

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63852; File No. SR-NASDAQ-2011-017)

February 7, 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”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on January 27, 2011, The NASDAQ Stock Market LLC (“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 February 1, 2011. The text of the proposed rule change is available at <http://nasdaq.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

¹ 15 U.S.C. 78s(b)(1).

² 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 modifications to its pricing schedule for execution and routing of orders through the NASDAQ Market Center. First, with respect to fees for NASDAQ's Closing Cross, NASDAQ is introducing a pricing discount to encourage market participants that might otherwise internalize orders at a price established through the Closing Cross to bring their orders to NASDAQ for full participation in the Closing Cross.

Currently, all "Market-on-Close" and "Limit-on-Close" orders that execute in the Closing Cross pay a fee of \$0.0010 per share executed. Under the proposed change, a member that trades through a Market Participant Identifier ("MPID") that qualifies as a High Volume MPID will pay a discounted fee of \$0.0001 per share executed with respect to executions of Market-On-Close and Limit-on-Close orders when the same High Volume MPID is on both sides of the trade. For this purpose, a "High Volume MPID" is defined as an MPID through which a member: (a) executes more than 100 million shares of "Market-On-Close" or "Limit-On-Close" orders in the NASDAQ Closing Cross per month, and (b) has an average daily volume through the NASDAQ Market Center of more than: (1) 95 million shares of liquidity provided, if average total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities is more than 10 billion shares per day during the month; (2) 85 million shares of liquidity provided, if average total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities is between 9,000,000,001 and 10 billion shares per day during the month; (3) 75 million shares of liquidity

provided, if average total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities is between 8,000,000,001 and 9 billion shares per day during the month; or (4) 65 million shares of liquidity provided, if average total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities is 8 billion or fewer shares per day during the month. The tier levels for liquidity provision are identical to the tier levels that qualify a member to receive a liquidity provider rebate of \$0.00295 per share executed with respect to shares executed through NASDAQ during the regular trading day. Such a member is, by that standard, a member with high volumes of order flow that enhances NASDAQ's market quality through extensive liquidity provision. NASDAQ believes that introducing a volume-based tier in the Closing Cross will maximize the extent to which high volumes of orders are brought to the Closing Cross, rather than being internalized by firms at the price established by the Closing Cross. The change is also reflective of a similar pricing change recently made by the New York Stock Exchange ("NYSE") under which it established a volume discount for participants in its closing process.³

Second, NASDAQ is modifying the fee for routing directed orders to the NASDAQ OMX PSX ("PSX") facility of NASDAQ OMX PHLX ("PHLX"), to reflect a change in the fee for executing orders at that venue that is being made as of February 1, 2011.⁴ Currently, the fee to access liquidity at PSX is \$0.0013 per share executed, and the fee for routing directed orders to PSX is \$0.0015 per share executed. With the fee charged by PSX rising to \$0.0025 per share executed, the fee for routing directed orders to it will rise to \$0.0027 per share executed, thereby maintaining the \$0.0002 markup that exists in the current fee schedule.

³ Securities Exchange Act Release No. 63642 (January 4, 2011), 76 FR 1653 (January 11, 2011) (SR-NYSE-2010-87).

⁴ SR-PHLX-2011-11 (January 26, 2011).

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Section 6(b)(4) of the Act,⁶ 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 believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated members will be subject to the same fee structure, and access to the Exchange's market is offered on fair and non-discriminatory terms.

The impact of the change in Closing Cost fees will be unambiguously positive or neutral to market participants, since members qualifying for the favorable tier will pay reduced fees for executing orders in the Closing Cross, while members that do not qualify will continue to pay existing fees. Volume-based discounts such as the reduced execution fee proposed here have been widely adopted in the cash equities markets, and are equitable because they are open to all members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes of the Closing Cross. NASDAQ further notes that it operates in a highly competitive market in which market participants can readily favor competing venues, or in this case, internalize orders rather than exposing them to the broader market, if they deem fee levels at a particular venue to be excessive. NASDAQ believes that the fee reduction will help ensure that its Closing Cross continues to attract high levels of participation.

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

The change for directed orders sent to PSX reflects recent pricing changes by that venue, and allows NASDAQ to maintain the current markup of \$0.0002 per share executed for directed orders that it routes to that venue. In this regard, the fees charged and rebates offered by NASDAQ for routing orders to PSX are reasonable and equitable, in that the decision to use NASDAQ as a router is entirely voluntarily, and members can avail themselves of numerous other means of directing orders to PSX, including becoming members of PHLX or using any of a number of competitive routing services offered by other exchanges and brokers.

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 and routing services if they believe that alternatives offer them better value. NASDAQ's reduction of Closing Cross fees is reflective of the need to ensure that fees are set at competitively viable levels, and its change to routing fees is necessary to reflect pricing changes at PSX.

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.⁷ 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

⁷ 15 U.S.C. 78s(b)(3)(a)(ii).

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. Please include File Number SR-NASDAQ-2011-017 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-2011-017. 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-2011-017 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.⁸

Cathy H. Ahn
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).