

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56739; File No. SR-NASDAQ-2007-082)

November 2, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto 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 October 1, 2007, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”), 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 substantially prepared by the Exchange. On October 31, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 this rule change on October 1, 2007.

The text of the proposed rule change is available at Nasdaq, the Commission’s Public Reference Room, and [www.nasdaq.complinet.com](http://www.nasdaq.complinet.com).

---

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

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

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

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

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

Effective October 1, 2007, Nasdaq is implementing a set of pricing changes to its fees for routing to the New York Stock Exchange ("NYSE") that reflect recently announced changes to order execution fees at that venue.<sup>5</sup> The changes are designed to ensure that Nasdaq's routing fees generally reflect the charges that Nasdaq Execution Services, Nasdaq's routing broker, will incur when routing to NYSE, with minimal markups or markdowns to reflect the value of Nasdaq's services as a high-speed router and to provide incentives for firms to enter orders that attempt to execute in Nasdaq for the full size of the order prior to routing. Accordingly, Nasdaq's routing fees are being decreased in instances where NYSE has lowered fees, and increased in instances where NYSE has increased its fees. Specifically:

- Nasdaq is eliminating the charge to route orders in securities other than exchange-traded funds to the NYSE in instances where the orders add liquidity on the NYSE, since NYSE is eliminating charges for such orders.

---

<sup>5</sup> See Securities Exchange Act Release No. 56590 (October 1, 2007), 72 FR 57369 (October 9, 2007) (SR-NYSE-2007-88).

- Nasdaq is increasing its fees to route other orders to NYSE, to approximate NYSE's increased charge of \$0.0008 per share for orders that remove liquidity. As is currently true, Nasdaq's exact charge varies depending on the overall volume of the member and the exact characteristics of the routed order, but is generally within \$0.0001 of NYSE's charge. In addition, NYSE caps its execution fee at \$120 per trade, which translates to a cap on executions greater than 150,000 shares. Nasdaq does not apply a cap to its routing charges when sending orders to the NYSE, because Nasdaq receives extremely few executions for greater than 150,000 shares from the NYSE. Under the revised pricing schedule, Nasdaq will charge:
  - \$0.00075 or \$0.0008 per share executed for orders that attempt to execute in Nasdaq for the full size of the order before being routed, depending on whether the order is eligible to post liquidity in Nasdaq or is designated only to remove liquidity before routing;
  - \$0.0009 per share executed for Directed Intermarket Sweep Orders and orders that attempt to execute solely against displayed interest in Nasdaq before routing; and
  - A variable charge of \$0.0008 to \$0.0009 for orders that do not attempt to execute in Nasdaq before routing. For members with an average daily volume in all securities during the month of more than 35 million shares of liquidity provided, the charge will be \$0.0008; for members with an average daily volume of more than 60 million shares of liquidity routed to NYSE without attempting to execute in Nasdaq (other than Directed Intermarket Sweep Orders), the charge will be \$0.000825; for members with an average daily volume in all securities of more than 20 million shares of

liquidity provided, the charge will be \$0.00085; and for other members, the charge will be \$0.0009.

- A fee of \$0.0004 per share executed for an order that executes in the NYSE opening or closing process as an “at the opening”, “at the opening only”, “market-at-the-close”, or “limit-at-the-close” order. Such orders receive a “blended execution” rate at NYSE, reflecting the average between the \$0.0008 charge to take liquidity and the \$0 charge to add liquidity. Nasdaq will pass this charge through directly.

In addition to the foregoing changes, Nasdaq is also modifying fees for routing orders to venues other than NYSE and the American Stock Exchange (“Amex”) in circumstances where the orders do not attempt to execute in Nasdaq for the full size of the order prior to routing. Currently, Nasdaq charges \$0.0035 per share for value-added orders that attempt to execute only against displayed size or that are designated as Directed Intermarket Sweep Order, and a slightly discounted fee of \$0.003 per share for other orders that do not check Nasdaq. Although Nasdaq is retaining the discounted fee for orders routed to Amex and for orders in exchange-traded funds (“ETFs”) routed to NYSE, Nasdaq adopted the higher fee for orders routed to other venues. Nasdaq believes that retaining the discount for Amex and ETF orders routed to NYSE is warranted in light of their historic status as primary listing markets and the volume of ETF orders routed to them, but that a higher fee for other orders that do not check the Nasdaq book is warranted in order to encourage greater use of orders that do check the book. Finally, Nasdaq is deleting several out-of-date references to fees in effect only during the month of July 2007.<sup>6</sup>

---

<sup>6</sup> All of the changes apply only to securities trading at \$1 per share or more. All of Nasdaq’s other fees, including its fees for securities priced at less than \$1, remain unchanged.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(4) of the Act,<sup>8</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. The change responds to fee changes by NYSE effective on October 1, 2007, to ensure that Nasdaq's fees for routing to NYSE are generally consistent with charges that NYSE imposes on Nasdaq when it routes orders to it, and further clarifies incentives of market participants to designate orders as eligible for execution on Nasdaq prior to routing.

### 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 that is 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

Written comments on the proposed rule change were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>10</sup> because it establishes or changes a due, fee, or other charge applicable only to a member imposed by a self-regulatory organization.

Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such

---

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

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.<sup>11</sup>

#### 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-2007-082 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2007-082. 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

---

<sup>11</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on October 31, 2007, the date on which Nasdaq filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. 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-2007-082 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Florence E. Harmon  
Deputy Secretary

---

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