

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59843; File No. SR-NASDAQ-2009-035)

April 29, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of 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 April 14, 2009, 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 by NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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 the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the Nasdaq Market Center. This proposed rule change, which is effective upon filing, will become operative on

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 C.F.R. 240.19b-4(f)(2).

April 15, 2009. The text of the proposed rule change is available at <http://nasdaqomx.cchwallstreet.com/>, at NASDAQ's principal office, and at 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 modifying its pricing for order execution and routing of equities. As detailed below, NASDAQ is establishing two fee schedules for the month of April, the first is applicable from April 1 through April 14 and the second from April 15 to April 30. The effect of the fee changes will vary with respect to the listing venue of the securities being traded and whether a member is accessing or providing liquidity or routing an order.

Fee Schedule Applicable From April 1 through April 14. For the first half of April, NASDAQ will charge the same "per transaction" fees and offer the same "per transaction" credits that were approved [sic]⁵ and put into effect prior to April 1 through the filing of SR-NASDAQ-2009-029. NASDAQ will modify the fee schedule by reducing the levels of market

⁵ The Commission does not approve proposed rule changes filed pursuant to Section 19(b)(3)(A) of the Act.

activity at which members qualify for reduced “per transaction” pricing. For firms that meet the reduced market activity requirements, this will result in an effective reduction of transaction-based prices. For firms that do not meet the reduced market activity requirements, there will be no change in fees.

As always, NASDAQ calculates market activity levels on a monthly basis at the end of each month. Therefore, although NASDAQ is not changing the transaction-based fees and rebates for the first half of April and the firms’ market activity for this period have already been fixed, firms can still affect their average market activity levels for the entire month of April by increasing their market activity on NASDAQ during the second half of April. Firms that increase their activity level to exceed the newly-reduced activity requirements will receive reduced fees per transaction.

The specific changes to market activity requirements are as follows. For securities listed on NASDAQ and the New York Stock Exchange (“NYSE”), NASDAQ is reducing the activity requirements for the tier for members with an average daily volume through the Nasdaq Market Center in all securities of (i) more than 50 million shares of liquidity provided, and (ii) more than 60 million shares of liquidity accessed and/or routed.⁶ The new fee schedule will require average daily volume through the Nasdaq Market Center in all securities of (i) more than 35 million shares of liquidity provided, and (ii) more than 55 million shares of liquidity accessed and/or routed. Members qualifying for this tier will continue to pay \$0.0026 per share executed when accessing liquidity (or 0.1% of the total transaction cost in the case of executions of securities priced at less than \$1 per share). There will be no change to the second pricing tier

⁶ As is currently the case with respect to reduced pricing tiers, orders that do not attempt to execute in the Nasdaq Market Center for the full size of the order prior to routing are not counted in determining shares of liquidity routed.

applicable to members with an average daily volume through the Nasdaq Market Center in all securities of (i) more than 25 million shares of liquidity provided, and (ii) more than 40 million shares of liquidity accessed and/or routed. Members qualifying for this tier will continue to pay \$0.0028 per share executed when accessing liquidity (or 0.1% of the total transaction cost in the case of executions at less than \$1 per share). As is currently the case, members not qualifying for a reduced pricing tier will pay \$0.0030 per share executed to access liquidity (or 0.1% of the total transaction cost in the case of executions at less than \$1 per share).

With respect to securities listed on exchanges other than NASDAQ or NYSE, NASDAQ is also modifying the levels of activity required to qualify for favorable pricing tiers while leaving the level of charges and credits associated with tiers unchanged. Thus, in order to qualify for the most favorable fee to access and route liquidity, a member must (i) provide more than 35 million shares of liquidity (currently 50 million) and (ii) access or route more than 55 million shares of liquidity (currently 60 million). Members qualifying for this tier currently pay \$0.0029 per share executed to access liquidity or to route after attempting to execute for the full size of the order, and this fee will remain unchanged.⁷ Members not qualifying for a reduced pricing tier will continue to pay \$0.0030 per share executed to access liquidity and to route after checking the Nasdaq Market Center book for the full size of the order.

NASDAQ is also decreasing the market activity levels required to qualify for the most favorable credits it pays to liquidity providers. With respect to NASDAQ and NYSE-listed securities, currently a member must provide more than 50 million shares of liquidity to qualify for the most favorable pricing tier, where the credit for displayed liquidity is \$0.0025 per share, with the credit for non-displayed liquidity remaining at \$0.0015 per share. The next most

⁷ For securities priced under \$1, the fee to access liquidity remains 0.1% of the total transaction cost, and the fee to route remains 0.3% of the total transaction cost.

favorable tier currently requires a member to provide a daily average of more than 25 million shares of liquidity, and the credit for displayed liquidity is \$0.0022 per share, with the credit for non-displayed liquidity remaining \$0.001 per share.⁸ Under the revised pricing schedule, members qualify for the most favorable pricing tier by providing 35 million shares of liquidity, and for the second tier by providing 20 million shares of liquidity. Members not qualifying for these pricing tiers will continue to receive \$0.001 per share for non-displayed liquidity and \$0.002 per share for displayed liquidity.

With respect to securities listed on exchanges other than NASDAQ or NYSE, NASDAQ is also reducing the volume levels required to qualify for favorable credits while the transaction-based pricing will remain unchanged. Thus, in order to qualify for the most favorable credit, a member must provide an average daily volume of more than 35 million shares of liquidity (currently 50 million): the most favorable credit will remain \$0.0015 for non-displayed liquidity and \$0.0028 for displayed liquidity. To qualify for the next most favorable credit, a member must provide a daily average volume of more than 20 million shares of liquidity (currently 25 million): members is [sic] this tier receive \$0.001 per share for non-displayed liquidity and \$0.0025 per share for displayed liquidity. Other members will continue to receive \$0.001 per share for non-displayed liquidity and \$0.002 per share for displayed liquidity.⁹

Fee Schedule Applicable From April 15 through April 30. For the second half of April, NASDAQ will modify the fee schedule by (1) adopting a uniform transaction fee of \$0.0030 per share for accessing liquidity in all securities priced over \$1.00, (2) adding a new tier of market

⁸ All credits described relate to executions of securities priced at \$1 or more per share. Both before and after implementation of the proposed rule change, the credit with respect to executions of securities priced at less than \$1 per share is \$0.

⁹ In all cases, no credit is paid with respect to securities priced at less than \$1 per share.

activity at which favorable pricing is available, and (3) reducing the transaction-based fees and increasing the transaction-based credits offered for each tier of market activity. For firms that meet reduced market activity requirements, this will result in a reduction of transaction-based prices. For firms that do not meet any reduced market activity requirements, there will be no change in fees. Unless specifically mentioned, all other fees set forth in Rule 7018 regarding the first half of April will remain the same for the second half of April.

Specifically, with respect to credits provided for tiers of liquidity-providing activity, NASDAQ will retain its current tiers of average daily volume of liquidity provided of 20 million and 35 million shares, and add a third tier of credits that will be available to members that provide average daily volume of liquidity of 125 million shares.¹⁰ NASDAQ is also modifying the transaction-based credits paid to liquidity providers in each market activity tier. Members that qualify for the highest tier of market activity by providing an average daily volume of 125 million shares or more will receive a credit of \$0.00295 per share, as opposed to \$0.0025 that they currently receive with respect to NASDAQ and NYSE stocks and \$0.0028 for stocks listed on other exchanges. Members that provide 35 million shares or more will receive a credit of \$0.0029 per share as opposed to \$0.0025 that they currently receive with respect to NASDAQ and NYSE stocks and \$0.0028 for stocks listed on other exchanges. Members that provide 20 million shares or more will receive a credit of \$0.0025 per share, as opposed to \$0.0022 that they currently receive with respect to NASDAQ and NYSE stocks and the same as currently offered

¹⁰ Again, average daily volume of liquidity provided is calculated on a monthly basis. Therefore, the daily volume that a member provided during the first half of April will impact the volume tier into which the member falls at the end of April.

for stocks listed on other exchanges. Finally, members that provide less than 20 million shares will receive a credit of \$0.0020 per share in all securities as they do today.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹¹ in general, and with Section 6(b)(4) of the Act,¹² 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 proposed fee change applies uniformly to all NASDAQ members. The impact of the changes upon the net fees paid by a particular market participant will depend upon a number of variables, including its monthly volume, the prices of its quotes and orders (*i.e.*, its propensity to add or remove liquidity), and the listing venue for the securities that it trades. 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. The proposed rule change reflects a reduction in the overall cost of trading on NASDAQ. Nasdaq believes that the applicable fees and credits 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.

¹¹ 15 U.S.C. 78f.

¹² 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 rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹³ and subparagraph (f)(2) of Rule 19b-4 thereunder.¹⁴ 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. Please include File Number SR-NASDAQ-2009-035 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2009-035. This file number should be included on the subject line if e-mail is used.

¹³ 15 U.S.C. 78s(b)(3)(a)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

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 offices 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-2009-035, 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.¹⁵

Elizabeth M. Murphy
Secretary

¹⁵ 17 CFR 200.30-3(a)(12).