

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59043; File No. SR-NASDAQ-2008-089)

December 3, 2008

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 Options Market

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 21, 2008, 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. Nasdaq has filed the proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 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. Specifically, Nasdaq proposes to adopt a credit of \$0.35 per executed contract to members who provide liquidity using price-improving orders through NOM. Nasdaq

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

will make the proposed rule change effective on December 1, 2008. The text of the proposed rule change is below. Proposed new language is underlined.⁵

* * * * *

7050. NASDAQ Options Market

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

(1) Fees for Execution of Contracts on the NASDAQ Options Market

Charge to member entering order that executes in
the NASDAQ Options Market \$0.45 per executed contract

For a pilot period ending July 31, 2009, charge for
members or non-members entering order via the Options
Intermarket Linkage that executes in the Nasdaq Options
Market

Credit to member providing liquidity through the NASDAQ Options Market: \$0.30 per executed contract

Credit to member providing liquidity \$0.35 per executed contract
using price-improving orders through
the NASDAQ Options Market:

⁵ Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://nasdaqomx.cchwallstreet.com>.

(2) – (4) No Change.

* * * * *

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 proposing to modify Rule 7050 to allow for a credit of \$0.35 per executed contract to members who provide liquidity using price-improving orders through NOM. Currently, members that provide liquidity through NOM receive a credit of \$0.30 per executed contract. Nasdaq believes increasing the credit to \$0.35 per executed contract for those members that provide liquidity using price-improving orders through NOM should help to encourage additional price improvement, which should in turn, benefit takers of liquidity and investors.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of 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. Nasdaq

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

believes that the proposed credit should encourage additional price improvement which should, in turn, benefit takers of liquidity and investors in general.

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. To the contrary, Nasdaq has designed its fees to compete effectively for the execution and routing of options contracts and to reduce the overall cost to investors of options trading.

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 Act⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁹

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:

⁸ 15 U.S.C. 78s(b)(3)(a)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

- 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-2008-089 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2008-089. 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 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 the 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-2008-089 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

Florence E. Harmon
Acting Secretary

¹⁰ 17 CFR 200.30-3(a)(12).