

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55588; File No. SR-NASDAQ-2007-038)

April 5, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Nasdaq Market Center Fees

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 April 3, 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 and II below, which Items have been substantially prepared by Nasdaq. Nasdaq has designated the proposal as constituting a “non-controversial” proposed rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) 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 modify the pricing for Nasdaq members using the Nasdaq Market Center. Nasdaq proposes to make the proposed rule change retroactively effective with respect to the Nasdaq Market Center’s invoices for executions of non-Nasdaq securities priced under \$1 during the period from March 5, 2007 to March 21, 2007.<sup>5</sup> The text of the proposed rule change

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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).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> Telephone conversation between John Yetter, Vice President and Deputy General Counsel, Nasdaq, and Sara Gillis, Attorney, Division of Market Regulation, Commission, on April 5, 2007.

is available at Nasdaq, on the Exchange's Web site at [www.nasdaq.com](http://www.nasdaq.com), and in 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 recently reduced its fee for executing orders in non-Nasdaq securities priced under \$1 to 0.1% of the cost of the transaction, effective March 22, 2007, on an immediately effective basis; this is the same as the comparable fee for Nasdaq-listed securities that had previously been in effect.<sup>6</sup> Prior to this change, the execution fee for non-Nasdaq securities priced under \$1 had ranged from \$0.0026 to \$0.003 per share executed. Nasdaq notes, however, that Rule 610(c)(2) of Regulation NMS<sup>7</sup> limits the fee on an execution of an order against a protected quotation, if the price of the protected quotation is less than \$1, to 0.3% of the quotation's price per share. Accordingly, Nasdaq is proposing to reduce the execution fee for non-Nasdaq securities to 0.25% of the transaction cost for the period from March 5, 2007 (the

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<sup>6</sup> See Securities Exchange Act Release No. 55576 (April 3, 2007) (SR-NASDAQ-2007-026).

<sup>7</sup> 17 CFR 242.610(c)(2).

effective date of Rule 610) through March 21, 2007 (the day before the effectiveness of SR-NASDAQ-2007-026). The change will result, in all circumstances, in a reduction of the execution fees previously payable with respect to orders in non-Nasdaq securities priced under \$1. Nasdaq is not, however, proposing to modify the routing fees or liquidity provider rebates applicable to transactions in these securities during the same time period.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Section 6(b)(4) of the Act,<sup>9</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. This change will reduce execution fees for trading non-Nasdaq securities at prices under \$1 in a manner consistent with 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 proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and

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<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

(3) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

The Exchange has asked the Commission to waive the 30-day operative delay and allow the proposed rule change to become operative immediately. The Commission hereby grants that request.<sup>12</sup> The Commission believes that the Exchange's proposal raises no regulatory issues, as the Exchange represents that proposed rule change will result in a retroactive reduction in fees for all executions in non-Nasdaq securities priced under \$1 from March 5, 2007 to March 21, 2007. Furthermore, this rule change will allow the Exchange to immediately comply with the requirements of Rule 610(c)(2) of Regulation NMS, which limits the fee on an execution of an order against a protected quotation, if the price of the protected quotation is less than \$1, to 0.3% of the quotation's price per share.<sup>13</sup> Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.

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

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). As required by Rule 19b-4(f)(6)(iii) under the Act, the Exchange also provided with the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the proposed rule change.

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 17 CFR 242.610(c)(2).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2007-038 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-2007-038. 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-2007-038 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.<sup>14</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).