SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80051; File No. SR–NASDAQ–2017–016]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 7014 and 7018

February 16, 2017.

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 9, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to (1) amend Rule 7014(j) to modify the conditions for qualifying for the Nasdaq Growth Program; and (2) amend Rule 7018(a) to modify the volume requirements needed to qualify for a credit of $0.0030 per share for members that add liquidity on both Nasdaq and the Nasdaq Options Market (''NOM'').

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's transaction fees at Rule 7014(j) and Rule 7018(a) to make two changes.[3] Specifically, the Exchange proposes to (1) add another way through which members may qualify for the Nasdaq Growth Program (''Program''); and (2) lower one of the volume requirements needed to qualify for a $0.0030 credit when adding liquidity on Nasdaq and NOM. These changes are described below.

Nasdaq Growth Program

Nasdaq introduced the Program in 2016.[4] The purpose of the Program is to provide a credit per share executed for members that meet certain growth criteria. The credit is designed to provide an incentive to members that do not qualify for other credits under Rule 7018 in excess of the Program credit to increase their participation on the Exchange. The Program provides a member a $0.0025 per share executed credit in securities priced $1 or more per share if the member meets certain criteria. The credit is provided in lieu of other credits provided to the member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity under Rule 7018, if the credit under the Nasdaq Growth Program is greater than the credit attained under Rule 7018.

Rule 7014(j) currently provides two ways in which a member may qualify for the Program in a given month. First, the member may qualify for the Program by (i) adding greater than 750,000 shares a day on average during the month through one or more of its Nasdaq Market Center MPIDs; and (ii) increasing its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 20% versus the member's Growth Baseline.[5] Alternatively, the member may qualify for the Program by (i) adding greater than 750,000 shares a day on average during the month through one or more of its Nasdaq Market Center MPIDs; and (ii) meeting the criteria set forth above (increasing its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 20% versus the member's Growth Baseline) in the preceding month, and maintaining or increasing its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume as compared to the preceding month.

Nasdaq now proposes a third way in which a member may qualify for the Program in a given month. Specifically, the member may qualify for the Program by (i) adding greater than 750,000 shares a day on average during the month through one or more of its Nasdaq Market Center MPIDs in three separate months; (ii) increasing its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume by 20% versus the member's Growth Baseline in three separate months; and (iii) maintaining or increasing its shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume compared to the growth baseline established when the member met the criteria for the third month.

The following example illustrates the application of this new provision:

- In September 2016, the firm's shares of liquidity as a percentage of Consolidated Volume is 0.03%. This is the firm's Growth Baseline.
- In October 2016, the firm added more than 750,000 shares a day on average through one or more of its Nasdaq Market Center MPIDs. The firm's shares of liquidity as a percentage of Consolidated Volume rose to 0.036%, an increase of 20% over its Growth Baseline. The member qualifies for the credit, since it has met the criteria of Rule 7014(j)(i) and 7014(j)(ii)(A). The member's Growth Baseline is updated to 0.036% (its October 2016 volume).
- In November 2016, the firm added more than 750,000 shares a day on average through one or more of its Nasdaq Market Center MPIDs. The firm's shares of liquidity as a percentage of Consolidated Volume was 0.041%. The firm qualifies for the credit under Rule 7014(j)(ii)(B) since it met the

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

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed changes on February 1, 2017 (SR–NASDAQ–2017–011). On February 9, 2017, the Exchange withdrew that filing and submitted this filing.

[4] *See* Securities Exchange Act Release No. 78977 (September 29, 2016), 81 FR 69140 (October 5, 2016) (SR–NASDAQ–2016–132).

[5] The Growth Baseline is defined as the member's shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume during the last month a member qualified for the Nasdaq Growth Program under Rule 7014(j)(ii)(A) (increasing its volume by 20% versus its Growth Baseline). If a member has not yet qualified for a credit under this program, its August 2016 share of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs as a percent of Consolidated Volume will be used to establish a baseline.

criteria under Rule 7014(j)(ii)(A) in October and added volume in November as compared to October. The firm does not, however, qualify for the credit under Rule 7014(j)(ii)(A). Accordingly, its Growth Baseline remains 0.036% (its October 2016 volume).

- In December 2016, the firm added more than 750,000 shares a day on average through one or more of its Nasdaq Market Center MPIDs. The firm's shares of liquidity as a percentage of Consolidated Volume rose to 0.044%, an increase of over 20% over its Growth Baseline. The member qualifies for the credit, since it has met the criteria of Rule 7014(j)(i) and 7014(j)(ii)(A). The member's Growth Baseline is updated to 0.044% (its December 2016 volume).
- In January 2017, the firm added more than 750,000 shares a day on average through one or more of its Nasdaq Market Center MPIDs. The firm's shares of liquidity as a percentage of Consolidated Volume rose to 0.053%, an increase of over 20% over its Growth Baseline. The member qualifies for the credit, since it has met the criteria of Rule 7014(j)(i) and 7014(j)(ii)(A). The member's Growth Baseline is updated to 0.053% (its January 2017 volume).
- In February 2017, the firm added more than 750,000 shares a day on average through one or more of its Nasdaq Market Center MPIDs. The firm's shares of liquidity as a percentage of Consolidated Volume remained at 0.053%. The firm would still qualify for the credit, since it satisfied the criteria under Rule 7014(j)(i) (adding more than 750,000 shares a day on average) and Rule 7014(j)(ii)(A) (increasing its volume by 20% over its Growth Baseline) in three separate months.
- Going forward, the firm would continue to qualify for the credit, as long as it continues to satisfy, on a monthly basis, the criteria under Rule 7014(j)(i) (adding more than 750,000 shares a day on average) and Rule 7014(j)(ii)(C) (maintaining or adding volume in comparison to the Growth Baseline that was established in the third month in which the firm qualified for the Program under Rule 7014(j)(ii)(A)).

The Exchange is adding this provision to provide firms with another way of qualifying for the Program. Currently, a firm may qualify for the Program in a given month if it met the criteria of Rule 7014(j)(ii)(A) in the preceding month (increasing its volume by 20% over its Growth Baseline), and maintained or increased its volume compared to that previous month. The new provision is similar in that it allows a firm to continue to qualify for the Program if it maintains or increases its volume in a given month. The new provision differs, however, in that the firm must have qualified for the Program pursuant to Rule 7014(j)(ii)(A) (increasing its volume by 20% over its Growth Baseline) in three separate months. Nasdaq believes that this provision provides firms with additional flexibility in qualifying for the Program, and furthers the Program's goal of incentivizing participation on the Exchange.

Credit for Adding Liquidity on Nasdaq and NOM

In the second change, Nasdaq proposes to amend one of the requirements in order to qualify for a credit for adding liquidity. Currently, a member will receive a credit if it meets a specified volume threshold on Nasdaq for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that add liquidity, and also meets a specified volume threshold on NOM when adding liquidity. Specifically, a member will receive a credit of $0.0030 per share executed if the member (1) adds liquidity through one or more of its Nasdaq Market Center MPIDs during the month that, in all securities, represents at least 0.125% of Consolidated Volume during the month, and (2) adds Customer,[6] Professional,[7] Firm,[8] Non-NOM Market Maker [9] and/or Broker-Dealer [10] liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.15% or more of total industry ADV in the customer clearing range for Equity and ETF option contracts per day during the month on NOM.

Nasdaq proposes to reduce the volume threshold for providing liquidity on Nasdaq from 0.125% to 0.12%. Nasdaq notes that members will continue to receive the same credit as they currently receive if they meet the volume requirements. Nasdaq believes that this change more closely aligns the volume requirement for activity on Nasdaq with the current volume requirement for activity on NOM, and with the amount of the credit itself.

The change to the volume threshold will be applied to transactions in securities of all three Tapes.[11] The volume threshold is therefore being amended in Rules 7018(a)(1), (2), and (3), which provide the fees and credits for execution and routing of orders in Nasdaq-listed securities, NYSE-listed securities, and securities not listed on Nasdaq or NYSE, respectively.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq Growth Program

The Exchange believes that the proposed change to the Nasdaq Growth Program is reasonable, and notes that the amount of the credits provided under the Program is unchanged.[14] Nasdaq believes that the proposed change is equitably allocated among members, and is not designed to permit unfair discrimination. Nasdaq notes that participation in the Program is voluntary, and that the proposed change applies to all members that otherwise qualify for the Program, *e.g.,* members that add greater than 750,000 shares a day on average during the month through one or more of its [sic] Nasdaq Market Center MPIDs.

In adopting Rule 7014(j)(ii)(C), Nasdaq is providing all members that otherwise qualify for the Program with an alternate way in which they may qualify for the Program by permitting members to either maintain or increase their volume in comparison to the last of three months in which they

[6] The term ''Customer'' applies to any transaction that is identified by a participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional,'' as defined in Chapter I, Section 1 of the NOM rules.

[7] A ''Professional'' is defined in Chapter I, Section 1 of the NOM rules as ''any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).''

[8] The term ''Firm'' or (''F'') applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

[9] The term ''Non-NOM Market Maker'' or (''O'') is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

[10] The term ''Broker-Dealer'' or (''B'') applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[11] Tape C securities are those that are listed on the Exchange, Tape A securities are those that are listed on the New York Stock Exchange (''NYSE''), and Tape B securities are those that are listed on exchanges other than Nasdaq or NYSE.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* Securities Exchange Act Release No. 78977 (September 29, 2016), 81 FR 69140 (October 5, 2016) (SR–NASDAQ–2016–132) (establishing the Nasdaq Growth Program and its credit structure).

previously qualified for the Program under Rule 7014(j)(ii)(A). At the same time, the purpose of the Program is to increase members' participation on the Exchange by offering a credit to members that meet the volume requirements. Nasdaq therefore believes that it is equitable and not unfairly discriminatory to only permit members to qualify for the credit in this manner if they have qualified for the credit in three separate months under Rule 7014(j)(ii)(A) (increasing their volume by 20% or more in comparison to the Growth Baseline) and maintain or increase their volume in the current month.

Nasdaq notes that, if a member qualifies for the credit under Rule 7014(j)(ii)(C), it would continue to qualify for the credit under this provision going forward, as long as it continues to meet the criteria under Rule 7014(j)(i) (adding more than 750,000 shares a day on average) and Rule 7014(j)(ii)(C) (maintaining or adding volume in comparison to the Growth Baseline that was established in the third month in which the firm qualified for the Program under Rule 7014(j)(ii)(A)). Nasdaq believes this aspect of the proposal is equitable and not unfairly discriminatory, as this way to receive an ongoing credit is open to any member that elects to meet the requirements under Rule 7014(j)(ii)(C).

In sum, Nasdaq believes that this proposed change strikes an appropriate and equitable balance by expanding the number of members that may be eligible for the Program while continuing to incentivize other members that may not currently qualify for the Program to transact greater volume in order to become eligible for the Program.

Credit for Adding Liquidity on Nasdaq and NOM

The Exchange believes that the proposed change to one of the volume requirements that is needed to qualify for the credit for adding liquidity on Nasdaq and NOM is reasonable, and notes that the amount of the credit provided under this provision is unchanged.[15] Nasdaq believes that the proposed change is equitably allocated among members, and is not designed to permit unfair discrimination. By reducing the Nasdaq volume requirement, Nasdaq is potentially expanding the number of members that may qualify for the credit. Moreover, all similarly situated members are equally capable of qualifying for the credit if they choose to meet the new volume requirement, and the same credit will be paid to all members that meet the new and existing volume requirements.

As with other credits that the Exchange provides, this credit is designed to encourage increased activity on Nasdaq and NOM. Nasdaq believes that the proposed Nasdaq volume requirement that is needed to qualify for the credit is equitable because it is more closely aligned with the current NOM volume requirement that is also needed to qualify for the credit, and is also more closely aligned with the amount of the credit itself. Nasdaq believes that the proposed requirement for qualifying for the credit is proportionate to the amount of the credit and equitably reflects the purpose of the credit, which is to incentivize members to transact greater volume on Nasdaq and NOM.

Finally, the Exchange notes that the proposed volume threshold is consistent with other volume-based credits that the Exchange offers to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity. Nasdaq currently offers a variety of credits for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that add liquidity, some of which are linked to activity on NOM and some of which relate to activity on Nasdaq only, which range from $0.0015 per share executed to $0.00305 per share executed, and which apply progressively more stringent requirements in return for higher per share executed credits.

Here, the member would receive a $0.0030 per share credit for adding liquidity of at least 0.12% of Consolidated Volume on Nasdaq, and adding Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.15% or more of total industry ADV in the customer clearing range for Equity and ETF option contracts per day during the month on NOM. In comparison, the Exchange currently offers a credit of $0.0027 per share executed if the member added liquidity during the month representing more than 0.10% of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs, and added Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options of 0.40% or more of total industry ADV in the customer clearing range for Equity and ETF option contracts per day in a month on NOM.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable.

In such an environment, the Exchange 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, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

With respect to the proposed change to the Nasdaq Growth Program, participation in the Program is voluntary. The proposed change will provide members with another way in which they may qualify for the Program, and will apply equally to all members who otherwise qualify for the Program and that elect to meet the requirements under Rule 7014(j)(ii)(C).

With respect to the proposed change to the volume requirement for the credit for adding liquidity on Nasdaq and NOM, the Exchange's execution services are completely voluntary and are subject to extensive competition both from other exchanges and from off-exchange venues. The new volume requirement applies equally to all members, and all similarly situated members are equally capable of qualifying for the credit if they choose to meet the new volume and current volume requirements. Moreover, the same credit will be paid to all members that qualify for the proposed and current volume requirements. Finally, the proposed change is designed to reward market-improving behavior by more closely aligning a requirement necessary to qualify for the credit with the actual credit. Thus, the Exchange does not believe that this proposed change will impose any burden on competition, but may rather promote competition.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the

[15] *See* Securities Exchange Act Release No. 79791 (January 13, 2017), 82 FR 7907 (January 23, 2017) (SR–NASDAQ–2017–002) (establishing the $0.0030 per share credit for adding liquidity on Nasdaq and NOM).

Exchange will lose market share as a result. Accordingly, the Exchange 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)(ii) of the Act.[16]

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

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2017–016 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2017–016. 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–2017–016, and should be submitted on or before March 15, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Assistant Secretary.

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[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80043; File No. SR–NYSEMKT–2016–99]

Self-Regulatory Organizations; NYSE MKT LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Amending Rule 104—Equities To Delete Subsection (g)(i)(A)(III) Prohibiting Designated Market Makers From Establishing a New High (Low) Price on the Exchange in a Security the DMM Has a Long (Short) Position During the Last Ten Minutes Prior to the Close of Trading

February 15, 2017.

I. Introduction

On October 27, 2016, NYSE MKT LLC (''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending Rule 104—Equities to delete subsection (g)(i)(A)(III), which prohibits Designated Market Makers (''DMMs'') from establishing, during the last ten minutes of trading before the close, a new high (low) price for the day on the Exchange in a security in which the DMM has a long (short) position (''Rule 104(g)(i)(A)(III) Prohibition''). The proposed rule change was published for comment in the **Federal Register** on November 17, 2016.[3]

On December, 20, 2016, the Commission extended to February 15, 2017, the time period in which to approve the proposal, disapprove the proposal, or institute proceedings to determine whether to approve or disapprove the proposal.[4] The Commission has received no comments on the proposal. This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposal.

II. Description of the Proposal

Currently, under Exchange Rule 104—Equities (g)(i)(A)(III), a DMM with a long (short) position in a security cannot, during the last ten minutes before the close of trading, make a purchase (sale) in that security that results in a new high (low) price on the Exchange for that day.[5] The Exchange proposes to remove this prohibition from its rulebook.

The Exchange asserts that, in light of developments in the equity markets and in the Exchange's own trading model, Rule 104(g)(i)(A)(III) has lost its original purpose and utility.[6] Specifically, the Exchange asserts that, in today's electronic marketplace, where DMMs have replaced specialists, and control of pricing decisions has moved away from market participants on the Exchange trading floor, the purpose behind the Rule 104(g)(i)(A)(III) Prohibition is no longer necessary, and eliminating the prohibition would not eliminate other existing safeguards that prevent DMMs from inappropriately influencing or manipulating the close.[7]

The Exchange argues that the rationale behind preventing specialists from setting the price of a security on the Exchange in the final ten minutes of

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79283 (Nov. 10, 2016), 81 FR 81210 (Nov. 17, 2016) (''Notice'').

[4] *See* Securities Exchange Act Release No. 79611 (Dec. 20, 2016), 81 FR 95205 (Dec. 27, 2016).

[5] *See* Exchange Rule 104—Equities (g)(i)(A)(III). Exchange Rule 104—Equities (g)(i)(A)(III)(2) provides two exceptions to this general prohibition.

[6] *See* Notice, 81 FR at 81211.

[7] *See id.* at 81211–81212.