

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57274; File No. SR-NASDAQ-2008-009)

February 5, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a 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 February 1, 2008, 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 substantially by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a member due, fee, or other charge imposed by Nasdaq under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 implemented this proposed rule change on February 1, 2008. The text of the proposed rule change is available at www.nasdaq.complinet.com, the principal offices of the Exchange, and 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 introducing changes to its order execution pricing schedule to lower fees for certain members that execute high volumes of transactions through the Nasdaq Market Center but that do not qualify for current favorable pricing because they provide lower volumes of liquidity. Specifically, any member that accesses an average of 55 million or more shares of liquidity through the Nasdaq Market Center in a month would pay a reduced fee for accessing that liquidity unless the member already qualifies for a more favorable pricing level. For shares of New York Stock Exchange (“NYSE”) listed companies, the fee will be \$0.00285 per share executed in the Nasdaq Market Center,⁵ and for securities listed on Nasdaq and other exchanges,

⁵ The fee represents a reduction from the current execution fees of \$0.0029 per share paid by members with an average daily volume of (i) more than 20 million shares of liquidity provided and (ii) more than 35 million shares of liquidity accessed and/or routed; and \$0.003 per share executed for members with lower volumes. Members with an average daily volume of (i) more than 35 million shares of liquidity provided and (ii) more than 55 million shares of liquidity accessed and/or routed; or with an average daily volume of (i) more than 25 million shares of liquidity provided, and (ii) more than 65 million shares of liquidity accessed and/or routed, will continue to pay a lower rate of \$0.0028 per share executed.

the reduced fee will be \$0.00265 per share executed in the Nasdaq Market Center.⁶ Members qualifying for the reduced execution charge would continue to pay fees for routing to other exchanges at their current levels, which are identical to the current fees for accessing liquidity.

Second, Nasdaq is simplifying its pricing schedule by eliminating a reduced fee for orders that are designated for routing directly to the American Stock Exchange (“Amex”) without attempting to execute in the Nasdaq Market Center prior to routing. As a result, for securities listed on exchanges other than NYSE, the fee is now \$0.0035 per share for all orders designated for specialized routing, including Directed Intermarket Sweep Orders, orders that attempt to execute solely against displayed interest in Nasdaq, and orders that do not attempt to execute in Nasdaq at all.

Third, Nasdaq is reducing one of the volume levels required to qualify for a reduced fee for routing orders to NYSE. Members with an average daily volume of more than 50 million shares of liquidity (currently 60 million shares) routed to NYSE without attempting to execute in Nasdaq (other than Directed Intermarket Sweep Orders) will qualify for a fee of \$0.0009 for orders that do not attempt to execute in Nasdaq (compared with the fee of \$0.001 for members with lower volumes).⁷

⁶ The fee represents a reduction from the current execution fees of \$0.0028 per share paid by members with an average daily volume of (i) more than 20 million shares of liquidity provided and (ii) more than 35 million shares of liquidity accessed and/or routed; and \$0.003 per share executed for members with lower volumes. Members with an average daily volume of (i) more than 35 million shares of liquidity provided and (ii) more than 55 million shares of liquidity accessed and/or routed; or with an average daily volume of (i) more than 25 million shares of liquidity provided, and (ii) more than 65 million shares of liquidity accessed and/or routed, will continue to pay a lower rate of \$0.0026 per share executed.

⁷ Members also qualify for the reduced fee if they have an average daily volume of more than 35 million shares of liquidity provided.

Finally, Nasdaq is modifying its fees for routing odd lot transactions to NYSE Arca. Currently, these fees apply only to orders that are entered in Nasdaq as odd lots and then executed at NYSE Arca. The modified fees will apply to any order executed at NYSE Arca as an odd lot, regardless of how it is entered in Nasdaq. For orders that attempt to execute in Nasdaq prior to routing, the fee will be \$0.004 per share executed for Nasdaq-listed securities and \$0.03 for other securities; for orders that do not attempt to execute in Nasdaq, the fee will be \$0.005 per share executed for Nasdaq-listed securities and \$0.04 for other securities. The change is designed to allow Nasdaq to recoup charges that NYSE Arca imposes on odd lots; the higher fee for orders that do not check Nasdaq before routing is designed to further discourage the entry of odd lot orders that have no opportunity for executing prior to routing.

2. Statutory Basis

Nasdaq believes that the proposed rule change is 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. The changes will result in a reduction in execution fees for members that execute high volumes of securities in Nasdaq but without also providing high volumes of liquidity, and will expand the availability of reduced routing rates for members using Nasdaq to route to the NYSE. The changes will also rationalize fees for routing orders in securities listed on exchanges other than NYSE by eliminating a discount for certain orders routed to Amex. Finally, the proposed rule change will ensure that Nasdaq fully recovers costs incurred when routing odd lots to NYSE Arca and will provide financial disincentives for members to enter orders that are likely to result in the routing

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

of odd lots. The impact of the changes upon the net fees paid by a particular market participant will depend upon a number of variables, including the types of securities that it trades through Nasdaq, its monthly volume, the order types it uses, and the prices of its quotes and orders, but on balance the change should result in a fee decrease or unchanged fees for most members.

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. Accordingly, to the extent that certain routing fees are increasing, Nasdaq believes that these fees remain competitive with those charged by other venues and therefore continue to be 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 proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2)¹¹ thereunder, because it establishes or changes a due, fee, or other charge imposed on members by Nasdaq. Accordingly, the proposal is effective upon filing with the Commission. At any time within 60 days of the filing of the

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

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-2008-009 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2008-009. 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 10:00 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-2008-009 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.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).