

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55576; File No. SR-NASDAQ-2007-026)

April 3, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Pricing for Nasdaq 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 March 22, 2007, 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. Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective immediately 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 modify the pricing for Nasdaq members using the Nasdaq Market Center. The text of the proposed rule change is available at Nasdaq, on the Exchange’s Web site at www.nasdaq.com, and in the Commission’s Public Reference Room.

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 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 proposes to conform its execution fees and liquidity-provider rebates for transactions in non-Nasdaq-listed securities priced under \$1 to the current fees and rebates for Nasdaq-listed securities priced under \$1. The execution fees for such transactions will be 0.1% of the total transaction cost, and the liquidity-provider rebate will be zero.⁵ Thus, for example, the execution fee for a trade of 100 shares in a stock priced at \$0.70 would be \$0.07, with no rebate to the liquidity provider.

Nasdaq is also proposing to modify the routing fee for Nasdaq-listed and non-Nasdaq-listed securities priced under \$1 to 0.3% of the total transaction cost.⁶ The change reflects the

⁵ For an order in a non-Nasdaq security through which a member accesses liquidity, this change will result in a fee reduction; for a quote or order through which a member acts as a liquidity provider, this change will eliminate the rebate previously paid to the member. See e-mail from John Yetter, Vice President and Deputy General Counsel, Nasdaq, to Sara Gillis, Attorney, Division of Market Regulation, Commission, on April 2, 2007 ("April 2, 2007 E-mail").

⁶ Depending on the price of the transaction and a member's average daily share volume during the month, this change may either constitute a fee increase or a fee reduction for a particular routed order. See April 2, 2007 E-mail, supra note 5.

fact that under Rule 610 of Regulation NMS,⁷ market centers to which Nasdaq routes may charge Nasdaq only up to 0.3% of the transaction cost for executing routed orders in securities priced under \$1.

Nasdaq recently began trading non-Nasdaq-listed securities priced under \$1 in sub-penny increments. As a result, Nasdaq has seen an increase in its share volume in these securities. Nasdaq believes that, as is true for Nasdaq-listed securities, the pricing structure for these securities ensures that market participants do not pay execution or routing fees, or receive rebates, that are disproportionately large when compared with the dollar value of a particular transaction. Nasdaq believes that the changes also ensure that execution fees are in compliance with Rule 610 of Regulation NMS. Separately, Nasdaq has filed a proposal for a retroactive reduction in the fees charged for executions of non-Nasdaq-listed securities priced under \$1 for the period from March 5 through March 21, 2007, to ensure that these fees are also in compliance with the requirements of Rule 610.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and with Section 6(b)(4) of the Act,⁹ 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 believes that this change will ensure that the level of fees and rebates associated with trading securities at prices under \$1 is consistent with the value of these securities, the costs of routing

⁷ 17 CFR 242.610.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

orders to other market centers for execution, and the requirements of Rule 610 of Regulation NMS.

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.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge applicable only to a member imposed by Nasdaq, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and subparagraph (f)(2) of Rule 19b-4 thereunder.¹¹ 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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2007-026 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2007-026. 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. 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 available publicly. All submissions should refer to File Number SR-NASDAQ-2007-026 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).