

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 the filing also will be available for inspection and copying at the principal office of the ISE. 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-ISE-2007-16 and should be submitted on or before May 11, 2007.

#### IV. Commission Findings and Accelerated Approval

After careful consideration, 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>13</sup> and, in particular, the requirements of Section 6 of the Act.<sup>14</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>15</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

#### Surveillance

The Commission notes that Exchange has represented that it has an adequate surveillance program in place for options based on Commodity Pool ETFs. The Exchange may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG and has entered into numerous comprehensive surveillance sharing agreements with various commodity futures exchanges worldwide. Prior to listing and trading options on Commodity Pool ETFs, the Exchange represented that it will either have the ability to obtain specific trading information via ISG or through a comprehensive surveillance sharing agreement with the exchange or exchanges where the particular commodity futures and/or options on commodity futures are traded. In

<sup>13</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f.

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

addition, the Exchange represented that the addition of Commodity Pool ETF options will not have any effect on the rules pertaining to position and exercise limits<sup>16</sup> or margin.<sup>17</sup>

#### Listing and Trading of Options on Commodity Pool ETFs

The Commission notes that, pursuant to the proposed rule change, a Commodity Pool ETF will be subject to the provisions of ISE Rules 502 and 503, as applicable. These provisions include requirements regarding initial and continued listing standards, the creation/redemption process for Commodity Pool ETFs, and trading halts. All Commodity Pool ETFs must be traded through a national securities exchange or through the facilities of a national securities association, and must be "NMS stock" as defined under Rule 600 of Regulation NMS.<sup>18</sup>

The Commission believes that this proposal is necessary to enable the Exchange to list and trade options on an expanding range of Commodity Pool ETFs currently approved for trading and that it is reasonable to expect other types of Commodity Pool ETFs to be introduced for trading in the future. This proposal would help ensure that the Exchange will be able to list options on Commodity Pool ETFs that have been recently launched as well as any other similar Commodity Pool ETFs that may be listed and traded in the future<sup>19</sup> thereby offering investors greater option choices.

#### Acceleration

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the proposal is consistent with the Exchange's listing and trading standards in ISE Rules 502 and 503, and the Commission has recently approved a similar proposal, after publishing it for comment and receiving no comments.<sup>21</sup> Therefore, the Commission does not believe that the proposed rule change, as amended, raises novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from the flexibility

<sup>16</sup> See ISE Rules 412 and 414.

<sup>17</sup> See ISE Rule 1202.

<sup>18</sup> 17 CFR 242.600(b)(47).

<sup>19</sup> 17 CFR 240.19b-4(e).

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> See Securities Exchange Act Release No. 55547 (March 28, 2007), 72 FR 16388 (April 4, 2007) (SR-Amex-2006-110).

afforded by trading these products as soon as possible.

Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,<sup>22</sup> to approve the proposal, as amended, on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-ISE-2007-16), as modified by Amendment No. 1, be, and is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55634; File No. SR-NASDAQ-2007-036]

### 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

April 16, 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 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.

<sup>22</sup> 15 U.S.C. 78s(b)(5).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

**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 *italicized*.<sup>5</sup>

\* \* \* \* \*

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 routed.	\$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.
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.	\$0.0028 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.
Other members .....	\$0.0030 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.
Charge to member entering order that does not attempt to execute in the Nasdaq Market Center prior to routing.	<i>\$0.0035 per share executed for a Directed Intermarket Sweep Order for securities priced at \$1 or more per share.</i> \$0.0030 per share executed <i>for other orders</i> for securities priced at \$1 or more per share. 0.3% of the total transaction cost for routed orders in securities priced at less than \$1 per share.
Surcharge for order routed to the American Stock Exchange and charged a fee by the specialist.	\$0.01 per share executed.
Credit to member providing liquidity through the Nasdaq Market Center:	
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.	\$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).
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.	\$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).
Other members .....	\$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).

**FEES FOR ROUTING ORDERS IN SECURITIES OTHER THAN EXCHANGE-TRADED FUNDS TO NYSE**

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

<sup>5</sup> Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://>

[nasdaq.complinet.com](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.

\* \* \* \* \*

## 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 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.

<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(6)(4).

### 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:

#### 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

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

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

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 May 11, 2007. 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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55633; File No. SR-NASDAQ-2007-041]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees of Other Market Centers Related to Clearly Erroneous Rulings

April 16, 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 April 10, 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 prepared by Nasdaq. Nasdaq submitted the proposed rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which

<sup>12</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> 15 U.S.C. 78s(b)(3)(A).

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