

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59879; File No. SR-NASDAQ-2009-041)

May 6, 2009

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 and 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 May 1, 2009, The NASDAQ Stock Market LLC (“NASDAQ” or the “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 by the Exchange. 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. This proposed rule change, which is effective upon filing, will become operative on May 1, 2009. The text of the proposed rule change is available at <http://nasdaqomx.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

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

<sup>2</sup> 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is modifying the price of trading equities and options on NASDAQ in several ways. First, NASDAQ is increasing the rebate for providing liquidity in equities traded on NASDAQ for members that actively trade both equities and options on NASDAQ. Currently, NASDAQ offers rebates of \$0.0020 to \$0.00295 per share for all members that provide liquidity in equities traded on NASDAQ depending on the volume of liquidity provided in equities.

Effective May 1, 2009, a member firm that accesses liquidity of more than 200,000 contracts per day from The NASDAQ Options Market ("NOM") and provides average daily volume of liquidity exceeding 25 million shares per day in the NASDAQ equities market will be credited a rebate of \$0.0029 for providing liquidity in securities listed on NASDAQ or the New York Stock Exchange ("NYSE") or on other exchanges. A member that provides 25 million shares of liquidity per day in equities and does not have the requisite options participation receives a rebate of \$0.0025 per share.

Second, also effective May 1, 2009, member firms will have the opportunity to earn a waiver of applicable fees charged for executing Mid-point Pegged orders (as defined in Nasdaq Rule 4751(f)(4)). Firms can earn this fee waiver by providing average daily volume of liquidity through the Nasdaq Market Center in all securities during the month of more than 125 million shares.

Third, NASDAQ is implementing pricing for the routing strategy set forth in Nasdaq Rule 4758(a)(1)(A)(i), as set forth in SR-NASDAQ-2009-036.<sup>3</sup> Specifically, NASDAQ modified Rule 4758, Order Routing, to provide market participants with the option of entering orders that do not check the Nasdaq Market Center book prior to routing. Market participants using that routing strategy for all securities will be assessed a fee of \$0.0005 per share executed for orders that execute on venues other than in the NYSE or NASDAQ OMX BX. For securities that utilize this strategy and that execute on NASDAQ OMX BX, NASDAQ will pass-through the fees or rebates currently assessed by NASDAQ OMX BX or \$0.0006 rebate per share executed for Nasdaq-listed and NYSE-listed securities and \$0.0014 charge per share executed for other securities. An order that is routed but does not execute and is returned to the Nasdaq Market Center will be assessed fees or provided rebates consistent with those approved for orders that execute or provide liquidity on the Nasdaq Market Center.

Fourth, NASDAQ is also eliminating from Rule 7018 all provisions related to process that were in effect from April 1 through April 14, 2009.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Section 6(b)(4) of the Act,<sup>5</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. The proposed fee change applies uniformly to all similarly-situated NASDAQ members. The

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<sup>3</sup> Securities Exchange Act Release No. 59807 (Apr. 21, 2009); 74 FR 19251 (Apr. 28, 2009).

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

impact of the changes upon the net fees paid by a particular market participant will depend upon a number of variables, including its monthly volume in equities and options, the prices of its quotes and orders (i.e., its propensity to add or remove liquidity) in equities and options, and the listing venue for the securities that it trades.

NASDAQ notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a significant reduction in the overall cost of trading on NASDAQ. NASDAQ believes that the applicable fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to NASDAQ rather than competing venues.

NASDAQ is also responding to the convergence of trading in which members simultaneously trade different asset classes within a single strategy. This has been true of equities and options trading which is increasing, and is now visible in equities and futures trading. For example, on April 1, 2009, NYSE Euronext LLC announced the “Futures Incentive Program” or “FIP” which coordinates fee schedules between NYSE Liffe US and NYSE Arca with respect to trading gold and silver futures contracts on NYSE Liffe US and gold and silver based exchange traded funds on NYSE Arca. Like the NYSE Euronext FIP proposal, NASDAQ’s current proposal enables NASDAQ members to continue to recognize the full benefit of trading on NASDAQ.

Additionally, NASDAQ and its members will both recognize additional operational and administrative efficiencies from linking the billing of equities and options trading. In addition to

the efficiencies associated with existing volume discounts for equities trading, this proposal will enable NASDAQ to issue a single invoice to replace two invoices in various circumstances.

Finally, this proposal is voluntary with respect to all firms and should be considered as one among many alternatives within NASDAQ's current tiered pricing structure. For example, Nasdaq is offering to waive execution fees for Mid-point Pegged Orders for firms with high equities trading volume. This fee waiver lowers the total cost of trading on Nasdaq, and responds to a similar waiver by the ArcaNYSE [sic] Exchange.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>7</sup> 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.

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

<sup>7</sup> 17 CFR 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2009-041 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-2009-041. 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, 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-2009-041 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>8</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).