

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64885; File No. SR-NASDAQ-2011-093)

July 14, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Rule 7027 of the NASDAQ Pricing Schedule

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 July 1, 2011, The NASDAQ Stock Market LLC (the “Exchange” or “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 Rule 7027 of its pricing schedule. NASDAQ will implement the proposed change immediately upon filing. The text of the proposed rule change is available from NASDAQ’s website at <http://nasdaq.cchwallstreet.com>, at NASDAQ’s principal office, at the Commission’s Public Reference Room, and at the Commission’s website at www.sec.gov.

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 7027, which allows affiliated members to aggregate their activity under certain provisions of NASDAQ's fee schedule that make fees dependent upon the volume of their activity. For example, various provisions of Rule 7018 contain pricing tiers, under which the fees charged to, or rebates received by, members are dependent upon their share volumes. Affiliated members that might not qualify for a favorable pricing tier by themselves may be able to qualify by aggregating their activity.

Under the rule, a member may request that NASDAQ aggregate its activity with the activity of its affiliates. A member requesting aggregation of affiliate activity is required to certify to NASDAQ the affiliate status of entities whose activity it seeks to aggregate, and is required to inform NASDAQ immediately of any event that causes an entity to cease to be an affiliate. In contrast with the common definition of affiliate, which identifies one entity as an affiliate of another if it controls it, is controlled by it, or is under common control with it, Rule 7027 requires that one affiliated member own 100% of the voting interests in the other, or that they are both under the common control of a parent that owns 100% of each.

NASDAQ conducts a review of information regarding the entities, and reserves the right to request additional information to verify the affiliate status of an entity. NASDAQ then approves a request unless it determines that the member's certification is not accurate.³

³ In the event of an inaccurate certification, NASDAQ would refer the matter to its regulatory services provider, the Financial Industry Regulatory Authority ("FINRA"), to

Although NASDAQ is not changing the process for review and approval, it has determined that it would promote the clarity of the rule to add text describing this process.

Because NASDAQ's bills are prepared on a monthly basis, recognizing an affiliation in the middle of a month would require NASDAQ to engage in a complex proration of members' bills. Accordingly, it has been NASDAQ's practice to recognize an affiliation request either at the beginning of the month in which the affiliation occurs or at the beginning of the following month. NASDAQ believes, however, that the clarity of the rule would be enhanced by adopting a stated policy with respect to the timing of recognition of aggregation requests. Accordingly, NASDAQ is amending the rule by adding a new paragraph (a)(2). The paragraph stipulates that if two or more members become affiliated on or prior to the sixteenth day of a month, and submit a request for aggregation on or prior to the twenty-second day of the month, an approval of the request by NASDAQ shall be deemed effective as of the first day of the month. Thus, for example, if one member acquires another, the acquisition is completed by June 16, and the members file a request for aggregation by June 22, NASDAQ's approval of the request would allow the members to aggregate all activity during June. This would be the case regardless of the time required for NASDAQ to review and approve the request. However, if members become affiliated after the sixteenth day of the month, or do not submit a request for aggregation until after the twenty-second day, the request would not be recognized until the following month.

Finally, NASDAQ is replacing references to specific rules containing fees under which aggregation may occur with a general reference to "any provision of the Rule 7000 Series where the charge assessed, or the credit provided, by NASDAQ depends on the volume of a member's activity."

investigate whether the member had violated NASDAQ rules and to take appropriate disciplinary action.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Section 6(b)(5) of the Act⁵ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and 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. NASDAQ believes that the change will result in the adoption of a clear policy with respect to the meaning, administration, and enforcement of Rule 7027, thereby promoting members' understanding of the parameters of the rule and the efficiency of its administration.

NASDAQ further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁶ 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. All similarly situated members are subject to the same fee structure, and access to NASDAQ is offered on fair and non-discriminatory terms. The addition of rule language stipulating that the timing for recognition of requests for aggregation is reasonable because it establishes a standard for implementation of such requests that is easy to administer and that reflects the need for NASDAQ to review and approve aggregation requests while avoiding the complexities associated with proration of the bills of members that affiliate

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78f(b)(4).

during the course of a month. The provision is equitable because all members seeking to aggregate their activity are subject to the same parameters, in accordance with a commonsense standard that recognizes an affiliation as of the month's beginning closes [sic] in time to when the affiliation occurs, provided the members submit a timely filing.

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 services if they believe that alternatives offer them better value. NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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)(i) 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 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.

⁷ 15 U.S.C. 78s(b)(3)(a)(i).

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-2011-093 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-2011-093. 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-2011-093 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).