

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58298; File No. SR-NASDAQ-2008-055)

August 4, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change Regarding Fees for Orders Routed Via the Options Intermarket Linkage

I. Introduction

On June 18, 2008, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change regarding fees for orders routed via the Options Intermarket Linkage (“Options Linkage”). The proposed rule change was published for comment in the Federal Register on July 1, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Nasdaq proposes to amend its fees related to orders routed to the NASDAQ Options Market (“NOM”) via the Options Linkage to establish a Linkage Fee Pilot Program that is effective through July 31, 2009 and to clarify the application of options transaction fees for trades executed through Options Linkage on the Exchange. Under this pilot, the fees applicable to Nasdaq members entering orders directly into NOM systems will apply to Nasdaq members and non-members that enter orders into other options exchanges that are then routed to Nasdaq via the Options Linkage and executed on NOM.

---

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

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

<sup>3</sup> See Securities Exchange Act Release No. 58014 (June 24, 2008), 73 FR 37520.

Under the Exchange's current Rule 7050(1), members are charged a fee of \$0.45 per executed contract for orders entered and then executed on the NOM. Nasdaq's current rule does not differentiate between orders entered directly into the NOM via Nasdaq systems and orders received by Nasdaq via the Linkage. Since the launch of the NOM, Nasdaq has been assessing the same fee for all orders executed on behalf of members on its market regardless of whether such orders were entered directly into Nasdaq systems or via the Options Linkage.

### III. Discussion and Commission Findings

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 exchange.<sup>4</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>5</sup> which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

Under the Exchange's current rule, the fee for members entering an order that executes on the NOM is \$0.45 per executed contract. Nasdaq's current rule does not specifically provide that the same \$0.45 options transaction fee is charged for trades routed to Nasdaq via the Options Linkage. The Exchange's proposal would establish a Linkage Fee Pilot Program, for a period ending July 31, 2009, that would charge \$0.45 per executed contract to members or non-members entering orders via the Options Linkage that execute in NOM. Accordingly, the Commission believes that the Exchange's proposed rule change and Linkage Fee Pilot Program clearly sets forth the fees imposed on Linkage Orders.

---

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

Because the Exchange may have assessed the options transaction fee on Linkage Orders prior to this approval and, therefore, without authority, any parties assessed the options transaction fee for Linkage Orders prior to the approval of this proposed rule change may seek reimbursement. In addition, the Commission notes that the Options Linkage fees are assessed pursuant to a pilot scheduled to end July 31, 2009 and that the Commission is continuing to evaluate whether such fees are appropriate and consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-NASDAQ-2008-055) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

Florence E. Harmon  
Acting Secretary

---

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).