

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55634; File No. SR-NASDAQ-2007-036)

April 16, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 30, 2007, 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 substantially prepared by Nasdaq. Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective immediately 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 Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for Nasdaq members using the Nasdaq Market Center. Nasdaq will implement this rule change on April 2, 2007.

The text of the proposed rule change is below. Proposed new language is underlined.<sup>5</sup>

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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).

<sup>5</sup> Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://nasdaq.complinet.com>, as amended by Securities Exchange Act Release No. 55576 (April 3, 2007), 72 FR 17969 (April 10, 2007) (SR-NASDAQ-2007-026), on an immediately effective basis.

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7018. Nasdaq Market Center Order Execution and Routing

(a) The following charges shall apply to the use of the order execution and routing services of the Nasdaq Market Center by members for all securities that it trades.

Fees for Order Execution in the Nasdaq Market Center; Fees for Routing of Orders in All Securities to Venues other than the New York Stock Exchange (“NYSE”); and Fees for Routing Orders in Exchange-Traded Funds to NYSE

Charge to member entering order that executes in the Nasdaq Market Center or attempts to execute in the Nasdaq Market Center prior to routing:	
Members with an average daily volume through the Nasdaq Market Center in all securities during the month of (i) more than 35 million shares of liquidity provided, and (ii) more than 55 million shares of liquidity accessed and/or routed; or members with an average daily volume through the Nasdaq Market Center in all securities during the month of (i) more than 25 million shares of liquidity provided, and (ii) more than 65 million shares of liquidity accessed and/or	\$0.0026 per share executed for securities priced at \$1 or more per share  0.1% of the total transaction cost for executions in the Nasdaq Market Center of securities priced at less than \$1 per share  0.3% of the total transaction cost for routed orders in securities priced at less than \$1 per share

routed	
Members with an average daily volume through the Nasdaq Market Center in all securities during the month of (i) more than 20 million shares of liquidity provided, and (ii) more than 35 million shares of liquidity accessed and/or routed	<p>\$0.0028 per share executed for securities priced at \$1 or more per share</p> <p>0.1% of the total transaction cost for executions in the Nasdaq Market Center of securities priced at less than \$1 per share</p> <p>0.3% of the total transaction cost for routed orders in securities priced at less than \$1 per share</p>
Other members	<p>\$0.0030 per share executed for securities priced at \$1 or more per share</p> <p>0.1% of the total transaction cost for executions in the Nasdaq Market Center of securities priced at less than \$1 per share</p> <p>0.3% of the total transaction cost for routed orders in securities priced at less than \$1 per share</p>
Charge to member entering order that does not attempt to execute in the Nasdaq Market Center prior to routing	<p><u>\$0.0035 per share executed for a Directed Intermarket Sweep Order for securities priced at \$1 or more per share</u></p> <p>\$0.0030 per share executed <u>for other orders for</u></p>

	<p>securities priced at \$1 or more per share</p> <p>0.3% of the total transaction cost for routed orders in securities priced at less than \$1 per share</p>
<p>Surcharge for order routed to the American Stock Exchange and charged a fee by the specialist:</p>	<p>\$0.01 per share executed</p>
<p>Credit to member providing liquidity through the Nasdaq Market Center:</p>	
<p>Members with an average daily volume through the Nasdaq Market Center in all securities during the month of more than 35 million shares of liquidity provided</p>	<p>\$0.0025 per share executed (or \$0, in the case of executions against Quotes/Orders in the Nasdaq Market Center at less than \$1.00 per share)</p>
<p>Members with an average daily volume through the Nasdaq Market Center in all securities during the month of more than 20 million shares of liquidity provided</p>	<p>\$0.0022 per share executed (or \$0, in the case of executions against Quotes/Orders in the Nasdaq Market Center at less than \$1.00 per share)</p>
<p>Other members</p>	<p>\$0.0020 per share executed (or \$0, in the case of executions against Quotes/Orders in the Nasdaq Market Center at less than \$1.00 per share)</p>

Fees for Routing Orders in Securities Other than Exchange-Traded Funds to NYSE

<p>Order that attempts to execute in the Nasdaq Market Center prior to routing and being executed at NYSE:</p>	<p>\$0.000225 per share executed for securities priced at \$1 or more per share</p> <p>0.3% of the total transaction cost for routed orders in securities priced at less than \$1 per share</p>
<p>Order that does not attempt to execute in the Nasdaq Market Center prior to routing and being executed at NYSE:</p>	<p><u>\$0.0035 per share executed for a Directed Intermarket Sweep Order for securities priced at \$1 or more per share</u></p> <p>\$0.000275 per share executed <u>for other orders</u> for securities priced at \$1 or more per share</p> <p>0.3% of the total transaction cost for routed orders in securities priced at less than \$1 per share</p>
<p>Order that is routed to NYSE and then routed to another venue for execution:</p>	<p>A pass-through of any routing fees charged to Nasdaq by NYSE</p>

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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 establishing a fee of \$0.0035 per share executed for orders that are designated as Directed Intermarket Sweep Orders (unless the order is for a security priced under \$1, in which case the fee is 0.3% of the transaction value). As described in SR-NASDAQ-2007-020,<sup>6</sup> a Directed Order allows a market participant to enter an order into Nasdaq that is designated for routing to another exchange without first checking the Nasdaq book. By designating a Directed Order as an Intermarket Sweep Order, the market participant entering the order represents that it is complying with the requirements of Regulation NMS Rules 610 and 611.<sup>7</sup> Because these orders bypass the Nasdaq book, and because Nasdaq will incur costs for post-trade surveillance of members' compliance with these rules, Nasdaq believes that an increased routing fee of \$0.0035 is warranted.

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

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<sup>6</sup> See Securities Exchange Act Release No. 55405 (March 6, 2007), 72 FR 11069 (March 12, 2007).

<sup>7</sup> 17 CFR 242.610 and 242.611.

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

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

and other persons using any facility or system which Nasdaq operates or controls. Nasdaq believes that an increased fee for Directed Intermarket Sweep Orders is appropriate in light of their special characteristics.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder because it establishes or changes a due, fee, or other charge.<sup>11</sup> 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:

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

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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-2007-036 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-2007-036. 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 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-2007-036 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>12</sup>

Florence E. Harmon  
Deputy Secretary

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