders.

[27] 15 U.S.C. 78f.

[28] 15 U.S.C. 78f(b)(4) and (5).

rebate in recognition of these benefits to NASDAQ and its market participants. NASDAQ further notes that the program is consistent with an equitable allocation of fees because it is immediately available to all market participants that allow NASDAQ to set or join the NBBO, regardless of the size of the firm or its trading volumes. Finally, NASDAQ believes that the program and the payment of a higher rebate with respect to qualifying orders is not unfairly discriminatory because it is intended to promote the benefits described above, and because the magnitude of the additional rebate is not unreasonably high in comparison to the rebate paid with respect to other displayed liquidity-providing orders.

NASDAQ further believes that the QMM program has been successful at encouraging members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities, thereby benefitting NASDAQ and other investors by committing capital to support the execution of orders. With respect to the enhanced NBBO Setter Incentive rebate provided to QMMs, NASDAQ believes that the rebate itself is reasonable, equitable, and not unfairly discriminatory for the reasons discussed above with regard to the NBBO Setter Incentive program. In addition, NASDAQ believes that it is reasonable to pay a higher rebate under that program to QMMs because of the additional commitment to market quality reflected in the quoting requirements associated with being a QMM. Similarly, NASDAQ believes that the higher rebate is consistent with an equitable allocation of fees because a QMM that sets the NBBO is demonstrating both a specific commitment to the market through the NBBO-setting order and a broad commitment through its quoting activity throughout the month. Accordingly, NASDAQ believes that it is consistent with an equitable allocation to pay a higher rebate in comparison with the rebate for other NBBO-setting orders. Finally, NASDAQ believes that this higher rebate is not unfairly discriminatory because it is consistent with the market quality and competitiveness benefits associated with the program and because the magnitude of the additional rebate is not unreasonably high in comparison to the rebate paid with respect to other displayed liquidity-providing orders. NASDAQ further believes that reserving the highest NBBO Setter Incentive Credit of $0.0005 per share executed for QMMs that increase their participation in NASDAQ above a prior benchmark level (or 1.0% of Consolidated Volume) is reasonable because it provides a greater incentive for QMMs to benefit the Exchange and other market participants through high levels of liquidity provision. This aspect of the program is consistent with an equitable allocation of fees because members that contribute significantly to market quality by satisfying the requirements of both the QMM and the NBBO Setter Incentive program while participating actively in the NASDAQ Market Center justifiably earn the higher credit of $0.0005 per share executed. This aspect of the program is not unfairly discriminatory because a QMM that does not achieve the higher requirements may still receive a credit of $0.0002 for orders that set the NBBO, as well as a credit of $0.0001 for other displayed orders (excluding Designated Retail Orders).

NASDAQ believes that the port fee discount for QMMs is consistent with an equitable allocation of fees because the fees for connectivity, such as the ports used for order entry, are a significant component of the overall cost of trading on NASDAQ and other trading venues. Accordingly, to the extent that a member maintains a significant presence in the NASDAQ market through the extent of its quoting at the NBBO, NASDAQ believes that it is equitable to provide the member a discount on this component of its trading costs. NASDAQ further believes that the discount is not unfairly discriminatory, because it is subject to a monthly cap, such that the disparity between the monthly costs of a QMM and another market participant with a similar configuration of order entry ports may not exceed $5,000. Finally, NASDAQ believes that the discount is reasonable because it will result in a fee reduction for members that provide the market quality benefits associated with QMM status.

The aspect of the QMM program that features a $0.0028 per share executed pricing tier for QMMs is reasonable because it provides an incentive for QMMs to maintain their participation in NASDAQ near or above a prior benchmark level. The tier is consistent with an equitable allocation of fees because members that contribute significantly to market quality by satisfying the requirements of the QMM program while participating actively in the NASDAQ Market Center justifiably may be charged a lower fee with respect to order executions. The tier is not unfairly discriminatory because a QMM that does not achieve the higher requirements would pay a fee that is only slightly higher ($0.0029 or $0.0030 per share executed, depending on other aspects of its participation in NASDAQ).

The proposed change to provide that Designated Retail Orders will not be considered when determining whether a QMM has met the NBBO requirements of the program is reasonable because the program is designed to increase the extent to which market makers and other market participants with proprietary trading interest choose to commit capital to support executions at the NBBO; accordingly, the program's goals are not supported by Designated Retail Orders, which do not reflect such trading interest. Moreover, the change is consistent with an equitable allocation of fees and is not unfairly discriminatory because Designated Retail Orders already benefit from a targeted financial incentive program designed to encourage them to be posted in NASDAQ.

The proposed changes with respect to the introduction of a new pricing tier for midpoint orders is reasonable because it will result in a fee reduction for members using these orders to the required extent. As such, it is consistent with pricing tiers established at a range of national securities exchanges under which discounts are dependent on achieving stipulated volume requirements. NASDAQ believes that the proposed tier is consistent with an equitable allocation of fees because use of such orders benefits other market participants to the extent that they execute at the midpoint between the national best bid and best offer and thereby offer price improvement. Accordingly, while NASDAQ's fee schedule reflects incentives for the use of displayed orders, which aid in price discovery, it also reflects a preference for midpoint orders over other forms of non-displayed orders because of these price improvement benefits. The change is not unfairly discriminatory because NASDAQ offers other means by which a member might earn a comparable rebate, including the basic rebate of $0.0020 per share executed paid with respect to displayed orders.

The proposed introduction of a volume-based requirement for members to receive the current credit of $0.0010 per share executed for non-displayed orders, and the proposed reduction in the credit for members not meeting the volume-based requirement, is reasonable because the volume requirement is modest, requiring members to provide an average daily volume of 1 million or more shares using non-displayed orders. Moreover, the changes are reasonable because members are able to receive much higher rebates using midpoint orders or displayed orders. The changes are consistent with an equitable allocation of fees and not unfairly discriminatory because they are consistent with NASDAQ's stated policy of encouraging the use of displayed orders and midpoint orders, which promote price discovery and price improvement, respectively, rather than non-displayed orders. Accordingly, while NASDAQ offers non-displayed orders to provide members with an option to conceal trading interest when they believe that doing so is to their advantage, nevertheless NASDAQ believes that it is equitable and not unfairly discriminatory for its fees to encourage usage of other order types.

The changes with respect to TFTY, SOLV, CART, SAVE, DOTI and directed orders that execute at BX are reasonable because they will result in members using these routing strategies to access BX receiving a consistent credit of $0.0004 per share executed, which is equivalent to the basic credit paid by BX with respect to orders that access liquidity on BX but that do not achieve BX's volume tiers, or no credit for directed orders, which is consistent with NASDAQ's practice of charging a higher markup for directed orders. Thus, while the change will result in a reduction of credits paid to members using these routing strategies, such members will continue to receive a credit equivalent to that received by many BX members.[29] The change is consistent with an equitable allocation of fees because use of NASDAQ's router and the affected routing strategies is voluntary and members may use other methods to route orders to other execution venues. Accordingly, the change is allocated solely to members that opt to use NASDAQ's router to access BX and that opt to use the routing strategies to which the change applies. In addition, the change is consistent with an equitable allocation and is not unfairly discriminatory because it is consistent with NASDAQ's practice of charging a markup for use of routing services above the fee charged to NASDAQ by the destination market, which allows NASDAQ to cover other costs of operation and to earn a profit.

The change with respect to directed orders that execute at PSX is reasonable because it will make the charge for such orders equal to the charge for directed orders that access liquidity at numerous other venues. The change is consistent with an equitable allocation of fees because use of NASDAQ's router and the use of directed orders is voluntary and members may use other methods to route orders to other execution venues. Accordingly, the change is allocated solely to members that opt to use NASDAQ's router to access PSX using directed orders. In addition, the change is consistent with an equitable allocation and is not unfairly discriminatory because the difference between the fee charged by PSX ($0.0030 per share executed) and the routing fee charged by NASDAQ will be generally consistent with the markup applicable to orders routed to other venues, allowing NASDAQ to cover other costs of operation and to earn a profit.

The change with respect to SAVE or SOLV orders that execute at venues other than BX, PSX, or NYSE is reasonable because it is a small increase of only $0.0001 per share executed. Moreover, depending on the execution venue to which an order is routed, the fee of $0.0030 may be equal to the access fee charged by the recipient market or may reflect a markup. The change is consistent with an equitable allocation of fees because use of NASDAQ's router and the affected routing strategies is voluntary and members may use other methods to route orders to other execution venues. Accordingly, the change is allocated solely to members that opt to use NASDAQ's router and that opt to use the routing strategies in question. In addition, the change is consistent with an equitable allocation and not unfairly discriminatory because it relates to a wide range of trading venues to which NASDAQ may route orders under the SAVE and SOLV strategies. To the extent that the fee reflects a markup above the fees charged by destination venues, it allows NASDAQ to cover other costs of operation and to earn a profit.

The changes with respect to directed orders and TFTY orders routed to NYSE are reasonable because they reflect modest increases of $0.0001 or $0.0002 per share executed to the applicable fees. The modified fees reflect markups of $0.0003 or $0.0004 above the fee of $0.0025 per share executed charged to NASDAQ by NYSE with respect to routed orders, but such markups allow NASDAQ not only to cover the access fees charged to it, but also to cover other costs of operation and to allow a profit. The changes are consistent with an equitable allocation of fees because use of NASDAQ's router and the affected routing strategies is voluntary and members may use other methods to route orders to NYSE. Accordingly, the change is allocated solely to members that opt to use NASDAQ's router to access NYSE using directed orders or the TFTY strategy. The change is not unfairly discriminatory because the difference between the fee charged by NYSE ($0.0025 per share executed) and the routing fee charged by NASDAQ will continue to be lower than the markup applicable to other routed orders, including directed orders sent to certain other trading venues, but will be made more consistent by the change. In addition, the change is consistent with an equitable allocation and not unfairly discriminatory because it is consistent with NASDAQ's practice of charging a markup for use of routing services above the fee charged to NASDAQ by the destination market, which allows NASDAQ to cover other costs of operation and to allow a profit.

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 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 in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, although some of the proposed changes impose conditions on the availability of certain previously introduced pricing incentives, the incentive programs in question remain in place and are themselves reflective of the need for exchanges to offer significant financial incentives to attract order flow. Similarly, although the proposed rule change includes increases in routing fees and decreases with respect to rebates for non-displayed orders, the

[29] Depending on routed volumes, NASDAQ may receive a credit of $0.0014 per share executed with respect to these orders. However, to the extent that the credit provided to members is lower, it reflects a charge for the use of NASDAQ's routing service, designed to cover other costs of operation and to allow a profit. To this extent, the change is consistent with other existing routing fees that are set in excess of the charges assessed to NASDAQ's router by the destination market.

impact of these changes is limited to voluntary aspects of NASDAQ's services for which numerous alternatives exist. Accordingly, if the changes are unattractive to market participants, it is likely that NASDAQ will lose market share as a result. As a result, 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.

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) of the Act [30] and paragraph (f)(2) of Rule 19b-4 thereunder.[31] 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.* Please include File Number SR–NASDAQ–2013–075 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–2013–075. 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 10:00 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–2013–075 and should be submitted on or before June 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–11775 Filed 5–16–13; 8:45 am]

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[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Avani International Group, Inc., Birch Mountain Resources Ltd., Capital Reserve Canada Ltd., Dynasty Gaming, Inc. (n/k/a Blue Zen Memorial Parks, Inc.), IXI Mobile, Inc., Laureate Resources & Steel Industries Inc., Millennium Energy Corp., Shannon International, Inc., and Welwind Energy International Corporation; Order of Suspension of Trading

May 15, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Avani International Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Birch Mountain Resources Ltd. because it has not filed any periodic reports since the period ended December 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Capital Reserve Canada Ltd. because it has not filed any periodic reports since the period ended December 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Dynasty Gaming, Inc. (n/k/a Blue Zen Memorial Parks, Inc.) because it has not filed any periodic reports since the period ended December 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of IXI Mobile, Inc. because it has not filed any periodic reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Laureate Resources & Steel Industries, Inc. because it has not filed any periodic reports since the period ended August 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Millennium Energy Corp. because it has not filed any periodic reports since the period ended September 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Shannon International, Inc. because it has not filed any periodic reports since the period ended September 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Welwind Energy International Corp. because it has not filed any periodic reports since the period ended September 30, 2010.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on May 15,