

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58014; File No. SR-NASDAQ-2008-055)

June 24, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Regarding Fees for Orders Routed via the Options Intermarket Linkage

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> notice is hereby given that on June 18, 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 substantially prepared by Nasdaq. 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 amend its fees related to orders routed to the NASDAQ Options Market (“NOM”) via the Options Intermarket Linkage (“Linkage”)<sup>3</sup> 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 Linkage on the Exchange. Nasdaq will implement

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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> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the American Stock Exchange LLC, Chicago Board Options Exchange, Inc., and International Securities Exchange LLC. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, the Philadelphia Stock Exchange, Inc., Pacific Exchange, Inc. (n/k/a NYSE Arca), Boston Stock Exchange, Inc., and Nasdaq joined the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004); and 57545 (March 21, 2008), 73 FR 16394 (March 27, 2008).

the proposed rule upon approval. The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and [www.nasdaq.com](http://www.nasdaq.com).

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

The purpose of this proposed rule change is 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 the 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 Linkage and executed on NOM.

Under the Exchange's current Rule 7050(1), the fee for members entering an order that executes on the NOM is \$.45 per executed contract. 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 Linkage.

Nasdaq did not differentiate between those groups because firms that are members of away markets are, by and large, also members of Nasdaq. Nasdaq states that, all orders received via the Linkage and executed by Nasdaq have been entered on away markets by firms that are also Nasdaq members. Nonetheless, the possibility exists that a firm that is not a Nasdaq member could enter an order that is routed to Nasdaq via the Linkage and executed by Nasdaq. In that case, under Nasdaq's current rule, Nasdaq would lack an approved rule to assess an execution fee to that non-member.

Nasdaq believes it is proper to charge the same fee for executions regardless of whether an order was entered directly into Nasdaq's systems or routed to Nasdaq via the Linkage. Since most firms join multiple exchanges, pricing that differentiates between orders originating in different markets tends to skew trading behaviors in ways that are unintended and possibly detrimental.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>5</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed Linkage Fee Pilot Program will result in the same fee being charged for the execution of all orders regardless of the manner in which they are sent to the Exchange.

### 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

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

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

competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, Nasdaq notes that the options markets compete aggressively on the basis of execution price and that the proposal is part of Nasdaq's attempt to compete effectively.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File No. SR-NASDAQ-2008-055 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-2008-055. 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, 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 available publicly. All submissions should refer to File Number SR-NASDAQ-2008-055 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

Florence E. Harmon  
Acting Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).