

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60492; File No. SR-NASDAQ-2009-074)

August 12, 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 31, 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 the 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 August 3, 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 C.F.R. 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 the fees associated with the use of the NASDAQ Market Center. First, NASDAQ is modifying the fees applicable to routing orders to NASDAQ OMX BX. Currently, NASDAQ passes through all fees charged and rebates provided by NASDAQ OMX BX with respect to orders routed to it. Pursuant to the change, NASDAQ will provide this pass-through only with respect to orders that either (i) check the NASDAQ book prior to routing and are then directed to route first to NASDAQ OMX BX and then to NYSE or NYSE Amex; or (ii) route to destinations other than NASDAQ prior to checking the NASDAQ book but that are designated to return to NASDAQ after being routed. For directed orders that route to NASDAQ OMX BX, NASDAQ will charge \$0.0002 per share executed in the case of orders for securities listed on NASDAQ or NYSE, and \$0.0022 per share executed in the case of orders for securities listed on other exchanges. For other orders routed to NASDAQ OMX BX, NASDAQ will charge \$0.0026 per share executed.

Second, for securities listed on NASDAQ or NYSE, NASDAQ is reducing the volume level required for a member to qualify for NASDAQ's most favorable "take rate"

for the months of August and September 2009. Currently, a member pays a fee of \$0.0027 per share executed if it has an average daily volume in all securities during the month of (i) more than 150 million shares of liquidity routed, removed, and/or provided, and (ii) more than 35 million shares of liquidity provided. During August and September 2009, the required volume of shares of liquidity routed, removed, and/or provided will be reduced to 140 million shares, with the required volume of liquidity provided remaining unchanged. The change reflects expectations of overall lower trading volumes during these months.

Third, NASDAQ is eliminating special fees for orders that execute at NYSE Arca as odd-lot transactions. The change reflects an announcement by NYSE Arca that it will itself eliminate special fees applicable to odd-lot transactions.⁵ Similarly, NASDAQ is modifying special fees applicable to routed orders that execute at NYSE as odd-lot transactions. Specifically, a special fee of \$0.0005 per share executed for orders that execute at NYSE as odd-lots after checking the NASDAQ book will be eliminated; thus, such orders would pay the normal routing fees applicable to orders that are not odd lots. Fees applicable to orders that execute at NYSE as odd-lots without checking the NASDAQ book remain unchanged.

Fourth, NASDAQ is modifying its fees for orders routed to NYSE that execute in its opening or closing process to reflect announced changes to NYSE's pricing for such orders.⁶ The fee for "market at the close" and "limit at the close" orders will be \$0.0007 per share executed, and the fee for "at the opening" or "at the opening only" orders will be \$0.0005, subject to a monthly cap of \$10,000 per member.

⁵ See http://www.nyse.com/pdfs/Arca_Fee_Schedule_Update.pdf.

⁶ See http://www.nyse.com/pdfs/NYSE_Pricing_Change_20090801.pdf.

Fifth, NASDAQ is adding language to paragraph (a) of Rule 7018 to clarify that for purposes of determining a member's shares of liquidity routed, orders that do not attempt to execute in the NASDAQ Market Center for the full size of the order prior to routing are not counted. NASDAQ is also deleting obsolete language pertaining to calculating a member's volume during the month of July 2009. Finally, NASDAQ is making several changes to the text of Rule 7018 to make the punctuation and phraseology of the rule consistent throughout.

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 reducing the level of liquidity required to receive a favorable take rate for orders in stocks listed on NASDAQ or NYSE, resulting in potential price reductions for members with large volumes of liquidity routed, accessed, and/or provided. NASDAQ is also reducing the circumstances under which it will pass through charges and rebates for orders routed to NASDAQ OMX BX, and increasing fees for routing certain orders that execute at NYSE as odd-lots. Finally, NASDAQ is making modifications in its routing charges to reflect announced changes in the fees that it will pay to route orders to NYSE and NYSE Arca.

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

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

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 believes that its fees remain competitive with other venues and are reasonable and equitably allocated to those members on the basis of whether they opt to direct orders to NASDAQ.

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.

⁹ 15 U.S.C. 78s(b)(3)(a)(ii).

¹⁰ 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. Please include File Number SR-NASDAQ-2009-074 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-2009-074. 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-2009-074 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).