

letter acknowledges in the letter or representation its obligation to promptly notify DTC whenever there is any anticipated change in the representations given.

Under Rule 10, if a participant fails to continue to adhere to these standards, then DTC, based on its judgment, may at any time cease to act for the participant with respect to a particular transaction, particular transactions, transactions generally, or a program and may terminate a participant's right to act as a Settling Bank. Both Rule 2 and Rule 10 give DTC the discretion to admit participants or continue to act for them on a temporary or other conditional basis.

In order to harmonize the rules of DTC with those of its clearing agency affiliates, DTC will add an additional consequence in this regard whereby a participant will be fined \$1,000 if it fails to notify DTC of its non-compliance with any general continuance standard for DTC participation within two business days.

In addition, DTC will add a provision to its fine schedule that would impose a fine in the amount of \$5,000 if a participant fails to notify DTC of a "material change." A "material change" would include events such as a merger or acquisition involving the participant, a change in corporate form, a name change, a material change in ownership, control or management, and participation as a defendant in litigation which could reasonably be anticipated to have a direct negative impact on the participant's financial condition or ability to conduct its business. The new provision provides that the notification must be provided 90 calendar days prior to the effective date of such event unless the participant demonstrates that it could not have reasonably have given notice within that timeframe.

With respect to both \$1,000 and \$5,000 fines mentioned above, DTC will add an additional provision that if the participant's failure to provide notice of such material change applies to more than one DTC-affiliate clearing agency, the fine amount will be divided equally among the clearing agencies. This is the same approach being adopted above with respect to fines for failure to timely provide requisite financial and other information. When the member is a DTC participant and a member of FICC or NSCC, DTC will collect the fine and allocate the amount equally among other clearing agencies, as appropriate. If the member is not a DTC participant but is a member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

### III. Discussion

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 registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),<sup>6</sup> which, among other things, requires that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions and with the requirements of Section 17A(b)(3)(H)<sup>7</sup> which, among other things, requires that the rules of a clearing agency provide a fair procedure with respect to the disciplining of participants and the denial of participation to any person seeking to be a participant. The Commission finds that the proposed rule change, which restructures and harmonizes DTC's fines with those of NSCC and FICC, is consistent with those statutory obligations.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act<sup>8</sup> and the rules and regulations thereunder. In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation.<sup>9</sup>

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-2007-05), as amended, be and hereby is approved.

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

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-16604 Filed 7-18-08; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(H).

<sup>8</sup> 15 U.S.C. 78q-1.

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

<sup>10</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58152; File No. SR-NASDAQ-2008-059]

### 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 Options Market

July 14, 2008.

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 July 1, 2008, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") 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. Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> thereunder, 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. Nasdaq will implement the proposed rule change on July 1, 2008.

The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.<sup>5</sup>

\* \* \* \* \*

#### 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)-(3) No Change.

(4) Fees for executions of contracts other than those executed on the

<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).

<sup>5</sup> Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://nasdaq.complinet.com>.

NASDAQ Options Market shall include execution and clearing fees charged to NASDAQ for executing on away markets, as follows:

	Customer	Firm	MM
<b>AMEX</b>			
	\$0.06	\$0.63	\$0.66
<b>BOX</b>			
Penny Pilot .....	0.51	0.51	0.51
Non-Penny Pilot .....	0.06	0.26	0.26
BKX .....	0.06	0.41	0.41
NDX .....	0.06	0.42	0.42
MNX .....	0.06	0.42	0.42
<b>CBOE</b>			
Equity Options .....	0.06	0.51	0.51
QQQQ .....	0.06	0.31	0.31
SPY .....	0.24	0.51	0.51
OEX, XEO .....	0.42	0.42	0.42
SPX ≥ \$1 .....	0.56	0.52	0.52
SPX < \$1 .....	0.47	0.52	0.52
MVR .....	0.46	0.31	0.31
Volatility Indices .....	0.52	0.57	0.57
DXL .....	0.56	0.61	0.61
IWM .....	0.24	0.31	0.31
DJX, MNX, NDX, & RUT .....	0.34	0.61	0.61
Other indices, ETFs, & HOLDRs .....	0.24	0.51	0.51
<b>ISE</b>			
Equity Options .....	0.06	0.24	[0.46] 0.51
Premium Products** .....	0.24	0.24	[0.46] 0.51
BKX, FTZ, IJH, IJR, IJS, MFX, MID, MSH, SML, UKX .....	0.24	0.34	[0.56] 0.61
RMN, RUI, RUT .....	0.24	0.39	[0.61] 0.66
NDX, MNX .....	0.24	0.40	[0.62] 0.67
FUM, HSX, POW, TNY, WMX .....	0.24	0.29	[0.51] 0.56
[FTZ] .....	[0.06]	[0.34]	[0.56]
** Premium products: BBH, BYT, DBA, DBO, DBS, DDM, DGL, DIA, DMA, DSI, DUG, DVY, DXD, EEM, EEV, EFA, ERF, EWA, EWC, EWG, EWH, EWJ, EWT, EWW, EWY, EWZ, FCG, FDG, FDM, FIW, FNI, FXA, FXB, FXC, FXE, FXF, FXI, FXP, FXY, GDX, GLD, HHH, HHO, HVY, IAI, IBB, IEF, IGW, ILF, IVE, IVV, IVW, IWB, IWD, IWF, IWM, IWN, IWO, IXX, IXZ, IYE, IYM, IYR, IYT, JLO, KBE, KCE, KIE, KLD, MDY, MOO, MYP, OEF, OIH, OOG, PBW, PGJ, PHO, PMP, PPH, PUF, QID, QLD, RND, RSP, RTH, RUF, SAW, SDS, SHY, SKF, SIN, SMH, SPY, SSO, TAN, TLT, TTH, TWM, UNG, USO, UTH, UWM, UYG, WSI, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XRT.			
<b>NYSE-Arca</b>			
Penny Pilot .....	0.51	0.51	0.51
Non-Penny Pilot .....	0.06	0.56	0.56
BKX .....	0.06	0.66	0.66
RUT .....	0.06	0.71	0.71
<b>PHLX</b>			
Equity Options .....	0.06	0.30	0.51
MNX & NDX Options .....	0.18	0.30	0.51
Index Options .....	0.50	0.30	0.26

**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 the fees assessed for execution of options orders entered into NOM but routed to

away markets. On June 30, 2008, Nasdaq filed SR-2008-058, a proposal to pass through to Exchange members the actual fees assessed by away markets plus the clearing fees for the execution of orders routed from Nasdaq. Nasdaq collected and organized in chart format the fees to be assessed for routing to each destination exchange.

Nasdaq is filing this proposed rule change to reflect a change proposed by the International Securities Exchange on

June 30, 2008, in SR-ISE-2008-55.<sup>6</sup> In addition, Nasdaq is adding to the list of products that ISE treats as "premium" options symbol FXY, which had been inadvertently omitted from Nasdaq's fee schedule. Finally, within Nasdaq's fee schedule for executions occurring at ISE, Nasdaq is proposing to classify options class FTZ as a premium product with a fee of \$.24, \$.34, and \$.61 for customers, firms, and market makers. Options class FTZ had previously been listed in a category by itself with executions fees of \$.06, \$.34, and \$.56 for customers, firms, and market makers. Nasdaq expects that ISE will charge Nasdaq members \$.24, \$.34, and \$.61, respectively, as set forth in Nasdaq's proposed rule language.<sup>7</sup> All fees for markets other than ISE remain unchanged.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is 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.

Nasdaq is one of seven options markets 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. The various exchanges have filed these fees with the Commission and it is reasonable for Nasdaq to pass those fees through to its members. As such, Nasdaq 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 result in 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*

Written comments were neither solicited nor 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<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>11</sup> 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 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-2008-059 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NASDAQ-2008-059. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. 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-2008-059 and should be submitted on or before August 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-16588 Filed 7-18-08; 8:45 am]

**BILLING CODE 8010-01-P**

## **SMALL BUSINESS ADMINISTRATION**

### **[Disaster Declaration #11328]**

#### **Kansas Disaster #KS-00027**

**AGENCY:** Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kansas (FEMA-1776-DR), dated 07/09/2008.

*Incident:* Severe Storms, Flooding, and Tornadoes.

*Incident Period:* 05/22/2008 through 06/16/2008.

**EFFECTIVE DATE:** 07/09/2008.

*Physical Loan Application Deadline Date:* 09/08/2008.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration,

<sup>6</sup> See Securities Exchange Act Release No. 58091 (July 3, 2008), 73 FR 39754 (July 10, 2008) (SR-ISE-2008-55).

<sup>7</sup> See e-mail from Jeffrey S. Davis, Vice President and Deputy General Counsel, Nasdaq, to Joseph P. Morra, Special Counsel, and Andrew Madar, Attorney-Advisor, Commission, dated July 10, 2008, adding the prior 3 sentences.

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

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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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