

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56940; File No. SR-NASDAQ-2007-095)

December 11, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Fees for Members Using the Nasdaq Market Center

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 November 30, 2007, The NASDAQ Stock Market LLC (“Nasdaq”) 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 prepared substantially by Nasdaq. Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> thereunder, Nasdaq has designated this proposal as establishing or changing a member due, fee, or other charge, which renders the proposed rule change effective immediately upon filing.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to modify pricing for Nasdaq members using the Nasdaq Market Center. Nasdaq will implement this proposed rule change on December 3, 2007. The

---

<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).

text of the proposed rule change is available at <http://nasdaq.complinet.com>, Nasdaq, and the Commission's Public Reference Room.

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

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

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

1. Purpose

Nasdaq is proposing changes to its fees for routing odd lot and mixed lot orders to the New York Stock Exchange ("NYSE") and NYSE Arca. In the case of odd lot orders routed to NYSE Arca, NYSE Arca charges Nasdaq a fee of \$0.03 per share executed for securities listed on an exchange other than Nasdaq and a fee of \$0.004 per share executed for Nasdaq-listed securities.<sup>5</sup> Nasdaq is proposing to pass these fees through directly to its members whose orders are routed to NYSE Arca,<sup>6</sup> but only if the orders are entered into Nasdaq as odd lot orders. Thus, if Nasdaq partially executes an order and routes a remaining odd lot, Nasdaq's normal routing fees would apply to the odd lot.

---

<sup>5</sup> See NYSE Arca Equities Fee Schedule (October 1, 2007) (available at [http://www.nyse.com/pdfs/NYSEArca\\_Equities\\_Fees.pdf](http://www.nyse.com/pdfs/NYSEArca_Equities_Fees.pdf)).

<sup>6</sup> A fee of 0.3% of the total transaction cost would apply to orders in securities priced at less than \$1 per share, which is higher than NYSE Arca's fee for executing such orders but consistent with Nasdaq's fee for routing other orders priced under \$1.

In the case of odd lot orders and the odd lot portion of partial odd lot orders routed to NYSE, NYSE charges \$0.0004 per share executed for securities other than exchange-traded funds (“ETFs”), and charges its regular execution fee for ETFs.<sup>7</sup> However, various NYSE rules and policies discourage the submission of odd lots to the NYSE, and Nasdaq therefore believes that it is appropriate to use its fee schedule to discourage the submission of routable odd lot and mixed lot orders into Nasdaq.<sup>8</sup> Specifically, in the case of an odd lot that does not check the Nasdaq book prior to routing, Nasdaq will charge \$0.03 per share executed, while in the case of the odd lot portion of a partial round lot that does not check the book, Nasdaq will charge \$0.01 per share executed. Nasdaq’s current routing fees will remain in effect for orders that check the book, since in these cases, the routing of the odd lot to NYSE may be due to the order being partially executed by Nasdaq. A fee of 0.3% of the total transaction cost will apply to orders in securities priced at less than \$1 per share.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and with Section 6(b)(4) of the Act,<sup>10</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges

---

<sup>7</sup> See NYSE 2007 Price List (available at <http://www.nyse.com/pdfs/2007pricelist.pdf>).

<sup>8</sup> Nasdaq also notes that NYSE Arca charges \$0.03 per share for routing odd lot orders in non-Nasdaq securities, and Nasdaq’s routing fees will be equal to or lower than this level.

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

among members and issuers and other persons using any facility or system which Nasdaq operates or controls.

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.

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

Written comments were neither solicited nor received.

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

The foregoing proposed rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and Rule 19b-4(f)(2) thereunder,<sup>12</sup> in that the proposed rule change establishes or changes a member due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of 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:

---

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

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

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-2007-095 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-2007-095. 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 on official business days between the hours of 10:00 am and 3:00 pm. 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-2007-095 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Florence E. Harmon  
Deputy Secretary

---

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