

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59822; File No. SR-NASDAQ-2009-034)

April 27, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying Rule 7050 Governing Pricing for The NASDAQ Options Market (“NOM”)

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 April 9, 2009, 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 by Nasdaq. Nasdaq has filed this proposal pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ [sic] Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge applicable only to members, which renders the proposed rule change effective upon filing. The Commission is publishing this notice and [sic] order 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 has filed a proposed rule change 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. Proposed new language is underlined [sic]; proposed deletions are in brackets.⁵

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 C.F.R. 240.19b-4(f)(2).

⁵ Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

(1) Fees for Execution of Contracts on the NASDAQ Options Market

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Except as specified below, the charge to \$0.45 per executed contract member entering order that executes in the NASDAQ Options Market

For a pilot period ending July 31, 2009, charge for members or non-members entering order via the Options Intermarket Linkage that executes in the Nasdaq Options Market \$0.45 per executed contract

Charge to members entering orders in options on QQQQ, SPY, DIA, IWM, AAPL BAC, C, GS, JPM, RIMM, XLE, XLF, and XOM with an account type "Customer" that executes and remove liquidity entered by another member. No fee.

Credit to member providing liquidity through the NASDAQ Options Market: \$0.30 per executed contract

Credit to member providing liquidity using price-improving orders through the NASDAQ Options Market: \$0.35 per executed contract

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<u>Fees and Rebates</u> (per executed contract)			
	<u>Customer</u>	<u>Firm</u>	<u>Market Maker</u>
<u>Penny Pilot Options:</u>			
<u>Rebate to Add Liquidity</u>	<u>\$0.25</u>	<u>\$0.25</u>	<u>\$0.25</u>
<u>Fee for Removing Liquidity</u>	<u>Free</u>	<u>\$0.45</u>	<u>\$0.45</u>
<u>All Other Options:</u>			
<u>Fee for Adding Liquidity</u>	<u>Free</u>	<u>\$0.30</u>	<u>\$0.30</u>
<u>Fee for Removing Liquidity</u>	<u>-</u>	<u>\$0.45</u>	<u>\$0.45</u>
<u>Rebate for Removing Liquidity</u>	<u>\$0.20</u>	<u>-</u>	<u>-</u>
<u>Transactions in which the same participant is the buyer and the seller shall be charged a net fee of \$0.10 per executed contract</u>			
<u>For a pilot period ending July 31, 2009, the charge for members or non-members entering order via the Options Intermarket Linkage that executes in the Nasdaq Options Market shall be \$0.45 per executed contract.</u>			

(2) – (4) No change.

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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. The text of these statements may be examined at the places specified in Item III below [sic], and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is modifying NASDQ Rule 7050, the fee schedule for NOM, in several ways. *First*, Nasdaq is making several changes that apply to orders with an account type of “Customer.” Specifically, Nasdaq is expanding a pricing program to lower the fee for the

execution of options contracts for certain orders in certain options on the NASDAQ Options Market (“NOM”). On January 12, 2009, Nasdaq began permitting orders with an account type of “Customer” to take liquidity⁶ for free in certain options. Nasdaq applied the new fee provision to options on four exchange-traded funds: QQQQ, SPY, DIA, and IWM. Nasdaq later expanded that program to apply the reduced fee provision to options on the following equities: AAPL, BAC, C, GS, JPM, RIMM, XLE, XLF, and XOM. That proposal accomplished its goal of attracting liquidity to the Nasdaq Options Market.

Accordingly, Nasdaq now proposes to expand the application of that rule to additional options classes. Specifically, Nasdaq is expanding the program to all options that are included in the Options Penny Pilot Program. Nasdaq will monitor the trading of options on these equities to ensure that the proposal is operating in a fashion that promotes the interests of investors.

Nasdaq is also changing the fee structure for “Customer” orders in options not included in the Options Penny Pilot Program. Specifically, Nasdaq will charge no execution fees for members providing liquidity through the NASDAQ Options Market with an account type “Customer.” Nasdaq will also offer a credit of \$0.20 per executed contract to members entering orders in options with an account type “Customer” that execute and remove liquidity entered by another member in options that are not included in the Options Penny Pilot Program.

Second, Nasdaq is modifying NASDAQ Rule 7050 to further distinguish between options that are included in the Options Penny Pilot Program and those that are not. Specifically, NOM will provide a credit of \$0.25 to members providing liquidity through NOM in options included in the Options Penny Pilot Program. [sic], and charge a fee of \$0.30 to members

⁶ An order that takes liquidity is one that is entered into NOM and that executes against an order resting on the NOM book.

providing liquidity in the capacity of “firm” or “market maker” (as opposed to “customer”) through NOM for options that are not included in Options Penny Pilot Program.

Third, Nasdaq is modifying NASDAQ Rule 7050 with respect to all options to change the distinction between orders that interact with other members’ orders and those that interact with orders from the same firm. Specifically, Nasdaq will charge a fee of \$0.10 per executed contract when a member order executes against the order entered by the same firm. Similarly, Nasdaq will not offer a credit or charge a fee when a member order provides liquidity to an order entered by the same firm.

Fourth, Nasdaq is eliminating the special pricing currently offered for Price Improving Orders. Going forward, Price Improving Orders will be subject to the standard fee schedule set forth in NASDAQ Rule 7050 as amended by this proposed rule change.

Nasdaq believes that the proposed fees are competitive, fair and reasonable, and non-discriminatory in that they apply equally to all similarly situated members and customers. As with all fees, Nasdaq may adjust these proposed fees in response to competitive conditions by filing a new proposed rule change.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and with Section 6(b)(5) of the Act,⁸ 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

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

a national market system, and, in general, to protect investors and the public interest. As one of seven options market in the national market system, Nasdaq's fees must be competitive and low in order for Nasdaq to attract order flow, execute orders, and grow as a market. 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 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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and Rule 19b-4(f)(2) thereunder,¹⁰ Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge applicable only to members, which renders the proposed rule change effective upon filing. Nasdaq will make the proposed pricing schedule operational on April 13, 2009.

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.

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 C.F.R. 240.19b-4(f)(2).

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-2009-034 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-2009-034. 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, 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 available publicly. All submissions should refer to File No. SR-NASDAQ-2009-034 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).