

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65020; File No. SR-NASDAQ-2011-099)

August 3, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule to Amend Fees Assessed for Use of NASDAQ Pre-trade Risk Management

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 25, 2011, The NASDAQ Stock Market LLC (the “Exchange” or “NASDAQ”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. 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 is proposing to amend fees assessed for use of NASDAQ Pre-trade Risk Management (“PRM”) and to make a minor technical correction. NASDAQ will implement the amended fees effective August 1, 2011.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

**7016. Nasdaq Risk Management**

(a) No change.

(b) Users of NASDAQ Pre-trade Risk Management (“PRM”) will be assessed [a charge of \$100 per month per PRM-enabled port.] a monthly fee based on the following table, and such fees will not exceed \$25,000 per member firm, per month:

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

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

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| <u>Port Tiers</u> | <u>Number of PRM-Enabled Ports</u> | <u>Monthly Fee</u>               |
|-------------------|------------------------------------|----------------------------------|
| <u>Tier 1</u>     | <u>50 or more</u>                  | <u>\$400 per port, per month</u> |
| <u>Tier 2</u>     | <u>20 to 49</u>                    | <u>\$500 per port, per month</u> |
| <u>Tier 3</u>     | <u>5 to 19</u>                     | <u>\$550 per port, per month</u> |
| <u>Tier 4</u>     | <u>1 to 4</u>                      | <u>\$600 per port, per month</u> |

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(c) Users of PRM services specified below will be assessed the following charges in addition to the applicable PRM-enabled port charges:

|   |  |
|---|--|
| PRM Modules   | [\$500 per month per PRM Module] <u>No charge</u>  |
| Aggregate Total Checks  | [\$0.025 per each eligible side, capped at \$2,000 per month per PRM Module] <u>No charge</u>  |
| PRM Workstation Add-ons to an existing NASDAQ Workstation or WeblinkACT 2.0 | \$100 per each PRM Workstation Add-on per month[beginning July 2006 (no charge for any PRM Workstation Add-ons in April, May and June 2008)] |

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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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to amend the fees assessed users of NASDAQ Pre-trade Risk Management. PRM provides member firms with the ability to set a wide range of parameters for orders to facilitate pre-trade protection by creating a PRM module defined to represent checks desired. Using PRM, firms can increase controls on their trading activity and the trading activity of their clients and customers at the order level, including the opportunity to prevent potentially erroneous transactions. PRM validates orders entered on PRM-enabled ports prior to allowing those orders into its matching engine and, using parameters set by the subscriber, determines if the order should be sent for fulfillment. If PRM rejects an order, it alerts the member firm and provides it with clearly-defined reasons for the rejection.<sup>3</sup> These alerts are sent on Execution and Order/Message DROP copy lines/reports.

PRM users may choose to set PRM Order Checks, Aggregate Total Checks within a PRM Module, and subscribe to PRM Workstation Add-ons to [sic] an existing NASDAQ Workstation or WeblinkACT 2.0. PRM manages risk by checking each order, before it is accepted into the system, against certain parameters pre-specified by the user within a module, such as maximum order size or value, order type restrictions, market session restrictions

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<sup>3</sup> For example, PRM provides a "Fat Finger Check," which allows a user to compare price instructions on incoming orders against the current displayed size and price in the market. If the order is not in line with the displayed price and size, the order will be rejected before it can execute. Users can set order limits at several levels to ensure that clearly erroneous orders never execute.

(pre/post market), security restrictions, including per-security limits, restricted stock list, and certain other criteria. These checks are in addition to the Fat Finger Check, which is available for all orders submitted through a RASH/FIX PRM-enabled port.<sup>4</sup> In order for a member firm to subscribe, at least one PRM Module per market participant ID (“MPID”) is required, but a user may have multiple PRM Module subscriptions per MPID, depending on the type and number of ports designated as PRM ports.<sup>5</sup> A PRM Module is created to validate individual orders against pre-specified parameters. Aggregate Total Checks allow users to limit overall daily trading activity based on Buy, Sell, and/or Net trading limits. These daily trading activity limits may be established at an aggregate limit and/or security specific limit per PRM Module. Member firms may subscribe to the PRM Workstation Add-on to [sic] an existing NASDAQ Workstation or WeblinkACT 2.0 for a fee.

NASDAQ is proposing to change the means by which PRM fees are assessed under Rules 7016(b) and (c). Currently, under Rule 7016(b) subscribers pay a nominal fee of \$100 per PRM-enabled port, and \$500 per month, per PRM Module. Subscribers must subscribe to at least one PRM Module, but often subscribe to more than one PRM Module so that firm may monitor separate order flow sent through a single PRM-enabled port. In addition, a separate fee for Aggregate Total Checks is assessed at a rate of \$.025 per each eligible side and is limited to a total of \$2,000 per module, per month. As such, combined fees for a single PRM-enabled port often exceed the minimum fee of \$600 per month.

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<sup>4</sup> Id.

<sup>5</sup> A member using FIX or Rash ports can configure its PRM Module to pre-trade-manage a subscriber’s order flow for a specified MPID and PRM-enabled port, or for an account within an MPID. A member using OUCH ports can configure its PRM Module to pre-trade-manage a subscriber’s order flow for a specified port.

In lieu of assessing module-based and order-based fees under Rule 7016(c), NASDAQ is proposing to eliminate the fee for these two services and increase the per-port fee assessed under Rule 7016(b). The new monthly port-based fee is tiered, decreasing as the number of PRM-enabled ports subscribed increase and the next tier is reached. NASDAQ is also proposing to limit the fees assessed a member firm under the new tiered fee structure to a total of \$25,000 per month. Although NASDAQ is proposing to eliminate the fees assessed for PRM Modules and Aggregate Total Check, both services will continue to be available to subscribers with no change to the service provided.

NASDAQ believes that assessing PRM fees by port will simplify the billing process and either result in no increase in fees as assessed under the current rules, or more likely result in a fee decrease for the majority of current subscribers. For example, a subscriber to a single PRM-enabled port with a single PRM Module subscription would incur the same fee under both the proposed PRM-enabled port fee and the current fee regime - \$600 per month. A subscriber to five PRM-enabled ports with five PRM Modules would be assessed a fee of \$3,000 per month under the current rules, whereas the same subscriber would only pay \$2,750 per month under the proposed rules. A subscriber with five PRM-enabled ports and a total of ten PRM Modules would pay \$5,500 per month under the current rules, yet only \$2,750 per month under the proposed fees. This analysis does not account for the additional savings that subscribers to Aggregate Total Checks will realize under the proposed new fees.

Last, NASDAQ is deleting language concerning a fee holiday from PRM Workstation Add-ons fees from the table under Rule 7016(c), since it concerns a limited timeframe that has since expired.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>6</sup> 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 the NASDAQ operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. The amended fee schedule applies to all subscribers equally based on the number of ports subscribed. The proposed amended fees provide a more efficient means of billing, thus reducing administrative costs. The proposed changes may also provide incentive for member firms to subscribe to the service and utilize additional PRM features (*i.e.*, Total Aggregate Checks) given the elimination of transaction-based fee for Total Aggregate Checks, the elimination of the monthly PRM Module fee, and the tiered PRM fee structure with a \$25,000 monthly fee cap, per member firm. The proposed amended fees will continue to cover the costs associated with separately offering the service, responding to customer requests, configuring NASDAQ's systems, programming to user specifications, and administering the service, among other things, and may provide NASDAQ with a profit to the extent costs are covered.

NASDAQ also believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act<sup>7</sup> because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. PRM is designed to assist member firms in avoiding entry of erroneous orders by screening out those that exceed pre-determined limits, which otherwise may harm both the

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<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

member firm and the quality of the markets. As such, PRM is an important compliance tool that members may use to help maintain the regulatory integrity of the markets. NASDAQ believes that the amendments to the fees assessed for PRM and its services may encourage more member firms to subscribe to this useful compliance tool.

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 Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>9</sup> 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 necessary or appropriate in the public interest, for the protection of investors, or 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

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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-2011-099 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-2011-099. 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 website (<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 website 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-2011-099 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>10</sup>

Elizabeth M. Murphy  
Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).