

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60323; File No. SR-NASDAQ-2009-067)

July 16, 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

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 July 1, 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. Pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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 pricing for NASDAQ members using the Nasdaq Market Center. NASDAQ will implement this rule change on July 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.

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).

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 several changes to its transaction services pricing. First, NASDAQ is proposing to lower the per-share fee for executions in the NASDAQ Market Center in securities listed on NASDAQ or on the New York Stock Exchange. Specifically, NASDAQ is establishing a new pricing tier for members that are most active in the NASDAQ Market Center. Currently, NASDAQ's highest activity tier offers a rebate of \$0.00295 for members that add an average daily volume of 125 million shares of liquidity to the NASDAQ Market Center, but NASDAQ charges \$0.0030 per share for accessing liquidity.⁵ Effective July 1, 2009, NASDAQ will establish a tier that requires members to meet two criteria: (1) add, route, and/or remove an average daily volume of more than 150 million shares of liquidity through the NASDAQ Market Center and (2) add an average daily volume of more than 35 million shares of liquidity to the NASDAQ Market Center. Members meeting these criteria will be charged a "take" rate of \$0.0027

⁵ The fees and rebates described in this filing apply to securities priced at \$1 or more per share. Fees and rebates applicable to lower-priced securities remain unchanged.

per share executed in the NASDAQ Market Center.⁶ The proposed rule change is designed to attract additional activity to the NASDAQ Market Center and to return to members the efficiencies that are gained when members increase their level of activity at NASDAQ markets. Ultimately, those efficiencies are returned to investors in the form of lower overall trading costs.

Second, NASDAQ is proposing to increase the fee it charges for Market-on-Close and Limit-on-Close orders executed in its closing cross, from \$0.0005 per share executed to \$0.0007 per share executed. NASDAQ will continue to charge no fee for other quotes and orders executed in the closing cross. NASDAQ has not modified this fee since it first began to operate as a national securities exchange in 2006, and believes that an increase is now warranted to provide for additional revenue to mitigate the impact of the significant reduction to fees to access liquidity otherwise provided by this filing. The fee remains far lower than the fees charged to access liquidity during regular market hours, which are themselves subject to reduction under this proposal.

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)(4) of the Act,⁸ 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 significantly reducing the charge to access

⁶ Firms that add average daily volume of 125 million shares currently receive a rebate of \$0.00295 per share, the highest rebate available to NASDAQ members. Members meeting that criteria will continue to receive that rebate regardless of whether they also qualify for the new “take” rate tier.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

liquidity for market participants that both access and provide significant quantities of liquidity. This aspect of the proposal is aimed at recognizing the value to the market of its most active participants, and is similar to volume-based discounts that have long been in effect at NASDAQ and other trading venues. NASDAQ is also increasing its fee for Market-on-Close and Limit-on-Close orders to allocate a greater proportion of overall fees to members that benefit from using these valuable and popular order types. The overall impact of this fee increase is modest in comparison with the corresponding reductions.

The 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, the order types it uses, and the prices of its quotes and orders (i.e., its propensity to add or remove liquidity and to set the best bid and offer). 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. NASDAQ is reducing fees for many of its market participants to remain competitive with those charged by other venues and therefore strongly believes that its fees are reasonable and equitably allocated to those members that opt to direct orders to NASDAQ rather than competing venues.

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 Act⁹ and subparagraph (f)(2) of Rule 19b-4 thereunder.¹⁰ 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-2009-067 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.

⁹ 15 U.S.C. 78s(b)(3)(a)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-NASDAQ-2009-067. 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 a.m. and 3 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 available publicly. All

submissions should refer to File Number SR-NASDAQ-2009-067 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.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).