

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60546; File No. SR-NASDAQ-2009-058)

August 20, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change To Modify Port Fees

On June 24, 2009, The NASDAQ Stock Market LLC (“NASDAQ”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to modify fees charged to members and non-members for ports used to enter orders into NASDAQ systems. The proposed rule change was published for comment in the Federal Register on July 16, 2009.³ The Commission received no comments regarding the proposal.

NASDAQ proposes 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 would increase the charge from \$400 to \$500 per month, would apply to ports using FIX, RASH, and OUCH and would 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 would apply to both 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 also proposes to modify 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 60265 (July 8, 2009), 74 FR 34613 (“Notice”).

NASD with references to FINRA, and remove obsolete language regarding a trial discount that ended in 2007. In addition, NASDAQ proposes to remove language regarding the applicability of the rule to members and non-members. NASDAQ believes that such language is unnecessary and potentially confusing to the reader.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁴ and, in particular, the requirements of Section 6(b) of the Act⁵ and the rules and regulations thereunder. Specifically, the Commission finds that the proposal to increase the fee that it charges for ports used to enter orders in NASDAQ trading systems is consistent with Section 6(b)(4) of the Act,⁶ which requires the equitable allocation of reasonable dues, fees, and other charges among NASDAQ members and other persons using NASDAQ's facilities.⁷ The Commission believes that the proposed increase in port fees is equitably allocated among members and non-members, as it is based on the number of access ports that they use to submit orders to the market. The Commission also believes that, if NASDAQ's proposed port fees are set too high, given the competitive nature of the market for execution and routing services, market participants could simply opt to connect with market centers other than NASDAQ to access liquidity available on NASDAQ by directing order flow to the other market centers that are required to route to NASDAQ if it has posted the best available price. As such, the

⁴ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ The Commission notes that NASDAQ will implement the increased port fees September 1, 2009. See Notice, supra note 3.

Commission believes that NASDAQ's proposed increase in port fees is both equitably allocated and reasonable.

In addition, the Commission believes that the clarifying changes to Rule 7015 are consistent with the requirements of Section 6(b)(5) of the Act,⁸ which requires, among other things, that NASDAQ's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that updating and removing certain outdated or unnecessary references in Rule 7015 would provide additional clarity to the rule text, for the benefit of market participants accessing NASDAQ's facilities and the marketplace as a whole.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NASDAQ-2009-058) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

⁸ 17 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).