

Company ("Russell") in connection with transactions in options on IWM, IWN, IWO, IWD and IWB. Accordingly, there is no longer a need for this surcharge fee. The Exchange will continue to charge an execution fee and a comparison fee for transactions in options on IWM, IWN, IWO, IWD and IWB.

Additionally, pursuant to a revised license agreement between Russell and ISE in connection with the listing and trading of options on RUI, RUT and RMN, and to defray the increased licensing costs, the Exchange is raising its surcharge fee from \$0.10 per contract to \$0.15 per contract for trading in options on RUI, RUT and RMN. The Exchange believes charging the participants that trade this instrument is the most equitable means of recovering the costs of the license. However, because of competitive pressures in the industry, the Exchange proposes to continue excluding Public Customer Orders<sup>8</sup> from this surcharge fee. Accordingly, this surcharge fee shall continue to be charged only to Exchange members with respect to non-Public Customer Orders (e.g., ISE Market Maker, non-ISE Market Maker & Firm Proprietary orders) and shall apply to certain Linkage Orders under a pilot program that is set to expire on July 31, 2007.<sup>9</sup> The Exchange will, however, continue to charge an execution fee and a comparison fee for transactions in options on RUI, RUT and RMN.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)<sup>10</sup> that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

### B. Self-Regulatory Organization's Statement on Burden on Competition

ISE 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.

<sup>8</sup> Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person that is not a broker or dealer in securities.

<sup>9</sup> Linkage Orders are defined in ISE Rule 1900(10). Under a pilot program that is set to expire on July 31, 2007, these fees will also be charged to Principal Acting as Agent Orders and Principal Orders (as defined in ISE Rule 1900(10)(i)-(ii)). See Securities Exchange Act Release No. 54204 (July 25, 2006), 71 FR 43548 (August 1, 2006) (SR-ISE-2006-38).

<sup>10</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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or interested parties.

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

The foregoing proposed rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and Rule 19b-4(f)(2)<sup>12</sup> thereunder, because it establishes or changes a due, fee, or other charge applicable only to a member.

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-ISE-2007-48 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-ISE-2007-48. 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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

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 such filing also will be available for inspection and copying at the principal office of 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-2007-48 and should be submitted on or before July 27, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-13070 Filed 7-5-07; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55979; File No. SR-NASDAQ-2007-055]

### 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

June 28, 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 May 29, 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, II, and III below, which Items have been substantially prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and

<sup>13</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).

Rule 19b-4(f)(2)<sup>4</sup> thereunder, as establishing or changing a member due, fee, or other charge, which renders the proposed rule change 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 rule change on June 1, 2007. The text of the proposed rule change is available at Nasdaq, <http://www.nasdaq.com>, 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, the Exchange 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. The Exchange 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 increasing its fees for routing orders in securities other than exchange-traded funds to the New York Stock Exchange ("NYSE") in instances where the order does not check the Nasdaq book prior to routing. The current fees for such orders are \$0.0035 per share executed for a Directed Intermarket Sweep Order for securities priced at \$1 or more per share, \$0.000275 per share executed for other orders for securities priced at \$1 or more per share, and 0.3% of the total transaction cost for routed orders in securities priced at less than \$1 per share. The fees for Directed Intermarket Sweep Orders and transactions at under \$1 per share will remain unchanged. Effective June 1, 2007, however, the fee of \$0.000275 per share executed for securities priced at \$1 or more per share will be available only if a member has an average daily volume through the Nasdaq Market Center in all securities

during the month of more than 35 million shares of liquidity provided; 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 will pay \$0.000325 per share executed, and other members will pay \$0.00035.

Nasdaq is also changing the means of calculating whether members qualify for reduced fees when accessing liquidity in the Nasdaq Market Center, routing to venues other than NYSE, and/or routing orders for exchange-traded funds to the NYSE. These fees are determined by a member's average daily volume of shares of liquidity provided, and its average daily volume of shares of liquidity accessed and/or routed. Nasdaq will not count orders that do not attempt to execute in Nasdaq prior to routing to other venues in determining a member's average daily volume of shares of liquidity accessed and/or routed.<sup>5</sup>

The changes are designed to enhance the quality of Nasdaq's market by providing an incentive for members to enter orders that check the Nasdaq book prior to routing. An increase in the extent to which members check the book will in turn encourage liquidity providers to post executable quotes in Nasdaq. Moreover, orders that check the Nasdaq book have an opportunity to post to the book if they are not immediately executable in Nasdaq or elsewhere, and therefore may themselves serve as a source of liquidity provision in Nasdaq. In a Regulation NMS trading environment, market participants must seek the best immediately executable price, and therefore the ability to encourage liquidity provision will be key to a market's ability to compete. Moreover, in situations where market centers are quoting the same price, the pricing change will provide an incentive for market participants to access liquidity in Nasdaq before accessing it elsewhere. To the extent that market participants do enter orders that route immediately, moreover, the pricing change will offer a better price to market participants that nevertheless contribute to market quality by providing liquidity.

##### **2. Statutory Basis**

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(4) of the

Act,<sup>7</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 the fee change reflects an allocation of fees that recognizes the benefits to Nasdaq market quality of liquidity provision and orders that access liquidity in Nasdaq prior to routing.

#### *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 proposed rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder,<sup>9</sup> in that the proposed rule change establishes or changes a member due, fee, or other charge imposed by the self-regulatory organization. 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-2007-055 on the subject line.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> Nasdaq is also deleting obsolete language that described pricing temporarily in effect in March 2007 for securities priced under \$1.

<sup>6</sup> 15 U.S.C. 78f.

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

*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-2007-055. 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, 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-2007-055 and should be submitted on or before July 27, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E7-13072 Filed 7-5-07; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-55974; File No. SR-NYSE-2007-52]

**Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Exclude Interest Expense on Financial Instruments Classified Under GAAP as Liabilities From the Exchange's Earnings Standard**

June 28, 2007.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on June 11, 2007, New York Stock Exchange LLC (the "NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes as described in Items I and II below, which items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the earnings standard of Section 102.01C(I) of the Exchange's Listed Company Manual (the "Manual"). The amendment will enable the Exchange to adjust companies' earnings for purposes of the earnings standard to exclude actual historical interest expense paid on financial instruments classified as liabilities under generally accepted accounting principles ("GAAP") that are either retired with the proceeds of an offering occurring in conjunction with the listing or converted into common stock in conjunction with the company's initial public offering ("IPO") at the time of listing. The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary, 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, the Exchange 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. The NYSE 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

The Exchange proposes to amend the earnings standard of Section 102.01C(I) of the Manual. The amendment will enable the Exchange to adjust the earnings of companies listing in conjunction with an IPO by excluding actual historical interest expense paid on financial instruments classified as liabilities under GAAP that are either retired with the proceeds of an offering occurring in conjunction with the listing or converted into common stock in conjunction with the company's IPO at the time of listing.

Nonpublic companies engaging in pre-IPO financings often raise capital through the sale of preferred stock. Preferred stock is also sometimes issued by pre-IPO companies to service providers in lieu of cash compensation. At the time of the company's IPO, the preferred stock may be converted into common stock. Companies may also redeem some or all of the outstanding preferred stock with a portion of the proceeds from the IPO.

Section 102.01C(I) currently provides that a company's historical earnings may be adjusted for purposes of the earnings standard to reflect the elimination of the actual historical interest on debt retired with offering proceeds. If the event giving rise to the adjustment occurred during a time period such that pro forma amounts are not set forth in the SEC registration statement, the company must prepare the relevant adjusted financial data to reflect the adjustment to its historical financial data, and its outside audit firm must provide a report of having applied agreed-upon procedures with respect to such adjustments. Such report must be prepared in accordance with the standards established by the American Institute of Certified Public Accountants. Preferred stock generally entitles the holders to the payment of regular dividends. Prior to the adoption of FASB Statement No. 150, many companies treated accreted dividends on preferred stock as a charge to stockholders' equity. Under FASB

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>10</sup> 17 CFR 200.30-3(a)(12).