

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65768; File No. SR-NASDAQ-2011-151)

November 17, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees to BATS Exchange, Inc.

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 November 8, 2011, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) 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 the Exchange. 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

The Exchange proposes to modify Rule 7050, governing pricing for NASDAQ members using the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options. In addition the Exchange is also proposing to make minor amendments to Rule 7053, entitled “NASDAQ Options Market - Access Services.”

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on December 1, 2011.

The text of the proposed rule change is set forth below. Proposed new text is in italics and deleted text is in brackets.

* * * * *

7050. NASDAQ Options Market

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

* * * * *

(4) Fees for routing contracts to markets other than the NASDAQ Options Market shall be assessed as provided below. The current fees and a historical record of applicable fees shall be posted on the NasdaqTrader.com website.

| Exchange | Customer | Firm | MM | Professional |
|---|----------|--------|--------|------------------------------|
| BATS | \$0.36 | \$0.55 | \$0.55 | \$0. 36 <u>48</u> |
| BOX | \$0.06 | \$0.55 | \$0.55 | \$0.06 |
| CBOE | \$0.06 | \$0.55 | \$0.55 | \$0.26 |
| CBOE orders greater than 99 contracts in NDX, MNX ETFs, ETNs & HOLDRs | \$0.24 | \$0.55 | \$0.55 | \$0.26 |
| C2 | \$0.50 | \$0.55 | \$0.55 | \$0.51 |
| ISE | \$0.06 | \$0.55 | \$0.55 | \$0.24 |
| ISE Select Symbols* | \$0.18 | \$0.55 | \$0.55 | \$0.34 |
| NYSE Arca Penny Pilot | \$0.50 | \$0.55 | \$0.55 | \$0.50 |
| NYSE Arca Non Penny Pilot | \$0.06 | \$0.55 | \$0.55 | \$0.06 |
| NYSE AMEX | \$0.06 | \$0.55 | \$0.55 | \$0.26 |
| PHLX (for all options other than PHLX Select Symbols) | \$0.06 | \$0.55 | \$0.55 | \$0.26 |
| PHLX Select Symbols** | \$0.30 | \$0.55 | \$0.55 | \$0.46 |

* These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

** These fees are applicable to orders routed to PHLX that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See PHLX's Fee Schedule for the complete list of symbols that are subject to these fees.

* * * * *

7053. NASDAQ Options Market - Access Services

[Part A: The following charges are assessed by Nasdaq for connectivity to the NASDAQ Options Market for NOM 1.0:]

[(a) Financial Information Exchange (FIX)]

| [Ports] | [Quantity] | [Price] |
|--|-----------------------------|--------------------|
| [FIX Trading Port] | [First 25 ports] | [\$500/port/month] |
| | [Additional ports above 25] | [\$250/port/month] |
| [FIX Port for Services Other than Trading] | [First 25 ports] | [\$500/port/month] |
| | [Additional ports above 25] | [\$250/port/month] |

[(b) TradeInfo]

[• Members not subscribing to the Nasdaq Workstation using TradeInfo will be charged a fee of \$95 per user per month.]

[(c) Other Port Fees]

[The following port fees shall apply in connection with the use of other trading telecommunication protocols:]

| [Quantity] | [Price] |
|-----------------------------|--------------------------------------|
| [First 25 ports] | [\$500 per month for each port pair] |
| [Additional ports above 25] | [\$250 per month for each port pair] |

[Part B: The following charges are assessed by Nasdaq for connectivity to the NASDAQ Options Market for NOM 2.0 as of August 26, 2011 through September 30, 2011:]

[(a) TradeInfo]

[• Members not subscribing to the Nasdaq Workstation using TradeInfo will be charged a fee of \$95 per user per month.]

[(b) Port Fees, per port per month, as follows:]

| | |
|------------------------|----------|
| [Order Entry Port Fee] | [\$0.00] |
|------------------------|----------|

| | |
|-----------------------------|----------|
| [CTI Port Fee] | [\$0.00] |
| [OTTO Port Fee] | [\$0.00] |
| [ITTO Port Fee] | [\$0.00] |
| [Order Entry DROP Port Fee] | [\$0.00] |
| [OTTO DROP Port Fee] | [\$0.00] |
| [SQF Port Fee] | [\$0.00] |

[Part C:] The following charges[*] are assessed by Nasdaq for connectivity to the NASDAQ Options Market [as of October 3, 2011]:

(a) TradeInfo

- Members not subscribing to the Nasdaq Workstation using TradeInfo will be charged a fee of \$95 per user per month.

(b) Port Fees, per port per month, as follows:

| | |
|---------------------------|----------|
| Order Entry Port Fee | \$500.00 |
| CTI Port Fee | \$500.00 |
| OTTO Port Fee | \$500.00 |
| ITTO Port Fee | \$500.00 |
| Order Entry DROP Port Fee | \$500.00 |
| OTTO DROP Port Fee | \$500.00 |
| SQF Port Fee | \$0.00 |

[* As of October 3, 2011, the fees in Parts A and B shall no longer apply. All NOM Participants will be assessed the fees in Part C.]

The text of the proposed rule change is available on the Exchange's website at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, 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, the Exchange 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. The Exchange 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 modify Rule 7050 governing fees assessed for option orders entered into NOM but routed to and executed on away markets (“Routing Fees”). Specifically, NASDAQ is proposing to amend the Professional Routing Fee for orders routed to the BATS Exchange, Inc. (“BATS”).

The Exchange currently assesses the following Routing Fees to route orders to BATS: a Customer is assessed \$0.36 per contract; a Firm is assessed \$0.55 per contract; a Market Maker is assessed \$0.55 per contract; and a Professional is assessed \$0.36 per contract. The Exchange is proposing to amend the Professional Routing Fee to BATS from \$0.36 per contract to \$0.48 per contract. The other BATS Routing Fees for Customers, Firms and Market Makers would remain the same.

BATS recently adopted a definition for a professional and amended its Fee Schedule to assess a fee of \$.42 for professionals that remove liquidity from BATS Options.³ The Exchange

³ See Securities Exchange Act Release No. 65694 (November 4, 2011) (SR-BATS-2011-046).

is proposing to amend its Professional Routing Fee to BATS to recoup this fee. In addition, NASDAQ Options Services LLC (“NOS”), a member of the Exchange, is the Exchange’s exclusive order router. Each time NOS routes to away markets NOS is charged a \$0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which are passed through to the Exchange. The Exchange is proposing this amendment in order to recoup clearing and transaction charges incurred by the Exchange when Professional orders are routed to BATS.⁴

In addition, the Exchange proposes to amend Exchange Rule 7053 to remove outdated text. The Exchange previously filed a rule change to amend Exchange Rule 7053 in connection with trading system enhancements that were to take place on October 3, 2011.⁵ The rule change implemented new Access Services Fees for all NOM Participants as of October 3, 2011 at which time all NOM Participants were required to transition to the new trading platform. The effective fees as of October 3, 2011 are located in Part C of Rule 7053. At this time, the Exchange proposes to remove Parts A and B as they are no longer effective and also remove the reference to the words “Part C” and “as of October 3, 2011” and the note which states “As of October 3, 2011, the fees in Parts A and B shall no longer apply. All NOM Participants will be assessed the fees in Part C.” This language is no longer necessary with the deletion of Parts A and B. The remaining text will reflect the existing fees.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of

⁴ The Exchange is proposing to recoup the \$.42 per contract professional taker fee for orders routed to BATS along with the \$0.06 clearing fee which is incurred by the Exchange, as explained herein.

⁵ See Securities Exchange Act Release No. 65180 (August 22, 2011), 76 FR 53521 (August 26, 2011) (SR-NASDAQ-2011-111).

Section 6 of the Act,⁶ in general, and with Section 6(b)(4) of the Act,⁷ 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.

The Exchange believes that the amendment to the BATS Professional Routing Fee is reasonable because it seeks to recoup costs that are incurred by the Exchange when routing Professional orders to BATS on behalf of its members. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange. The Exchange believes that the proposed Professional Routing Fee would enable the Exchange to recover the professional taker fee assessed by BATS, plus clearing fees for the execution of Professional orders. The Exchange also believes that the proposed Routing Fee is equitable and not unfairly discriminatory because it would be uniformly applied to all Professionals.

In addition, the Exchange believes that the proposed amendments to Exchange Rule 7053 are reasonable, equitable and not unfairly discriminatory because the amendments seek to remove outdated and unnecessary language from the Rule text. The amendments will clarify the current Rule for all NOM Participants.

NASDAQ is one of nine options market in the national market system for standardized options. Joining NASDAQ and electing to trade options is entirely voluntary. Under these circumstances, NASDAQ's fees must be competitive and low in order for NASDAQ to attract order flow, execute orders, and grow as a market. NASDAQ thus believes that its fees are fair and reasonable and consistent with the Exchange Act.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or 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 Act⁸ and paragraph (f)(2) of Rule 19b-4⁹ thereunder. 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.

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. Please include File Number SR-NASDAQ-2011-151 on the subject line.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

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-2011-151. 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-2011-151 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.¹⁰

Kevin M. O'Neill
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).