For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8326 Filed 4–10–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59706; File No. SR–NASDAQ–2009–029]

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

April 6, 2009.

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 25, 2009, 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 by NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective 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 pricing for NASDAQ members using the Nasdaq Market Center. NASDAQ will implement this rule change on April 1, 2009. The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com/*, at NASDAQ's principal office, and at 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 is proposing to modify its pricing for order execution and routing. As detailed below, the effect of the fee changes varies with respect to the listing venue of the securities being traded and whether a member is accessing or providing liquidity or routing an order.

Execution of Orders for Securities Listed on NASDAQ or the New York Stock Exchange (''NYSE''); Routing of Orders for Securities Listed on NASDAQ or NYSE to Venues Other Than NYSE; Routing of Orders for Exchange-Traded Funds (''ETFs'') to NYSE

NASDAQ is reducing fees to access liquidity in securities listed on NASDAQ and NYSE by reducing the levels of market activity at which members qualify for reduced pricing and by reducing the fees charged to these qualifying members. Specifically, NASDAQ is introducing a new pricing tier for members with an average daily volume through the Nasdaq Market Center in all securities of (i) more than 50 million shares of liquidity provided, and (ii) more than 60 million shares of liquidity accessed and/or routed.[5] Members qualifying for this tier will pay $0.0026 per share executed when accessing liquidity (or 0.1% of the total transaction cost in the case of executions of securities priced at less than $1 per share). A second pricing tier will apply to members with an average daily volume through the Nasdaq Market Center in all securities of (i) more than 25 million shares of liquidity provided, and (ii) more than 40 million shares of liquidity accessed and/or routed. Members qualifying for this tier will pay $0.0028 per share executed when accessing liquidity (or 0.1% of the total transaction cost in the case of executions at less than $1 per share). By contrast, under the current pricing schedule, a member must have an average daily volume of (i) more than 35 million shares of liquidity provided and (ii) more than 55 million shares of liquidity accessed and/or routed in order to qualify for a fee to access liquidity of $0.0029. Thus, under the change, favorable pricing becomes available at lower levels of liquidity provision (25 million shares versus 35 million shares) and routing and/or accessing (40 million shares versus 55 million shares), and the reduced fees are themselves lower ($0.0026 or $0.0028 per share executed, versus $0.0029 per share executed). However, in order to simplify its schedule, NASDAQ is eliminating a reduced fee of $0.00295 per share executed for members that access a daily average of more than 55 million shares of liquidity during a month but that do not otherwise qualify for a lower rate. As is currently the case, members not qualifying for a reduced pricing tier will pay $0.0030 per share executed to access liquidity (or 0.1% of the total transaction cost in the case of executions at less than $1 per share).

NASDAQ is also instituting changes with respect to fees for routing orders that attempt to execute in the Nasdaq Market Center for the full size of the order before routing. These routing changes apply to orders in NASDAQ-listed securities, orders in NYSE-listed securities routed to venues other than NYSE, and routing of orders for ETFs to NYSE. With respect to such activity, NASDAQ is eliminating volume-based tiers, with fees that currently range from $0.0029 to $0.003, and instituting a lower fee of $0.0026 available to all members.[6] Fees for routing orders that do not check the Nasdaq Market Center for the full size of the order before routing remain unchanged, except with respect to orders in securities that are priced at $1 or more per share and listed on NASDAQ or NYSE, where the order is directed to NASDAQ OMX BX (''BX''). For securities listed on NASDAQ or NYSE, BX is replacing its fee to access liquidity with a credit of $0.0006.[7] Because that credit is designed to encourage direct use of BX by its members, NASDAQ will not be passing on the credit to NASDAQ members that use its routing facility to access BX. Nevertheless, NASDAQ believes that the change in BX pricing warrants eliminating the fee for routing orders to BX in circumstances where NASDAQ members choose to direct orders to BX. Similarly, NASDAQ is

[17] 17 CFR 200.30–3(a)(12).

[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).

[5] As is currently the case with respect to reduced pricing tiers, orders that do not attempt to execute in the Nasdaq Market Center for the full size of the order prior to routing are not counted in determining shares of liquidity routed.

[6] The fee remains 0.3% of the total transaction cost in the case of securities priced at less than $1 per share.

[7] SR–BX–2009–018 (March 25, 2009).

eliminating the fee to route orders to BX if the orders check the Nasdaq Market Center book for the full size of the order prior to routing but are designated by the market participant as not eligible for posting to the Nasdaq Market Center book after routing. This would occur in circumstances where a market participant wishes to route an order to NYSE or NYSEAlternext for posting but specifies that the order should check the Nasdaq Market Center and BX books before being routed to the destination market.

To offset the reduction in fees to access and route liquidity, NASDAQ is decreasing the overall credits it pays to liquidity providers. Currently, members qualify for the most favorable credit tier if they provide an average daily volume during the month of more than 35 million shares of liquidity: members in this tier receive $0.0015 per share of liquidity provided in the case of non-displayed quotes/orders, and $0.0028 per share of liquidity provided in the case of displayed quotes/orders.[8] Under the revised fees, a member must provide more than 50 million shares of liquidity to qualify for the most favorable pricing tier, and the credit for displayed liquidity will be reduced to $0.0025 per share, with the credit for non-displayed liquidity remaining at $0.0015 per share. The next most favorable tier currently requires providing more than 20 million shares of liquidity: the credit for non-displayed liquidity is $0.001 per share, and the credit for displayed liquidity is $0.0025. Under the revised pricing schedule, a member must provide a daily average of more than 25 million shares of liquidity, and the credit for displayed liquidity will be reduced to $0.0022 per share, with the credit for non-displayed liquidity remaining $0.001 per share. Members not qualifying for these pricing tiers will continue to receive $0.001 per share for non-displayed liquidity and $0.002 per share for displayed liquidity.

Finally, NASDAQ is deleting obsolete fee language regarding a surcharge for orders routed to the American Stock Exchange and charged a fee by the specialist. Specialists at NYSEAlternext (formerly the American Stock Exchange) no longer charge this fee.

Execution and Routing of Orders for Securities Listed on Exchanges Other Than NASDAQ or NYSE

With respect to securities listed on exchanges other than NASDAQ or NYSE, NASDAQ is modifying the levels of activity required to qualify for favorable pricing tiers, but is not modifying the level of charges and credits associated with tiers. Thus, in order to qualify for the most favorable fee to access and route liquidity, a member must (i) provide more than 50 million shares of liquidity (currently 35 million) and (ii) access or route more than 60 million shares of liquidity (currently 55 million). Members qualifying for this tier currently pay $0.0029 per share executed to access liquidity or to route after attempting to execute for the full size of the order, and this fee will remain unchanged.[9] As is the case with executions of NASDAQ- and NYSE-listed securities, NASDAQ is eliminating a reduced fee of $0.00295 per share executed for members that access a daily average of more than 55 million shares of liquidity during a month. Members not qualifying for a reduced pricing tier will continue to pay $0.0030 per share executed to access liquidity and to route after checking the Nasdaq Market Center book for the full size of the order.

The level of credits for providing liquidity to support executions of securities listed on exchanges other than NASDAQ and NYSE will remain unchanged, but the volume levels required to qualify for favorable credits will increase. Thus, in order to qualify for the most favorable credit, a member must provide an average daily volume of more than 50 million shares of liquidity (currently 35 million): the most favorable credit will remain $0.0015 for non-displayed liquidity and $0.0028 for displayed liquidity. To qualify for the next most favorable credit, a member must provide a daily average volume of more than 25 million shares of liquidity (currently 20 million): members is this tier receive $0.001 per share for non-displayed liquidity and $0.0025 per share for displayed liquidity. Other members will continue to receive $0.001 per share for non-displayed liquidity and $0.002 per share for displayed liquidity.[10]

Because BX is maintaining a fee of $0.0014 per share executed for orders that access liquidity in securities listed on exchanges other than NASDAQ and NYSE,[11] NASDAQ is maintaining its current fee of $0.0016 per share executed for directed orders routed to BX. NASDAQ is, however, lowering the fee to route orders for such securities to BX if the orders check the Nasdaq Market Center book for the full size of the order prior to routing but are not designated as eligible for posting to the Nasdaq Market Center book after routing. The new fee for such orders will be $0.0016 per share, rather than the current fee of $0.0029 or $0.0030.

Finally, NASDAQ is deleting obsolete fee language regarding a surcharge for orders routed to the American Stock Exchange and charged a fee by the specialist. Specialists at NYSEAlternext (formerly the American Stock Exchange) no longer charge this fee.

Fees for Routing of Securities Other Than Exchange-Traded Funds to NYSE

With respect to fees for routing orders for securities other than ETFs to NYSE, NASDAQ is modifying the volume level required to qualify for a reduced routing fee. Currently, members with an average daily volume of more than 35 million shares of liquidity provided pay a fee of $0.0019 per share when routing an order to NYSE that does not attempt to execute in the Nasdaq Market Center prior to routing and that is not designated as an Intermarket Sweep Order.[12] Members with a lower volume of liquidity provision pay $0.0020 per share when routing such orders. The volume of liquidity provision required to receive the reduced routing rate is being raised to an average daily volume of 50 million shares of liquidity provided.

For orders that execute at NYSE as an odd lot (including the odd lot portion of a partial round lot orders), NASDAQ will charge a fee of $0.0005 (rather than $0.001) to reflect a recent fee change by NYSE.[13] In addition, in March 2009, NASDAQ instituted a per order fee for round lot or mixed lot orders that are designated only to remove liquidity from the NASDAQ book prior to routing to NYSE (''DOTI Orders''). The fee, which is designed to discourage inefficient use of DOTI Orders that do not result in executions, applies if a member sends an average of more than 10,000 DOTI Orders per day during the month and its ratio of DOTI Orders to executions exceeds 300 to 1. NASDAQ is modifying this fee to exclude from the calculation of a member's DOTI Orders during the month the day with the

[8] All credits described relate to executions of securities priced at $1 or more per share. Both before and after implementation of the proposed rule change, the credit with respect to executions of securities priced at less than $1 per share is $0.

[9] For securities priced under $1, the fee to access liquidity remains 0.1% of the total transaction cost, and the fee to route remains 0.3% of the total transaction cost.

[10] In all cases, no credit is paid with respect to securities priced at less than $1 per share.

[11] SR–BX–2009–018 (March 25, 2009).

[12] The fee is $0.0020 for Intermarket Sweep Orders and for orders that attempt to execute solely against displayed interest prior to routing. Orders that attempt to execute for the full size of the order prior to routing pay $0.0018 per share if they access liquidity at NYSE or receive a credit for $0.0010 per share if they add liquidity at NYSE.

[13] Securities Exchange Act Release No. 59483 (March 2, 2009), 74 FR 10328 (March 10, 2009) (SR–NYSE–2009–22).

single highest ratio of DOTI Orders to executions. Because the purpose of the new fee is to discourage persistently inefficient use of DOTI Orders, the change will exclude from the calculation an ''outlier'' day that may occur due to unusual conditions on a particular day. This will help to guard against the possibility that a member that is a high volume user of DOTI Orders may be assessed the per order charge merely due to one day on which its volume of DOTI Orders is disproportionate to executions.

Recent widespread reductions in the quoted prices of cash equities have increased the relative costs of accessing liquidity by making bid-ask spreads account for a greater percentage of that cost. Accordingly, NASDAQ believes that its members have become more focused than ever on paying the lowest possible cost when accessing liquidity. The proposed changes to fees for execution and routing of orders for securities listed on NASDAQ or NYSE are designed to respond to this trend by significantly reducing the cost to access liquidity (and to route, when liquidity must be sought on other venues). To ensure that the changes do not unduly impact NASDAQ's revenues, they are being partially offset by increasing the volume levels required to qualify for favorable liquidity provider credits, favorable fees to access liquidity in securities listed on venues other than NASDAQ or NYSE, and favorable fees for routing certain types of orders to NYSE.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[14] in general, and with Section 6(b)(4) of the Act,[15] 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 proposed fee change applies uniformly to all NASDAQ members. The impact of the changes upon the net fees paid by a particular market participant will depend upon a number of variables, including its monthly volume, the order types it uses, the prices of its quotes and orders (*i.e.*, its propensity to add or remove liquidity), and the listing venue for the securities that it trades. NASDAQ notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a significant reduction in the fees charged by NASDAQ to route orders and access liquidity with respect to securities listed on NASDAQ or NYSE. Although this reduction is partially offset by (i) reductions in the overall level of credits paid to liquidity providers, (ii) increases in the overall fees charged to route or access liquidity with respect to securities not listed on NASDAQ or NYSE and (iii) increases in the overall fees charged to route certain orders to NYSE, Nasdaq believes that the applicable fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to NASDAQ rather than competing venues.

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.

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[16] and subparagraph (f)(2) of Rule 19b–4 thereunder.[17] 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*. Please include File Number SR–NASDAQ–2009–029 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2009–029. 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 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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–2009–029 and should be submitted on or before May 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8325 Filed 4–10–09; 8:45 am]

BILLING CODE 8010–01–P

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

[17] 17 CFR 240.19b–4(f)(2).

[18] 17 CFR 200.30–3(a)(12).