

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56130; File No. SR-NASDAQ-2007-061)

July 25, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Institute a Pricing Incentive Program for Market Makers in Exchange-Traded Funds and Index-Linked Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 18, 2007, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 institute a pricing incentive program for market makers in exchange-traded funds (“ETFs”) and index-linked securities (“ILSs”) listed on Nasdaq.<sup>5</sup> Nasdaq plans to implement the proposed rule change on August 1, 2007. The text of the proposed rule change is

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

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

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

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

<sup>5</sup> The Exchange’s proposed rule text is contained in the Nasdaq 7000 Series (Charges for Membership, Services, and Equipment) at paragraph (g) of Rule 7018 (Nasdaq Market Center Order Execution and Routing).

available at the Exchange, the Commission's Public Reference Room, and

[www.nasdaq.com/about/LegalCompliance.stm](http://www.nasdaq.com/about/LegalCompliance.stm).

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 Statutory Basis for, Proposed Rule Change

1. Purpose

Nasdaq proposes to introduce a pricing incentive program for market makers in ETFs and ILSs listed on Nasdaq. In April 2007, Nasdaq executed 34.8% of all transactions in ETFs listed on U.S. exchanges, making it the largest market for ETF transactions. Nasdaq also executes a large percentage of transactions in ILSs. However, Nasdaq currently lists fewer ETFs and ILSs than the New York Stock Exchange LLC and the American Stock Exchange LLC. The proposal is designed both to enhance Nasdaq's competitiveness as a listing venue for ETFs and ILSs and further strengthen its market quality as a transaction venue for ETFs and ILSs.

Nasdaq proposes to adopt rules that are similar to those regarding NYSE Arca, Inc.'s ("NYSE Arca's") program for Designated Market Makers.<sup>6</sup> Under NYSE Arca's program, a Designated Market Maker for a security listed on NYSE Arca is required to maintain minimum

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<sup>6</sup> See NYSE Arca Equities Rule 7.24 (Designated Market Maker Performance Standards) and NYSE Arca Schedule of Fees and Charges for Exchange Services ([www.nyse.com/pdfs/NYSEArca\\_Equities\\_Fees.pdf](http://www.nyse.com/pdfs/NYSEArca_Equities_Fees.pdf)).

performance standards with regard to (1) percent of time at the national best bid (best offer) (“NBBO”), (2) percent of executions better than the NBBO, (3) average displayed size, (4) average quoted spread, and (5) in the case of derivative securities, the ability of the Designated Market Maker to transact in underlying markets. In return, the Designated Market Maker pays \$0.0025 per share when accessing liquidity in stocks for which it is the Lead Market Maker, and receives a \$0.004 per share credit when providing liquidity.

Under Nasdaq’s proposed program, a market maker in an ETF or ILS may become a “Designated Liquidity Provider” in a “Qualified Security” and receive similarly favorable incentive pricing. A Qualified Security must be an ETF or ILS listed on Nasdaq, have at least one Designated Liquidity Provider, and have a Nasdaq-designated maximum trading volume. Specifically, a security is no longer eligible to be a Qualified Security once there have been two calendar months in any three calendar-month period during which its average daily volume on Nasdaq exceeded 250,000 shares. Thus, the program is designed to encourage support of ETFs and ILSs during their period of initial listing, when the security must develop an active trading market in order to succeed. Once the volume threshold is reached, the pricing for the ETF or ILS would be consistent with pricing for other securities traded on Nasdaq.

A “Designated Liquidity Provider” is a registered Nasdaq market maker in a Qualified Security that has committed to maintain minimum performance standards. Designated Liquidity Providers would be selected by Nasdaq based on factors including, but not limited to, experience with making markets in ETFs and ILSs, adequacy of capital, willingness to promote Nasdaq as a marketplace, issuer preference, operational capacity, support personnel, and history of adherence to Nasdaq rules and securities laws. Nasdaq may limit the number of Designated Liquidity Providers in a Qualified Security, or modify a previously established limit, upon prior written

notice to members. Specifically, Nasdaq may modify such limit either to increase or decrease the number of Designated Liquidity Providers for a Qualified Security upon providing such prior written notice.

As is true under the equivalent rules of NYSE Arca, the minimum performance standards applicable to a Designated Liquidity Provider may be determined from time to time by Nasdaq and may vary depending on the price, liquidity, and volatility of a particular Qualified Security. The performance measurements would include: (1) percent of time at the NBBO; (2) percent of executions better than the NBBO; (3) average displayed size; and (4) average quoted spread. Nasdaq may remove Designated Liquidity Providers that do not meet the performance standards or that decide to change their status at any time.

When accessing liquidity in a Qualified Security or routing to another market, the Designated Liquidity Provider would pay \$0.003 per share executed; when providing liquidity, the Designated Liquidity Provider would receive a credit of \$0.004 per share executed. Consistent with the requirements of Rule 610 of Regulation NMS,<sup>7</sup> however, in the unlikely event that the security trades at less than \$1 per share, the normal execution fee and credit schedule in Nasdaq Rule 7018(a) regarding securities trading less than \$1 would apply.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and Sections 6(b)(4) and 6(b)(5) of the Act,<sup>9</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls, and is designed to

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<sup>7</sup> 17 CFR 242.610.

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

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

promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, respectively. Nasdaq believes that by allocating pricing benefits to certain market makers that make tangible commitments to enhancing market quality for ETFs and ILSs listed on Nasdaq, the proposal will encourage the development of new financial products, provide a better trading environment for investors in ETFs and ILSs, and encourage greater competition between listing venues for ETFs and ILSs.

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

Nasdaq believes that the proposed rule change will encourage greater competition among venues that list ETFs and ILSs and further strengthen the quality of the Nasdaq market as a venue for transactions in ETFs and ILSs. Accordingly, 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Nasdaq states that written comments were neither solicited nor received with respect to the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 19b-4(f)(2).

the proposed rule change, the Commission may summarily abrogate 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2007-061 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2007-061. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2007-061 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Florence E. Harmon  
Deputy Secretary

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