

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55284; File No. SR-NASDAQ-2007-003)

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Pricing for Nasdaq Members Using the Nasdaq Market Center

February 13, 2007

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 29, 2007, 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 substantially by Nasdaq. Pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2)⁴ thereunder, Nasdaq has designated the proposed rule change as establishing or changing a member due, fee, or other charge, which renders the proposed rule change 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 the pricing for Nasdaq members using the Nasdaq Market Center (“Center”). Nasdaq will implement this proposed rule change on February

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).

1, 2007. The text of the proposed rule change is available at Nasdaq, www.nasdaq.com, and the Commission's Public Reference Room.⁵

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

This proposed rule change modifies the pricing schedule for trading securities through the Center. In addition to modifying the level of certain fees, the filing also adds language reflecting the fees to be charged for trading non-Nasdaq securities through the Center. Nasdaq anticipates that such trading will begin on February 12, 2007. The fee schedule reflects the volume of a member's use of the Center and also the ITS/CAES and Inet systems operated by Nasdaq and its affiliates as facilities of NASD, in determining applicable fees.⁶ The changes proposed by this filing relate to order execution fees for

⁵ Changes to the proposed rule text are marked to the rule text that appears in the electronic Nasdaq Manual found at nasdaq.complinet.com/nasdaq/display/index.html.

⁶ The consideration of volumes through ITS/CAES and Inet is a function of the phased transition of Nasdaq from an operator of NASD facilities to a separate national securities exchange. As such, NASD fees schedules will be amended to remove all references to Nasdaq shortly after the time when Nasdaq begins to trade non-Nasdaq exchange-listed securities as an exchange. NASD is submitting

the Nasdaq Market Center and fees for routing to venues other than the New York Stock Exchange (“NYSE”). When the Center begins to route orders to NYSE, the changes will also apply to such routing.

Currently, members with an average daily volume through the Center in all securities during the month of (i) more than 30 million shares of liquidity provided, and (ii) more than 50 million shares of liquidity accessed and/or routed; or members with an average daily volume through the Center in all securities during the month of (i) more than 20 million shares of liquidity provided, and (ii) more than 60 million shares of liquidity accessed and/or routed, pay a fee of \$0.0027 per share executed when their orders access liquidity on the Center or are routed. Members with lower volumes pay a fee of \$0.0028 or \$0.003, depending on their volumes. The proposed rule change raises the volume thresholds needed to qualify for the \$0.0027 fee, such that it will be available to market participants that (i) add more than 35 million shares of liquidity per day during the month and route or remove more than 55 million shares of liquidity per day during the month, or (ii) add more than 25 million shares of liquidity per day during the month and route or remove more than 65 million shares of liquidity per day during the month.

Currently, members adding more than 30 million shares of liquidity per day during the month receive a liquidity provider credit of \$0.0025 per share executed; members providing less liquidity receive a credit of \$0.002. The proposed rule change would raise the threshold needed to qualify for the \$0.0025 rebate to 35 million shares per day. However, the proposed rule change also introduces an intermediate credit of

a comparable filing to modify fees for non-Nasdaq exchange-listed securities, which likewise considers trading volumes through the Center.

\$0.0022 per share executed for members that provide more than 20 million shares of liquidity during the month.

Nasdaq announced the fees reflected in this proposed rule change on November 30, 2006,⁷ as part of a market-wide evolution in the pricing structure for non-Nasdaq listed securities and an effort by Nasdaq to adopt consistent pricing for all types of securities. Previously, the fees charged by Nasdaq and other venues for non-Nasdaq securities had been characterized by low execution and routing fees and no credits for liquidity providers. During the Fall of 2006, however, other markets began to adopt higher execution fees, coupled with liquidity provider credits, thereby moving towards a structure that had long been in effect for Nasdaq-listed securities. As of January 2, 2007, NASD filed fees for ITS/CAES and Inet that reflected this evolving pricing structure, and Nasdaq adopted comparable fees for Nasdaq-listed securities traded through the Center.⁸ However, the fees filed for January were intended as a one-month transition away from the previous structure, and therefore included lower thresholds to qualify for favorable pricing. In addition, the new higher thresholds reflecting the growing volumes of orders for NYSE-listed securities that are executed or routed through Inet and ITS/CAES, and are intended to encourage further usage.

2. Statutory Basis

⁷ See Nasdaq Head Trader Alert #2006-199 (November 30, 2006) (available at <http://www.nasdaqtrader.com/trader/news/2006/headtraderalerts/hta2006-199.stm>).

⁸ See Securities Exchange Act Release No. 55129 (January 18, 2007), 72 FR 3894 (January 26, 2007)(SR-NASD-2006-137). See also Securities Exchange Act Release No. 55137 (January 19, 2007), 72 FR 3452 (January 25, 2007) (SR-NASDAQ-2006-068).

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general, and with Section 6(b)(4) of the Act,¹⁰ in particular, in that the proposed rule change 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 fees are reasonably allocated among members based on their usage of the trading systems operated by Nasdaq, and are generally consistent with fees charged by other market centers for comparable services.¹¹

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.

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

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ NYSE Arca's fees are structured the same as Nasdaq's fees; Nasdaq's fees are generally the same or slightly lower. See <http://www.nyse.com/productservices/nysearcaequities/1157018931977.html>. BATS fees are also structured similarly, and are generally lower. See http://www.batstrading.com/subscriber_resources/BATS_Fee_Schedule_20070201.pdf. NYSE uses a different pricing model, but recently made changes to its fees that are reflected in Nasdaq's fees for routing to NYSE. See <http://www.nyse.com/Frameset.html?nyseref=&displayPage=/press/PressReleases.html> (November 30, 2006 press release). February 12, 2007 email from John Yetter, Nasdaq, to Joseph Morra, Commission.

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹² and Rule 19b-4(f)(2) thereunder,¹³ in that the proposed rule change establishes or changes a member due, fee, or other charge. 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:

- 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-2007-003 on the subject line.

Paper comments:

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

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-NASDAQ-2007-003. 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. 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-2007-003 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Florence E. Harmon
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).