

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61515; File No. SR-NASDAQ-2010-014)

February 12, 2010

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 and To Correct a Typographical Error in Rule 7018

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 January 26, 2010, 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 by NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective 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 the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center, and to correct a typographical error in Rule 7018.⁵ NASDAQ will implement the proposed change to Rule 7018(b) on February 1, 2010, and will implement the remainder of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 C.F.R. 240.19b-4(f)(2).

⁵ The Commission notes that the “typographical error in Rule 7018” is more accurately characterized as a drafting error by Nasdaq that resulted in the omission and misplacement of rule language.

filing immediately upon filing. The text of the proposed rule change is available at <http://nasdaqomx.cchwallstreet.com/>, at NASDAQ's principal office, 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, 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 modifying its fee structure for securities that execute at prices below \$1. For these securities, NASDAQ currently charges members accessing liquidity a fee equal to 0.1% (10 basis points) of the total transaction cost and provides no credit to members providing liquidity. Under the new fee structure, members accessing liquidity will be charged 0.3% (30 basis points) of the total transaction cost, and members providing liquidity will be provided a credit equal to 0.2% (20 basis points) of the total transaction cost. The change is intended to provide a competitive response to another trading venue that has adopted a similar "maker-taker" pricing structure for securities priced below \$1.⁶ The proposal is consistent with the provisions of Rule 610 under Regulation NMS⁷ that govern access fees.

⁶ See <http://www.directedge.com/SubscriberInfo/FeeSchedule.aspx>.

⁷ 17 CFR 242.610.

NASDAQ is also proposing to correct a typographical error in Rule 7018. In SR-NASDAQ-2009-072,⁸ NASDAQ submitted a proposed rule change to make clerical changes designed to streamline and simplify Rule 7018. As stated in the “Purpose” section of NASDAQ’s Form 19b-4 filing, “[n]one of the clerical changes will modify any fee assessed or credit earned for trading on the NASDAQ Market Center.” However, due to a typographical error, Exhibit 5 introduced inaccuracies into the provisions of the rule describing the fees for orders in securities listed on the New York Stock Exchange (“NYSE”) that are routed to other venues without attempting to execute in NASDAQ for the full size of the order prior to routing. This portion of the fee schedule had previously been divided between sections governing fees for orders in NYSE-listed securities executed at NYSE and fees for orders executed at other venues. Both sections had included catch-all provisions governing “other” orders that did not fit into more defined categories of routed orders; these catch-all provisions apply specifically to directed orders that are not designated as intermarket sweep orders (i.e., immediate-or-cancel orders that are directed to route to a venue specified by the member, and that may be executed by the receiving venue only if its quotation is at the national best bid or offer). In the case of such orders routed to NYSE, the fee is either \$0.0020 per share executed, or \$0.0019 per share executed for members with an average daily volume through the Nasdaq Market Center in all securities during the month of more than 35 million shares of liquidity provided. In the case of such orders routed to other venues, the fee is \$0.0035 per share executed. However, language describing the fee for routing to other venues was inadvertently deleted, while language describing the fee for routing to NYSE was moved but without language that had formerly limited its applicability to orders sent to NYSE. Accordingly, a reader of the amended rule may

⁸ Securities Exchange Act Release No. 60430 (August 4, 2009), 74 FR 40279 (August 11, 2009) (SR-NASDAQ-2009-072).

conclude that the fee of \$0.0020 or \$0.0019 per share executed is applicable to “other” orders routed to venues other than NYSE.

As noted above, however, the filing that introduced this error in Rule 7018 stated that it was not modifying any fees or credits, and in fact, was filed as a “stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule” under SEC Rule 19b-4(f)(1)⁹ rather than a fee change under SEC Rule 19b-4(f)(2).¹⁰ Moreover, NASDAQ’s intent not to modify fees through SR-NASDAQ-2009-072 was reflected in the Commission’s notice of the filing on the SEC website¹¹ and in the Federal Register,¹² and the applicable fees have been accurately described in the pricing schedule that appears on NASDAQ’s website.¹³ Accordingly, this filing corrects the typographical error. NASDAQ has been billing members in accordance with the correct fees since the effective date of SR-NASDAQ-2009-072 on July 24, 2009, and accordingly believes that all of its members are cognizant of the correct fee. However, because this filing is immediately effective and therefore cannot take effect retroactively, NASDAQ is also submitting a filing for notice and comment under Section 19(b)(2) of the Act to seek Commission approval for charging the correct fee during the period from July 24, 2009 through January 25, 2010.¹⁴

⁹ 17 C.F.R. 240.19b-4(f)(1).

¹⁰ 17 C.F.R. 240.19b-4(f)(2).

¹¹ See <http://www.sec.gov/rules/sro/nasdaq/2009/34-60430.pdf>.

¹² See Securities Exchange Act Release No. 60430 (August 4, 2009), 74 FR 40279 (August 11, 2009) (SR-NASDAQ-2009-072).

¹³ See <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

¹⁴ SR-NASDAQ-2010-015 (January 26, 2010).

Finally, NASDAQ is making non-substantive changes to Rule 7018 to reflect clearly that the category of “other” fees is, with respect to all types of securities, a charge for directed orders where the fees are not described by other provisions of Rule 7018. NASDAQ believes that this change will enhance the clarity of the rule.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁵ in general, and with Section 6(b)(4) of the Act,¹⁶ 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. NASDAQ is adapting the “maker-taker” pricing model that is prevalent across most U.S. transaction venues for securities priced at \$1 or higher and applying it securities priced below \$1. This change is a competitive response to another trading venue that has already introduced this pricing model for low-priced securities. The change will result in a fee increase for firms when they access liquidity in these securities and a fee reduction for firms when they provide liquidity in these stocks. NASDAQ is also correcting a typographical error in Rule 7018.

The impact of the changes upon the net fees paid by a particular market participant will depend upon a number of variables, including the prices of the market participant’s quotes and orders relative to the national best bid and offer (i.e., its propensity to add or remove liquidity) and the extent to which it trades in low-priced securities. NASDAQ notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. NASDAQ

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(4).

believes that the change will further enhance the competitiveness of its fees in comparison with those charged by other venues, and that its fees are reasonable and equitably allocated to members on the basis of whether they opt to direct orders to NASDAQ.

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 rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁷ and subparagraph (f)(2) of Rule 19b-4 thereunder.¹⁸ 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:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

¹⁷ 15 U.S.C. 78s(b)(3)(a)(ii).

¹⁸ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2010-014 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-2010-014. 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 Web site viewing and printing in the Commission's Public Reference Room 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 offices 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-2010-014, 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.¹⁹

Florence E. Harmon
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).