

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57146; File No. SR-NASDAQ-2008-003)

January 14, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto to Establish Fees for Members Using the NASDAQ Pre-Trade Risk Management Functionality

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 January 7, 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. On January 10, 2008, Nasdaq filed Amendment No. 1 to the proposed rule change to make certain clarifying changes in its description. Nasdaq has designated this proposal as one establishing or changing a member due, fee, or other charge imposed by the Exchange 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, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to establish member charges for the use of NASDAQ new pre-trade risk management (“PRM”) functionality. The text of the proposed rule change is available at [www.nasdaq.complinet.com](http://www.nasdaq.complinet.com), the principal offices of the Exchange, and the Commission’s Public Reference Room.

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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).

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 establish the following charges for the use of Nasdaq's new PRM functionality:

There will be a charge of \$100 per month for each port enabled for PRM functionality. This charge will be in addition to other applicable port charges. Each PRM-enabled port will provide (at no additional charge) "fat finger" checks for orders being placed through the port. A fat finger check will compare price instructions on the order against the current composite displayed size and price at the relevant levels, and will automatically reject the order if it is priced outside the acceptable range previously specified by the user.

Users of PRM Modules will be assessed a further charge of \$500 per month per Module. Since a PRM Module can function only through PRM-enabled ports, all Module users will also be responsible for the charges described above to enable at least one port for PRM.

A PRM Module helps users control risk by checking each order, before it is accepted into the system, against certain parameters pre-specified by the user, such as maximum order size or value, order type restrictions, market session restrictions (pre/post market), security restrictions, including per-security limits, restricted stock list, and certain other criteria. These checks are in

addition to the fat finger checks that are available for all orders submitted through a PRM-enabled port. A Module can be configured to pre-trade-manage a user's order flow for a specified market participant ID ("MPID"), for a specified MPID and PRM-enabled port, or for an account within an MPID.

There will be an additional charge for PRM Module users who wish also to use the Aggregate Total Checks functionality: \$0.025 per each side that is being checked, capped at \$2,000 per month per PRM Module. Whereas PRM Modules validate individual orders against pre-specified parameters, Aggregate Totals Checks allow users to establish additional checks by limiting in certain pre-specified ways their overall daily trading activity.

Users of the NASDAQ Workstation or WeblinkACT 2.0 who subscribe to PRM Modules will receive one Workstation add-on per Module. Additional add-ons will be available, if needed, for \$100 per month.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Section 6(b)(4) of the Act,<sup>6</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. The PRM functionality provides members with a new optional tool at a reasonable cost. Members are not required to use either the NASDAQ PRM or any similar functionality. Furthermore, some users are already performing various pre-trade checks either with their own tools or with third-party software. The optional nature of the service and competition from both existing and possible future sources and providers assures that the proposed charges will remain market-competitive.

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<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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>7</sup> and Rule 19b-4(f)(2)<sup>8</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.<sup>9</sup>

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:

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on January 10, 2008, the date on which Nasdaq filed Amendment No. 1.

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-2008-003 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-2008-003. 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-2008-003 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).