

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56841; File No. SR-NASDAQ-2007-089]

### 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

November 27, 2007.

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 October 1, 2007, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders it 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 pricing for Nasdaq members using the Nasdaq Market Center. Nasdaq will implement this proposed rule change on November 1, 2007. The text of the proposed rule change is available at the Exchange’s Web site, [www.nasdaq.com/plinet.com](http://www.nasdaq.com/plinet.com), the Exchange and 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

Effective November 1, 2007, Nasdaq is implementing changes to its fees for routing to the New York Stock Exchange (“NYSE”) that reflect recently announced changes to order execution fees at that venue. Specifically, NYSE has eliminated a transaction fee of \$0.0004 per share on “at the opening” and “at the opening only” orders in equity securities (excluding exchange-traded funds).<sup>5</sup> Similarly, Nasdaq is eliminating the \$0.0004 fee it charges to members when their orders are routed to NYSE and execute in the NYSE opening process as “at the opening” or “at the opening only” orders.

In addition, effective October 1, 2007, NYSE implemented a fee of \$0.0004 per share for odd lot transactions (including the odd lot portions of partial round lots).<sup>6</sup> At that time, Nasdaq did not implement a routing fee that specifically distinguished these transactions from other transactions executed at NYSE. Nasdaq is now implementing such a fee at the same \$0.0004 per share level as the NYSE execution fee, effective November 1, 2007.

##### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(4) of the Act,<sup>8</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 change responds to fee changes by NYSE to ensure that Nasdaq’s fees for routing to NYSE are generally consistent with charges that NYSE imposes on Nasdaq when it routes orders to it.

#### 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.

<sup>5</sup> See Securities Exchange Act Release No. 56740 (November 5, 2007), 72 FR 63636 (November 9, 2007) (SR-NYSE-2007-100).

<sup>6</sup> See Securities Exchange Act Release No. 56590 (October 1, 2007), 72 FR 57369 (October 9, 2007) (SR-NYSE-2007-88).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 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 on the proposed rule change were neither solicited nor received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is filed pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>10</sup> because it establishes or changes a due, fee, or other charge applicable only to a member imposed by a self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2007-089 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-2007-089. 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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<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)(2).

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 a.m. and 3 p.m. 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-2007-089 and should be submitted on or before December 24, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E7-23316 Filed 11-30-07; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56842; File No. SR-NYSE-2007-77]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, To Amend Listing Fees for Structured Products

November 27, 2007.

On August 24, 2007, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend certain provisions of its Listed Company Manual ("Manual") governing structured product fees. Except as described below, the proposed changes would apply retroactively as of October 3, 2007. On October 3, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. On October 12,

2007, the Exchange filed Amendment No. 2 to the proposed rule change. On October 22, 2007, the Exchange filed Amendment No. 3 to the proposed rule change. The proposed rule change and Amendments Nos. 1, 2, and 3 thereto were published for comment in the **Federal Register** on October 26, 2007.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment Nos. 1, 2, and 3.

Section 902.06 of the Manual sets forth the listing and annual fees for "short-term" securities, *i.e.*, those having a term of seven years or less. The Exchange proposes to revise Section 902.06 to clarify the scope of the rule's coverage. For example, proposed Section 902.06 excludes from its coverage certain short-term securities—namely, securities listed pursuant to Sections 703.15 (Foreign Currency Warrants and Currency Index Warrants), 703.17 (Stock Index Warrants Listing Standards), and 703.22 (Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities and Currency-Linked Securities)—that would instead be subject to lower fees set forth in proposed new Section 902.09.

The proposed listing fees applicable to securities subject to Section 902.09 of Manual are based on the total number of shares outstanding. The proposed fees would apply each time an issuer lists a security of one of the classes specified in Section 902.09 of the Manual and also to subsequent listings of additional shares of the same security. The Exchange would treat each series of the security as a separate issue. Proposed Section 902.09 would also establish annual fees based on the total number of shares outstanding. The proposed annual fees would be billed in January for the forthcoming year. Additionally, a \$2,500 fee for certain changes that involve modifications to Exchange records would apply.

The Exchange also proposes to amend Section 902.05 of the Manual to provide that the fees applicable to: (1) Structured products listed under the debt criteria set out in Section 703.19 (Other Securities) and traded on NYSE Bonds are set forth in Section 902.08 (Listings Fees for Debt Securities); and (2) short-term structured products are set forth in Section 902.06.

Additionally, the Exchange seeks to codify its existing practice whereby it applies the fee schedules set forth in Sections 902.05 and 902.06 of the Manual to securities listed pursuant to

Sections 703.15, 703.17 and 703.22 of the Manual. However, Sections 902.05 and 902.06 of the Manual do not identify Sections 703.15, 703.17 and 703.22 as securities to which the fees would apply. Through this proposed rule change, the Exchange proposes to apply retroactively for the period from June 7, 2006 to October 2, 2007 the fee schedules set forth in Sections 902.05 and 902.06 of the Manual to all securities previously listed pursuant to Sections 703.15, 703.17 and 703.22 of the Manual. Therefore, beginning October 3, 2007, all securities listed pursuant to Sections 703.15, 703.17 and 703.22 of the Manual would be subject to the fee schedule set forth in Section 902.09 of the Manual.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>4</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,<sup>5</sup> which requires, among other things, that the rules of a national securities exchange be designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Commission notes that no comments have been received regarding the proposed rule change, and that the proposed fees are similar to those it approved for the American Stock Exchange LLC.<sup>6</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-NYSE-2007-77), as modified by Amendment Nos. 1, 2, and 3 thereto, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Nancy M. Morris,  
Secretary.

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<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> See Securities Exchange Act Release No. 45403 (February 6, 2002), 67 FR 6553 (February 12, 2002) (SR-Amex-2001-100).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 56688 (October 23, 2007), 72 FR 60924.