

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934  
Release No. 60203 / June 30, 2009

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In the Matter of: )  
The NASDAQ Stock Market LLC )  
File No. SR-NASDAQ-2009-053 )  
\_\_\_\_\_)

ORDER  
OF  
SUMMARY  
ABROGATION

Notice is hereby given that the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(3)(C) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> is summarily abrogating a certain proposed rule change of The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”).

On June 24, 2009, NASDAQ filed SR-NASDAQ-2009-053. The proposed rule change establishes a four-month pilot program that would reduce transaction fees for members that trade equities on NASDAQ provided that they also make markets in options on the NASDAQ OMX PHLX, Inc. (“Phlx”) options exchange. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>2</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A).

Pursuant to Section 19(b)(3)(C) of the Act,<sup>3</sup> at any time within 60 days of the date of filing a proposed rule change pursuant to Section 19(b)(1) of the Act,<sup>4</sup> the Commission may summarily abrogate the change in the rules of the self-regulatory organization and require that the proposed rule change be re-filed in accordance with the provisions of Section 19(b)(1) of the Act<sup>5</sup> and reviewed in accordance with Section 19(b)(2) of the Act,<sup>6</sup> 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.

NASDAQ proposes to offer a reduced transaction fee for securities listed on NASDAQ and the New York Stock Exchange LLC (“NYSE”) only to member firms that: (1) make markets in 400 or more options classes as a Specialist, Streaming Quote Trader, or Remote Streaming Quote Trader on Phlx; and (2) add average daily volume of 35 million shares of liquidity on NASDAQ. Member firms meeting these criteria would pay a reduced transaction fee of \$0.0027 per share executed on NASDAQ for securities listed on NASDAQ or NYSE. The Commission is concerned about whether the proposal is consistent with the statutory requirements applicable to a national securities exchange under the Act, including, among other provisions, Section 6(b)(4) of the Act,<sup>7</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and

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

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> Id.

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

other parties using its facilities; Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of a national securities exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and Section 6(b)(8) of the Act,<sup>9</sup> which requires that the rules of a national securities exchange do not impose any burden on competition not necessary or appropriate in furtherance of the Act.

Accordingly, the Commission believes that the procedures provided by Section 19(b)(2) of the Act<sup>10</sup> will provide a more appropriate mechanism for determining whether the proposed rule change is consistent with the Act. Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to abrogate the proposed rule change.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(3)(C) of the Act,<sup>11</sup> that File No. SR-NASDAQ-2009-053, be and hereby is, summarily abrogated. If NASDAQ chooses to re-file the proposed rule change, it must do so pursuant to Sections 19(b)(1)<sup>12</sup> and 19(b)(2) of the Act.<sup>13</sup>

By the Commission.

Elizabeth M. Murphy  
Secretary

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<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(8).

<sup>10</sup> Id.

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

<sup>12</sup> 15 U.S.C. 78s(b)(1).

<sup>13</sup> 15 U.S.C. 78s(b)(2).