SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61666; File No. SR-NASDAQ-2010-027)

March 5, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Pricing for Option Orders Routed to Away Markets

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 March 2, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b-4(f)(2) thereunder,[4] NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. 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 the 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. NASDAQ will make the proposed rule change effective for transactions settling on or after March 2, 2010.

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A)(ii).

4 17 CFR 240.19b-4(f)(2).

The text of the proposed rule change is available at http://nasdaqomx.cchwallstreet.com/, at NASDAQ's principal office, 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, 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 governing the fees assessed for execution of options orders entered into NOM but routed to and executed on away markets ("routing fees"). When NASDAQ began trading standardized options on March 31, 2008, it assessed a routing fee based upon an approximation of the cost to NASDAQ of executing such orders at those markets. NASDAQ later determined that the superior approach for executions on away markets at the time was to pass-through to NASDAQ members the actual fees assessed by away markets plus the clearing fees for the execution of orders routed from NASDAQ.

NASDAQ proposes to simplify Rule 7050 by eliminating entirely all current NOM pass-through fees and replacing those fees with the following new routing fees: (i) a $0.36 per contract side fee for customer orders routed to BATS Exchange, Inc. ("BATS") in all options, (ii) a $.06 per contract side fee for customer orders routed to the Boston Options Exchange Group LLC ("BOX") in all options; (iii) a $0.06 per contract side fee for customer orders routed to the Chicago

Board Options Exchange, Inc. ("CBOE") in all options; (iv) a $.06 per contract side fee for customer orders routed to International Securities Exchange, LLC ("ISE") in all options; (v) a $0.50 per contract side fee for customer orders routed to NYSE Arca, Inc. ("NYSEArca") in options included in the penny pilot ("penny options"); (vi) a $0.06 per contract side fee for customer orders routed to NYSE Arca non-penny options; (vii) a $0.06 per contract side fee for customer orders routed to NYSE Amex LLC ("NYSE Amex") in all options; (viii) a $0.30 per contract side fee for customer orders routed to NASDAQ OMX PHLX, Inc. ("Phlx") in AMZN, C, BAC, DELL, DIA, DRYS, EK, GDX, GE, GS, IWM, MSFT, QCOM, QQQQ, RIMM, SBUX, SKF, SLV, SMH, SPY, UNG, USO, UYG, WYNN, and XLF options; (ix) a $0.06 per contract side fee for customer orders routed to Phlx in all other options; and (x) a $0.55 per contract side fee for all Firm and Market Maker orders routed by the Exchange to away markets.

Recovery of Transaction and Clearing Costs

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 BATS, NYSEArca, and Phlx, is charged a transaction fee in certain symbols, which are passed through to the Exchange. The following routing fees are proposed in order to recoup these costs:

- The Exchange is proposing a $.06 per contract routing fee for orders routed to NYSE, AMEX, BOX, CBOE, ISE and NYSEArca in order to recoup clearing charges which are incurred by the Exchange when customer orders are routed to these away markets.

- The Exchange is proposing a $0.36 per contract routing fee for orders routed to BATS in order to recoup transaction and clearing charges incurred by the Exchange when customer orders are routed to BATS.
- The Exchange is proposing a $0.50 per contract routing fee for orders routed to NYSE Arca, Inc. ("NYSEArca") in penny options.
- The Exchange is proposing a $0.30 per contract routing fee for orders routed to Phlx in order to recoup transaction and partial clearing charges incurred by the Exchange when customer orders in the symbols listed above (subject to Phlx "taker" fees), are routed to Phlx.[5]

The Exchange is proposing these fees to recoup the majority of transaction and clearing costs associated with routing customer orders to each destination market. As with all fees, the Exchange may adjust these routing fees by filing a new proposed rule change.

The Exchange has designated this proposal to be operative for trades settling on or after March 2, 2010.

Routing Fees for Firms and Market Makers

The Exchange proposes a fixed routing fee of $0.55 for routing orders for the account(s) of Firms (i.e., an order that clears as "Firm" with the Options Clearing Corporation ("OCC")) and Market Makers to away markets.

The Exchange notes that all U.S options exchanges charge fees for Firm and Market Maker[6] orders and that they are consistently higher than fees for customer orders. Additionally,

[5] Phlx charges a transaction fee of $0.25, together with a clearing charge of $0.06 in the symbols. The Exchange proposes to recoup $0.05 of the $0.06 clearing charge for customer orders.

[6] The Exchange notes that some other options exchanges include Market Maker transaction and clearing fees as "broker-dealer" fees.

the pricing on the various U.S options exchanges for such orders varies significantly from exchange to exchange, with much more variation than for customer orders.[7] Accordingly, the Exchange is proposing the $0.55 per contract side routing fee in order to capture the majority of the transaction and clearing fees for Firm and Market Maker orders, while making the Exchange's routing fees easier to calculate and predict for members whose proprietary orders are routed away.

Simply put, fixed routing fees are easier to comprehend by the members whose orders are routed away. There is no uncertainty and it is simpler for members acting as agent for other members to pass-through fees to its customer. Currently, predicting, calculating and charging back "pass-through" fees is an unduly burdensome, expensive and complicated task for Exchange members whose orders are routed away. The fixed routing fees for Firm and Market Maker orders should ease the burden, expense and complexity of this task. Furthermore, fixed fees are easier to manage and maintain for the Exchange, ensuring accurate billing and accounting.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] 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 further believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[10] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and

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[7] There are, in fact, no customer transaction fees applicable on BOX, CBOE, ISE, NYSEArca non-penny options, and Phlx options not subject to the "taker" fee.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.

Routing Fees for Customer Orders

The Exchange believes that the proposed routing fees applicable to customer orders 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed routing fees applicable to customer orders are equitable and reasonable, in that they would apply to all customer orders equally on the reasonable basis that the routing fees are approximately equal to the transaction and clearing fees charged to NOS and ultimately to the Exchange.[11]

The routing fees applicable to customer orders are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because, the Exchange believes, they are much easier to follow and calculate, and as stated above, most U.S. options exchanges do not charge transaction fees for customer orders. Therefore, the amount of the routing fees are naturally less than the proposed fees applicable to Firm and Market Maker orders routed to away markets.

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[11] The Exchange notes that it will recoup less than the $0.06 clearing fee for orders routed to Phlx in options subject to the Phlx "taker" fee.

Routing Fees for Firm and Market Maker Orders

The Exchange believes its proposed fixed routing fees applicable to Firm and Market Maker orders are equitable, in that they would apply to all such orders equally. Such orders are reasonably distinguished from customer orders because most U.S. options exchanges do not charge transaction fees for customer orders, whereas all U.S. options exchanges assess transaction and clearing charges for Firm and Market Maker orders. The Exchange believes that the proposed routing fees for Firm and Market Maker orders are a reasonable approximation of across-the-board transaction and clearing fees charged to NOS and ultimately to the Exchange for such orders.

The Exchange believes that the fixed routing fee for Firm and Market Maker orders schedule is reasonable and not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because as stated above, the away market transaction and clearing fees for customer orders are generally significantly less than such fees for Firm and Market Maker orders. The $0.55 fee is intended to approximate the charges to the Exchange for routing such orders to away markets.

Additionally, the proposed fixed routing fees are intended to simplify the process by which members calculate, predict and account for routing fees. There is no consistent formula among the exchanges for determining such charges. Members routing such orders are faced with the monumental task of determining exactly what charges apply to each exchange, and accounting for such charges relative to routing fees charged by the various exchanges. Simply put, it is easier for members to make such determinations on a real-time basis with one fixed rate instead of seven different, often complicated, rates.

NASDAQ is one of eight 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.

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

NASDAQ 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 Act[12] and paragraph (f)(2) of Rule 19b-4[13] thereunder. 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:

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12 15 U.S.C. 78s(b)(3)(A)(ii).

13 17 CFR 240.19b-4(f)(2).

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-2010-027 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-2010-027. 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 Web site 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 such 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2010-027 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.[14]

Florence E. Harmon
Deputy Secretary

[14] 17 CFR 200.30-3(a)(12).