

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65246; File No. SR-NASDAQ-2011-120)

September 1, 2011

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 August 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 proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on September 1, 2011. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at NASDAQ’s principal office, at the Commission’s Public Reference Room, and at the Commission’s website at [www.sec.gov](http://www.sec.gov).

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

---

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

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

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 amending Rule 7018 to make two modifications to its pricing schedule for routing and execution of quotes/orders through the NASDAQ Market Center of securities priced at \$1 or more. First, NASDAQ is proposing to extend and modify, for one month the Attributable Market Provider pilot program to continue to encourage more extensive market making activity on NASDAQ. Under the pilot, set forth in NASDAQ Rule 7018(a)(4), a market maker with an MPID through which it has registered as a market maker in a daily average of more than 5,000 securities during the month will receive an additional credit of \$0.0004 per share executed with respect to attributable quotes/orders that provide liquidity through such MPID, in addition to the credit that it is otherwise entitled to receive under Rule 7018. Currently, the maximum additional rebate that a member can receive under this pilot program is \$250,000 per month. NASDAQ is reducing the maximum from \$250,000 to \$100,000 during the one-month extension of the pilot.

The cap applies on a per member basis, regardless of the number of MPIDs through which the member qualifies for the program. Through the program, NASDAQ hopes to see a continuation of increased market maker participation and contribution of attributable liquidity in order to enhance price discovery. Throughout the pilot period, NASDAQ will evaluate the costs and benefits of the program, and will then either allow the pilot to lapse or file to extend, modify, or make the program permanent.

Second, NASDAQ is raising from \$0.0027 to \$0.0029 the charge for members entering Directed Orders sent to NASDAQ OMX PSX. The current charge of \$0.0027 reflects a premium of \$0.0002 above the standard charge for removing liquidity at NASDAQ OMX PSX. Effective September 1, 2011, NASDAQ OMX PSX will be increasing by \$0.0002 the charge for removing liquidity. Therefore, to maintain the \$0.0002 premium above that rate, NASDAQ is increasing the rate for Directed Orders sent to NASDAQ OMX PSX by \$0.0002 to \$0.0029.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>3</sup> in general, and with Section 6(b)(4) of the Act,<sup>4</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. All similarly situated members are subject to the same fee structure, and access to NASDAQ is offered on fair and non-discriminatory terms.

Extending the proposed Attributable Market Provider program is reasonable because it will continue a fee reduction for members that qualify for the program, without increasing the costs borne by other members. It is reasonable that NASDAQ lowers the maximum credit due to its analysis of the current mix of usage of the pilot program by its various members. Moreover, the proposed program is consistent with an equitable allocation of fees because it allocates a higher rebate to members that make significant contributions to NASDAQ market quality by making markets in a large number of stocks and that contribute to price discovery by posting attributable quotes/orders. Although members qualifying for the program may use non-attributed and non-displayed orders, the enhanced rebate will be paid only with respect to attributable,

---

<sup>3</sup> 15 U.S.C. 78f.

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

displayed liquidity. Based on three months of experience with the pilot, NASDAQ believes that the program does encourage some market makers to become active in more stocks and display more shares of liquidity, thereby benefitting other market participants that will receive a more complete understanding of the supply and demand for particular stocks and that will be able to access the liquidity displayed by such market makers.

With respect to the charge for sending Directed Orders to NASDAQ OMX PSX, NASDAQ believes that raising the fee by \$0.0002 is reasonable and an equitable allocation of fees in that this increase maintains a stable premium of \$0.0002 over the charge for removing liquidity on NASDAQ OMX PSX. This premium represents a fee for usage of NASDAQ's state-of-the-art routing service.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges.

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. Because the market for order execution and routing is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, NASDAQ does not believe that the proposed

changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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>5</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 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-2011-120 on the subject line.

---

<sup>5</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

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-2011-120. 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-2011-120 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>6</sup>

Elizabeth M. Murphy  
Secretary

---

<sup>6</sup> 17 CFR 200.30-3(a)(12).