

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62056; File No. SR-NASDAQ-2010-056)

May 6, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Pricing for Option Orders Routed to Away Markets and Execution Pricing for Certain Options

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 April 30, 2010, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 Rule 7050 governing pricing for NASDAQ members using the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options. Specifically, NOM proposes to expand the list of options that will be assessed routing fees of \$0.30 per contract for customer orders and \$0.55 per contract

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

for Firm and Market Maker orders that are routed from NOM to NASDAQ OMX PHLX, Inc. (“Phlx”), as well as update execution pricing for certain options and increase the Firm fee for removing liquidity in non-Penny Pilot options. NASDAQ will make the proposed rule changes effective for transactions on or after May 3, 2010.

The text of the proposed rule change is set forth below. Underlining indicates new text.

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### 7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market by members for all securities.

#### (1) Fees for Execution of Contracts on the NASDAQ Options Market

Fees and Rebates (per executed contract)				
	Customer	Firm	<u>Non-NOM Market Maker</u>	<u>NOM Market Maker</u>
<u>Penny Pilot Options:</u>				
Rebate to Add Liquidity	\$0.25	\$0.25	\$0.25	\$0.25
Fee for Removing Liquidity	\$0.35	\$0.45	\$0.45	\$0.45
<u>IWM, QQQQ, SPY</u>				
Rebate to Add Liquidity	\$0.30	\$0.30	\$0.30	\$0.30
Fee for Removing Liquidity	\$0.35	\$0.45	\$0.45	\$0.45
<u>NDX and MNX</u>				
Rebate to Add Liquidity	\$0.10	\$0.10	\$0.10	\$0.20
Fee for Removing Liquidity	\$0.50	\$0.50	\$0.50	\$0.40
<u>All Other Options:</u>				
Fee for Adding Liquidity	Free	\$0.30	\$0.30	\$0.30
Fee for Removing Liquidity	-	<u>\$0.40</u> [\$0.20]	\$0.45	\$0.45
Rebate for Removing Liquidity*	\$0.20	-	-	-

Transactions in which the same participant is the buyer and the seller shall be charged a net fee of \$0.10 per executed contract.

\*No rebate will be paid when a customer order executes against another customer order.

For a pilot period ending July 31, 2010, the charge for members or non-members entering order via the Options Intermarket Linkage that executes in the Nasdaq Options Market shall be \$0.45 per executed contract.

(2) - (3) No Change.

(4) Fees for routing contracts to markets other than the NASDAQ Options Market shall be assessed as provided below. The current fees and a historical record of applicable fees related to orders routed to other exchanges shall be posted on the NasdaqTrader.com website.

<b>Exchange</b>	<b>Customer</b>	<b>Firm</b>	<b>MM</b>
BATS	\$0.36	\$0.55	\$0.55
BOX	\$0.06	\$0.55	\$0.55
CBOE	\$0.06	\$0.55	\$0.55
ISE	\$0.06	\$0.55	\$0.55
NYSE Arca Penny Pilot	\$0.50	\$0.55	\$0.55
NYSE Arca Non Penny Pilot	\$0.06	\$0.55	\$0.55
NYSE AMEX	\$0.06	\$0.55	\$0.55
PHLX (for all options other than the below listed options)	\$0.06	\$0.55	\$0.55
PHLX (for the following options only): AA, AAPL, AIG, ALL, AMD, AMR, AMZN, BAC, <u>BRC</u> D, C, CAT, CSCO, DELL, DIA, DRYS, EK, F, FAS, FAZ, GDX, GE, GLD, GS, <u>IB</u> M, INTC, IWM, JPM, LVS, MGM, MSFT, MU, NEM, <u>N</u> OK, PALM, PFE, POT, QCOM, QQQQ, RIMM, SBUX, <u>S</u> IRI, SKF, SLV, SMH, SNDK, SPY, T, <u>T</u> ZA, UAUA, UNG, USO, UYG, VZ, WYNN, X, XLF	\$0.30	\$0.55	\$0.55

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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 to modify Rule 7050 governing the fees assessed for options orders entered into NOM but routed to and executed on Phlx. Specifically, NASDAQ is proposing to expand the number of options to which certain routing fees apply to reflect the expansion of the fee schedule for adding and removing liquidity on the Phlx.<sup>5</sup> NASDAQ is also proposing to modify Rule 7050 governing the fees for execution of contracts on NOM by updating execution pricing for IWM, QQQQ and SPY options, as well as raise the Firm fee for removing liquidity in non-Penny Pilot options.

NASDAQ currently assesses a \$0.30 per contract routing fee for customer orders, and a \$0.55 per contract routing fee for Firm and Market Maker orders routed from NOM to Phlx for options that are subject to fees and rebates for adding and removing liquidity as described in the Phlx fee schedule. To reflect the additions Phlx is making to its fee schedule, NASDAQ proposes to add the following options to the table set forth in Rule 7050(4): Brocade Communications Systems, Inc. (“BRCD”); International Business Machines Corp., (“IBM”); Nokia Corp. (“NOK”); Sirius XM Radio, Inc. (“SIRI”); and Direxion Daily Small Cap Bear 3X Shares (“TZA”).

The Exchange is proposing these fees to recoup the majority of transaction and clearing

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<sup>5</sup> See SR-Phlx-2010-64 (April 26, 2010). For a description of the Phlx’s current fee schedule for adding and removing liquidity, See Securities Exchange Act Release No. 61684 (March 10, 2010), 75 FR 13189 (March 18, 2010) (SR-Phlx-2010-33).

costs associated with routing orders to Phlx. As with all fees, the Exchange may adjust these routing fees by filing a new proposed rule change.

NASDAQ currently offers a Penny Pilot option rebate of \$0.25. NASDAQ is proposing to increase the rebate to all participants for providing liquidity in IWM, QQQQ and SPY options to \$0.30 per executed contract.<sup>6</sup> The fee to remove liquidity in these options will continue to be the standard Penny Pilot remove fee of \$0.35 for Customers and \$0.45 for Firms and Market Makers. The Exchange also proposes to increase the Firm fee for removing liquidity in non-Penny Pilot options from \$0.20 to \$0.40 per executed contract.<sup>7</sup>

The changes are part of the Exchange's continued effort to attract and enhance participation on NOM. The Exchange believes these proposed fee changes are reasonable and equitable in that they apply uniformly to all similarly situated participants on NOM.

The Exchange has designated this proposal to be operative for trades on or after May 3, 2010.

## 2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Section 6(b)(4) of the Act,<sup>9</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.

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<sup>6</sup> The rebate increase is consistent to a similar increase made by NYSEArca. See Securities Exchange Act Release No. 61894 (April 13, 2010), 75 FR 20413 (April 19, 2010) (SR-NYSEArca-2010-24).

<sup>7</sup> This fee increase is similar to rates assessed by NYSEArca and NASDAQ OMX PHLX, Inc. for Firm electronic executions. Id.; See Securities Exchange Act Release No. 61971 (April 23, 2010), pending publication in the Federal Register (SR-Phlx-2010-62).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

NASDAQ further believes that the proposed rule changes are consistent with Section 6(b)(5) of the Act<sup>10</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.

NASDAQ is one of eight options market in the national market system for standardized options. Joining NASDAQ and electing to trade options is entirely voluntary. Under these circumstances, NASDAQ's fees must be competitive and low in order for NASDAQ to attract order flow, execute orders, and grow as a market. NASDAQ thus believes that its fees are fair and reasonable and consistent with the Exchange Act.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

NASDAQ does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, NASDAQ has designed its fees to compete effectively for the execution and routing of options contracts and to reduce the overall cost to investors of options trading.

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

No written comments were either solicited or received.

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<sup>10</sup> 15 U.S.C. 78f(b)(5).

### 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>11</sup> and paragraph (f)(2) of Rule 19b-4<sup>12</sup> thereunder. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2010-056 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-2010-056. 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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

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 Web site viewing and printing 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 such 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2010-056 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>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).