

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58152; File No. SR-NASDAQ-2008-059)

July 14, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 1, 2008, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) 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 Act<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> thereunder, 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 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 implement the proposed rule change on July 1, 2008.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.<sup>5</sup>

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

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

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**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) – (3) No Change.

(4) Fees for executions of contracts other than those executed on the NASDAQ Options Market shall include execution and clearing fees charged to NASDAQ for executing on away markets, as follows:

AMEX			
	Customer	Firm	MM
	\$0.06	\$0.63	\$0.66

BOX			
	Customer	Firm	MM
Penny Pilot	\$0.51	\$0.51	\$0.51
Non-Penny Pilot	\$0.06	\$0.26	\$0.26
BKX	\$0.06	\$0.41	\$0.41
NDX	\$0.06	\$0.42	\$0.42
MNX	\$0.06	\$0.42	\$0.42

CBOE			
	Customer	Firm	MM
Equity Options	\$0.06	\$0.51	\$0.51
QQQQ	\$0.06	\$0.31	\$0.31
SPY	\$0.24	\$0.51	\$0.51
OEX, XEO	\$0.42	\$0.42	\$0.42
SPX >= \$1	\$0.56	\$0.52	\$0.52
SPX < \$1	\$0.47	\$0.52	\$0.52
MVR	\$0.46	\$0.31	\$0.31
Volatility Indices	\$0.52	\$0.57	\$0.57
DXL	\$0.56	\$0.61	\$0.61
IWM	\$0.24	\$0.31	\$0.31
DJX, MNX, NDX, & RUT	\$0.34	\$0.61	\$0.61
Other indices, ETFs, & HOLDERS	\$0.24	\$0.51	\$0.51

ISE			
	Customer	Firm	MM
Equity Options	\$0.06	\$0.24	\$(0.46) <u>0.51</u>
Premium Products**	\$0.24	\$0.24	\$(0.46) <u>0.51</u>
BKX, <u>FTZ</u> , IJH, IJR, IJS, MFX, MID, MSH, SML, UKX	\$0.24	\$0.34	\$(0.56) <u>0.61</u>
RMN, RUI, RUT	\$0.24	\$0.39	\$(0.61) <u>0.66</u>
NDX, MNX	\$0.24	\$0.40	\$(0.62) <u>0.67</u>
FUM, HSX, POW, TNY, WMX	\$0.24	\$0.29	\$(0.51) <u>0.56</u>
[FTZ]	[\$0.06]	[\$0.34]	[\$0.56]

**\*\*Premium products:** BBH, BYT, DBA, DBO, DBS, DDM, DGL, DIA, DMA, DSI, DUG, DVY, DXD, EEM, EEV, EFA, ERF, EWA, EWC, EWG, EWH, EWJ, EWT, EWW, EWY, EWZ, FCG, FDG, FDM, FIW, FNI, FXA, FXB, FXC, FXE, FXF, FXI, FXP, FXY, GDX, GLD, HHH, HHO, HVY, IAI, IBB, IEF, IGW, ILF, IVE, IVV, IVW, IWB, IWD, IWF, IWM, IWN, IWO, IXX, IXZ, IYE, IYM, IYR, IYT, JLO, KBE, KCE, KIE, KLD, MDY, MOO, MYP, OEF, OIH, OOG, PBW, PGJ, PHO, PMP, PPH, PUF, QID, QLD, RND, RSP, RTH, RUF, SAW, SDS, SHY, SKF, SIN, SMH, SPY, SSO, TAN, TLT, TTH, TWM, UNG, USO, UTH, UWM, UYG, WSI, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XRT

NYSE-Arca			
	Customer	Firm	MM
Penny Pilot	\$0.51	\$0.51	\$0.51
Non-Penny Pilot	\$0.06	\$0.56	\$0.56
BKX	\$0.06	\$0.66	\$0.66
RUT	\$0.06	\$0.71	\$0.71

PHLX			
	Customer	Firm	MM
Equity Options	\$0.06	\$0.30	\$0.51
MNX & NDX Options	\$0.18	\$0.30	\$0.51
Index Options	\$0.50	\$0.30	\$0.26

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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 the fees assessed for execution of options orders entered into NOM but routed to away markets. On June 30, 2008, Nasdaq filed SR-2008-058, a proposal to pass through to Exchange members the actual fees assessed by away markets plus the clearing fees for the execution of orders routed from Nasdaq. Nasdaq collected and organized in chart format the fees to be assessed for routing to each destination exchange.

Nasdaq is filing this proposed rule change to reflect a change proposed by the International Securities Exchange on June 30, 2008, in SR-ISE-2008-55.<sup>6</sup> In addition, Nasdaq is adding to the list of products that ISE treats as "premium" options symbol FXY which had been inadvertently omitted from Nasdaq's fee schedule. Finally, within Nasdaq's fee schedule for executions occurring at ISE, Nasdaq is proposing to classify options class FTZ as a premium product with a fee of \$.24, \$.34, and \$.61 for customers, firms, and market makers. Options class FTZ had previously been listed in a category by itself with executions fees of \$.06, \$.34, and \$.56 for customers, firms, and market makers. Nasdaq expects that ISE will charge Nasdaq

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<sup>6</sup> See Securities Exchange Act Release No. 58091 (July 3, 2008), 73 FR 39754 (July 10, 2008) (SR-ISE-2008-55).

members \$.24, \$.34, and \$.61, respectively, as set forth in Nasdaq's proposed rule language.<sup>7</sup> All fees for markets other than ISE remain unchanged.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Section 6(b)(4) of the Act,<sup>9</sup> 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 is one of seven options markets 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. The various exchanges have filed these fees with the Commission and it is reasonable for Nasdaq to pass those fees through to its members. As such, Nasdaq 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 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.

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<sup>7</sup> See e-mail from Jeffrey S. Davis, Vice President and Deputy General Counsel, Nasdaq, to Joseph P. Morra, Special Counsel, and Andrew Madar, Attorney-Advisor, Commission, dated July 10, 2008, adding the prior 3 sentences.

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

### 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<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>11</sup> because it establishes or changes a due, fee, or other charge imposed on members by Nasdaq. Accordingly, the proposal is effective upon filing with the Commission. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2008-059 on the subject line.

#### Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2008-059. 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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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 a.m. and 3:00 p.m. 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2008-059 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.<sup>12</sup>

Florence E. Harmon  
Acting Secretary

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<sup>12</sup> 17 CFR 200.30-3(a)(12).