

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63253; File No. SR-NASDAQ-2010-144)

November 5, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of
Proposed Rule Change by NASDAQ Stock Market, LLC Relating to Access Service Fees

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 October 28, 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 the Exchange. 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

The Exchange proposes to modify Exchange Rule 7053, related to fees governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, the Exchange proposes to adopt a tiered fee structure for certain Access Services fees.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on November 1, 2010.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is set forth below. Proposed new text is in italics and deleted text is in brackets.

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7053. NASDAQ Options Market – Access Services

The following charges are assessed by Nasdaq for connectivity to the NASDAQ Options Market.

(a) Financial Information Exchange (FIX)

| [Ports] | [Price] |
|--|--------------------|
| [FIX Trading Port] | [\$500/port/month] |
| [FIX Port for Services Other than Trading] | [\$500/port/month] |

| <u>Ports</u> | <u>Quantity</u> | <u>Price</u> |
|---|----------------------------------|-------------------------|
| <u>FIX Trading Port</u> | <u>First 25 ports</u> | <u>\$500/port/month</u> |
| | <u>Additional ports above 25</u> | <u>\$250/port/month</u> |
| <u>FIX Port for Services Other than Trading</u> | <u>First 25 ports</u> | <u>\$500/port/month</u> |
| | <u>Additional ports above 25</u> | <u>\$250/port/month</u> |

(b) TradeInfo

- Members not subscribing to the Nasdaq Workstation using TradeInfo will be charged a fee of \$95 per user per month.

(c) Other Port Fees

The following port fees shall apply in connection with the use of other trading telecommunication protocols:

[• \$500 per month for each port pair.]

| <u>Quantity</u> | <u>Price</u> |
|----------------------------------|---|
| <u>First 25 ports</u> | <u>\$500 per month for each port pair</u> |
| <u>Additional ports above 25</u> | <u>\$250 per month for each port pair</u> |

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The text of the proposed rule change is available on the Exchange’s Website at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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. The Exchange 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 amend Rule 7053, titled NASDAQ Options Market – Access Services, to create a tiered fee structure for its Financial Information Exchange (“FIX”)³ Fees and Other Port Fees⁴ pricing.

³ FIX is a protocol used by NOM market participants for order entry, modification and cancellation and message transmittal.

⁴ Other Port Fees refer to non-Fix ports used by NOM market participants for order entry and quotes.

Currently Rule 7053 contains fees assessed by Nasdaq for connectivity to NOM. Access Services fees relate to ports used to: enter orders into the NASDAQ trading systems; receive market data; and enter quotes.

The Exchange proposes to amend the current FIX fees, which are currently \$500 per month/per port for a Fix Trading Port or a FIX Port for Services Other than Trading. The Exchange proposes to assess the following tiered fees:

| Ports | Quantity | Price |
|--|---------------------------|------------------|
| FIX Trading Port | First 25 ports | \$500/port/month |
| | Additional ports above 25 | \$250/port/month |
| FIX Port for Services Other than Trading | First 25 ports | \$500/port/month |
| | Additional ports above 25 | \$250/port/month |

These tiered fees would allow NOM members to incur a lower fee after the first 25 ports.

The NOM member would continue to be assessed a \$500 per month, per port fee for the first 25 ports.⁵

⁵ According to the Exchange, the tiered fee structure is being proposed in light of the nature of the NOM architecture, which makes it necessary for liquidity providers in options to utilize more ports in comparison to liquidity providers on the NASDAQ Stock Market. Liquidity providers on NOM may provide liquidity in up to 140,000 different symbols versus approximately 8,500 symbols in equities. Moreover, several options symbols for a given underlying may be directly correlated and may require updates to a large number of symbols simultaneously. For example, a liquidity provider in SPY options may need to update all 2401 SPY options simultaneously due to a change in the price of SPY in the equity market.

Further, a NASDAQ Stock Market member, who is both an equity and options member, is required to have a distinct port(s) for each market and would be billed according to whether the particular port was assigned to the equity or options infrastructure. See e-mail from Angela Dunn, Assistant General Counsel,

The Exchange is also proposing to amend the Other Port Fee pricing. Currently, NOM members are assessed the \$500 per month fee for each port pair. The Exchange proposes to assess the following tiered fees:

| Quantity | Price |
|---------------------------|------------------------------------|
| First 25 ports | \$500 per month for each port pair |
| Additional ports above 25 | \$250 per month for each port pair |

These tiered fees would allow NOM members to incur a lower fee after the first 25 port pairs.⁶ The NOM member would continue to be assessed a \$500 per month, per port [sic] fee for the first 25 port pairs. The Exchange does not intend to amend the TradeInfo fee.⁷

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on November 1, 2010.

2. Statutory Basis

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

Exchange, to Richard Holley, Assistant Director, and Terri Evans, Special Counsel, Division of Trading and Markets, Commission, on November 4, 2010.

⁶ Id.

⁷ Currently, NOM members not subscribing to the Nasdaq Workstation using TradeInfo are charged a fee of \$95 per user per month.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

The Exchange believes the proposed amendments to Rule 7053 to established tiered pricing for FIX and Other Port Fees pricing is reasonable to incentivize members by proving [sic] a discount for the quantity of ports or port pairs to which they subscribe. Also, the Exchange believes that the pricing proposal is equitable because all NOM members are assessed the same rates.

2. Statutory Basis [sic]

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,¹⁰ in general, and with Section 6(b)(4) of the Act,¹¹ 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.

The Exchange believes the proposed amendments to Rule 7053 to establish tiered pricing for FIX and Other Port Fees pricing is reasonable to incentivize members by proving a discount for the quantity of ports or port pairs to which they subscribe. Also, the Exchange believes that the pricing proposal is equitable because all NOM members are assessed the same rates.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4).

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.

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.¹² At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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:

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-2010-144 on the subject line.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2010-144. 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 website (<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 website 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-2010-144 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.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).