

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57599; File No. SR-NASDAQ-2008-027)

April 1, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish Fees for Trading on The NASDAQ Options Market

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 March 27, 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 Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 establish pricing for trading standardized equity and index options on The NASDAQ Options Market (“NOM”), Nasdaq’s facility for the trading of standardized equity and index options. Nasdaq will implement this rule change on March 31, 2008, the expected launch date for NOM. The text of the proposed rule change is available at

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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).

[www.complinet.com/nasdaq](http://www.complinet.com/nasdaq), the principal offices of the Exchange, and 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, 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 fees and credits for the execution of options contracts within NOM. The fees are based on the pricing model currently in place for the trading of equities via the Nasdaq Market Center, with variations to reflect Nasdaq's understanding of the different competitive conditions in the markets that trade options.

Specifically, Nasdaq will assess fees for the execution of options contracts based upon which member provides liquidity to the market and which member takes liquidity from the market. This model seeks to attract liquidity to NOM by providing credits to members that provide liquidity, and to assess a fee to the member whose order executes against an order that has provided liquidity. An order that provides liquidity is any order that is entered into NOM and is placed on the NOM book for potential execution. An order that takes liquidity is one that is entered into NOM and that executes against an order resting on the NOM book. In the case of the NOM Closing Cross, all orders entered during the continuous market or entered as Imbalance

Only orders will be considered liquidity providers and all On Close orders will be considered liquidity takers.

For all executions except the NOM Opening Cross, the fee for liquidity takers will be \$0.45 per executed contract and the rebate for liquidity providers will be \$0.30 per executed contract. For orders executed in the NOM Opening Cross, the fee will be \$0.05 per contract for each side of the transaction. Executions in the Opening Cross are not susceptible to the liquidity provider and taker analysis described above because NOM will not place orders on its book prior to the opening of the market. Instead, NOM will place orders on the book just prior to and in anticipation of the execution of the NOM Opening Cross. In light of this difference, Nasdaq has concluded that charging all members equally for the execution of their orders in the NOM Opening Cross is the fairest way to allocate fees.

Nasdaq will assess a routing fee for orders that are executed at another options market based upon the cost to Nasdaq of executing such orders at those markets. In order to reflect Nasdaq's cost of execution at away markets, the proposed fees are separated by type of option (penny pilot, equity/non-penny pilot, ETF or HLDS/non-penny pilot, and Index) and vary depending upon whether the order is being routed for a customer, a member firm, or a registered market maker. In addition, Nasdaq will pass-through surcharges that are assessed by other markets for the execution of specific options orders on specific underlying instruments.

These options are separated into three tiers by level of surcharge and the options included in each tier are listed in an Options Trader Alert and also posted on the NasdaqTrader.com website.<sup>5</sup> A copy of the posted fee schedule is attached as Exhibit 2 to Nasdaq's rule filing.

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<sup>5</sup> See Options Trader Alert 2008-001 (March 12, 2008) (announcing SEC approval of The NASDAQ Options Market rule proposal), at <http://www.nasdaqtrader.com/TraderNews.aspx?id=OTA2008-001>; [http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#nq\\_optionsex](http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#nq_optionsex).

Nasdaq believes that these routing fees and surcharges are competitive, fair and reasonable, and non-discriminatory in that they approximate the cost to Nasdaq of executing routed orders at an away market. As with all fees, Nasdaq may adjust these routing fees in response to competitive conditions by filing a new proposed rule change.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(4) of the Act,<sup>7</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.

Upon launch, Nasdaq will be the seventh options market in the national market system. 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 Commission has already determined that Nasdaq's pricing model for executions – charging the liquidity taker and crediting the liquidity provider – is consistent with the Exchange Act. 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 states that it 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.

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<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 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

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 Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> 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 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.

Nasdaq expects to launch NOM on March 31, 2008. To lighten the administrative burden on firms, Nasdaq will not send firms a monthly bill for March based on just one day of trading. Rather, Nasdaq will add the fees incurred on March 31, 2008, to the invoices that firms will receive for the full month of options trading for April.

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

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2008-027 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-2008-027. 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-2008-027 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>10</sup>

Florence E. Harmon  
Deputy Secretary

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