

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60265; File No. SR-NASDAQ-2009-058)

July 8, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify Port Fees

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 June 24, 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. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify fees charged to members and non-members for ports used to enter orders into NASDAQ systems. The text of the proposed rule change is available from the principal office of NASDAQ and from the Commission, and is also available at <http://www.cchwallstreet.com/nasdaq>. NASDAQ will implement the proposed rule change on the first day of the month immediately following Commission approval (or on the date of approval, if on the first business day of a month).

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

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

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

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 increase the monthly fee that it charges for ports used to enter orders in NASDAQ trading systems such as the NASDAQ Market Center and the NASDAQ Options Market. The change, which increases the charge from \$400 to \$500 per month, applies to ports using FIX, RASH, and OUCH. The change does not affect ports used to receive market data, to enter quotes, or to enter trade reports into the FINRA/NASDAQ Trade Reporting Facility. The change applies both to members that obtain ports for direct access, and non-member service bureaus that act as a conduit for orders entered by NASDAQ members that are their customers.

NASDAQ has not made any significant changes to the fees that it charges for access to its market facilities since it began to operate as a national securities exchange in 2006. During that period, however, the market has undergone dramatic changes, including the implementation of Regulation NMS, the entry of several significant new trading venues, extreme market volatility resulting from the credit crisis in the late 2008, and a marked increase in the percentage of orders being executed away from transparent public markets. Accordingly, NASDAQ believes that an increase in access services fees is now warranted to help ensure that its market technology continues to perform at a high level of responsiveness and efficiency.

NASDAQ is also modifying the language of Rule 7015 to make it clear that access service fees apply to access provided to all NASDAQ-operated systems, to replace references to NASD with references to FINRA, and remove obsolete language regarding a trial discount that

ended in 2007. Finally, NASDAQ is removing language regarding the applicability of the rule to members and non-members. Because the current rule has been previously approved for applicability to members and non-members, and because this filing likewise applies to both members and non-members, the existing language is unnecessary and potentially confusing to the reader.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>3</sup> in general and with Section 6(b)(4) of the Act,<sup>4</sup> as stated above [sic], in that it provides an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using the [sic] its facilities. NASDAQ believes that its modified access services fees are reasonable in light of the benefits to members of direct market access, and are equitably allocated among members based upon the number of access ports that they require to submit orders to the market. NASDAQ believes that its fees for access services will enable it to cover its costs and earn an appropriate return on its investment in market technology and services.

### 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. Fees for market access are a component of the overall fees charged by NASDAQ to execute and route orders through the NASDAQ Market Center. As the Commission has

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<sup>3</sup> 15 U.S.C. 78f.

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

recognized, the market for execution and routing services is extremely competitive.<sup>5</sup> Market participants that choose not to connect directly to NASDAQ can readily access liquidity available on NASDAQ by directing their order flow to other venues that, under Regulation NMS, must route to NASDAQ if it has posted the best price. Accordingly, NASDAQ must set its fees, including access services fees, at a level that will not deter market participants from connecting to NASDAQ: otherwise, potential users of NASDAQ's services will simply direct order flow to NASDAQ's multiple competitors.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

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:

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<sup>5</sup> Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

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-2009-058 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-2009-058. 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 the 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-2009-058 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>6</sup>

Elizabeth M. Murphy  
Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).