

participants once a year per CUSIP. DTC collected DSFs at the request of the depository bank and only for issues that have not paid a dividend in the last 12 months. In addition to collecting the DSF, DTC charged its participants three percent (3%) of the ADR agent fee, which includes all fees under the ADR agreement, up to a maximum of \$10,000 per CUSIP ("collection charge") in order to cover costs incurred in collecting and passing through DSFs.<sup>3</sup>

With this rule filing, DTC will collect all allowable DSFs, dividend fees,<sup>4</sup> pass-through expenses, or other special fees as governed by the ADR agreement.<sup>5</sup> Additionally, DTC will increase the maximum collection charge to \$20,000 per CUSIP. In order to collect the ADR agent fees, the ADR depository banks will be required to notify DTC thirty calendar days prior to the record date that a DSF or other fee is due and payable.<sup>6</sup> Moreover, DTC will require that the ADR depository bank submit an attestation that the specific fee(s) is (are) allowable under the ADR agreement with the issuer. The attestation will be in a form prescribed by DTC and may be changed periodically to address operational issues. If a participant asks DTC to substantiate the fee, DTC may require the ADR depository to provide DTC with a copy of the ADR agreement with the issuer and highlight the fee schedule. DTC may at its discretion provide copies of the agreement to its participants to substantiate the fee.

As a result of this rule filing, the fee schedule for assessing ADR agent fees will be revised. First, ADR agent fees will apply to all fees permitted under the ADR agreement; the reference to "issues not paying periodic dividends" would be deleted. Second, as discussed above, the maximum ADR agent fee that DTC would collect would be increased to \$20,000 from \$10,000.

DTC expects to begin collecting ADR agent fees as expanded by this rule filing in the first full month following the approval of this filing.

<sup>3</sup> See Securities Exchange Release Act No. 55306 (Feb. 15, 2007) 72 FR 8217 (Feb. 23, 2007) (File No. SR-DTC-2006-21) (modifying the fees from the original filing).

<sup>4</sup> Dividend fees will continue to be collected through the current rate adjustment process. The dividend fee is incorporated into the final rate paid on the dividend by the agent on payment date and covers their cost for servicing the dividend payment.

<sup>5</sup> ADR agreements are filed with the Commission and are usually posted on the depository bank's Web site.

<sup>6</sup> Fees may be collected multiple times in any given calendar year depending on the terms of the ADR agreement.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC. In particular, the Commission believes the proposal is consistent with Section 17A(b)(3)(F) of the Act,<sup>7</sup> which requires that the rules of a registered clearing agency are designed to, among other things, remove impediments to the perfection of the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. For example, further automating and centralizing information to effect DTC's ADR agent fee collection process should eliminate invoice and check processing for DTC participants and depository banks because ADR depositories will no longer have to mail invoices and reminders to participants holding ADR securities at DTC. In addition, DTC participants will have a more transparent view into upcoming ADR agent fees and a centralized source for information about the ADR agent fee and the collection process. These refinements to the ADR fee collection process should therefore remove impediments to the perfection of the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act<sup>8</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-DTC-2009-05) be and hereby is approved.<sup>10</sup>

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

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>8</sup> 15 U.S.C. 78q-1.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59822; File No. SR-NASDAQ-2009-034]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying Rule 7050 Governing Pricing for The NASDAQ Options Market ("NOM")

April 27, 2009.

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 9, 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. Nasdaq has filed this proposal pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> [sic] Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge applicable only to members, which renders the proposed rule change effective upon filing. The Commission is publishing this notice and [sic] order 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 has filed a proposed rule change to modify Rule 7050 governing pricing for Nasdaq members using the NASDAQ Options Market ("NOM"), Nasdaq's facility for executing and routing standardized equity and index options. Proposed new language is underlined [sic]; proposed deletions are in brackets.<sup>5</sup>

\* \* \* \* \*

#### 7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

##### (1) Fees for Execution of Contracts on the NASDAQ Options Market

<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 manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

Except as specified below, the charge to member entering order that executes in the NASDAQ Options Market.	\$0.45 per executed contract.
For a pilot period ending July 31, 2009, charge for members or non-members entering order via the Options Intermarket Linkage that executes in the Nasdaq Options Market.	\$0.45 per executed contract.
Charge to members entering orders in options on QQQQ, SPY, DIA, IWM, AAPL BAC, C, GS, JPM, RIMM, XLE, XLF, and XOM with an account type "Customer" that executes and remove liquidity entered by another member.	No fee.
Credit to member providing liquidity through the NASDAQ Options Market .....	\$0.30 per executed contract.
Credit to member providing liquidity using price-improving orders through the NASDAQ Options Market	\$0.35 per executed contract.

**FEES AND REBATES**  
[Per executed contract]

	Customer	Firm	Market maker
<b>Penny Pilot Options:</b>			
Rebate to Add Liquidity .....	\$0.25	\$0.25	\$0.25
Fee for Removing Liquidity .....	Free	0.45	0.45
<b>All Other Options:</b>			
Fee for Adding Liquidity .....	Free	0.30	0.30
Fee for Removing Liquidity .....	.....	0.45	0.45
Rebate for Removing Liquidity .....	0.20	.....	.....

Transactions in which the same participant is the buyer and the seller shall be charged a net fee of \$0.10 per executed contract.  
For a pilot period ending July 31, 2009, the charge for members or non-members entering order via the Options Intermarket Linkage that executes in the Nasdaq Options Market shall be \$0.45 per executed contract.

(2)-(4) No change.

\* \* \* \* \*

**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. The text of these statements may be examined at the places specified in Item III below [sic], and is set forth in Sections A, B, and C below.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Nasdaq is modifying NASDAQ Rule 7050, the fee schedule for NOM, in several ways. *First*, Nasdaq is making several changes that apply to orders with an account type of "Customer." Specifically, Nasdaq is expanding a pricing program to lower the fee for the execution of options contracts for certain orders in certain options on the NASDAQ Options Market ("NOM"). On January 12, 2009, Nasdaq began permitting orders with an account type of "Customer" to take liquidity<sup>6</sup> for free in certain options. Nasdaq applied the new fee provision to options on four

exchange-traded funds: QQQQ, SPY, DIA, and IWM. Nasdaq later expanded that program to apply the reduced fee provision to options on the following equities: AAPL, BAC, C, GS, JPM, RIMM, XLE, XLF, and XOM. That proposal accomplished its goal of attracting liquidity to the Nasdaq Options Market.

Accordingly, Nasdaq now proposes to expand the application of that rule to additional options classes. Specifically, Nasdaq is expanding the program to all options that are included in the Options Penny Pilot Program. Nasdaq will monitor the trading of options on these equities to ensure that the proposal is operating in a fashion that promotes the interests of investors.

Nasdaq is also changing the fee structure for "Customer" orders in options not included in the Options Penny Pilot Program. Specifically, Nasdaq will charge no execution fees for members providing liquidity through the NASDAQ Options Market with an account type "Customer." Nasdaq will also offer a credit of \$0.20 per executed contract to members entering orders in options with an account type "Customer" that execute and remove liquidity entered by another member in options that are not included in the Options Penny Pilot Program.

*Second*, Nasdaq is modifying NASDAQ Rule 7050 to further distinguish between options that are included in the Options Penny Pilot Program and those that are not. Specifically, NOM will provide a credit

of \$0.25 to members providing liquidity through NOM in options included in the Options Penny Pilot Program. [sic], and charge a fee of \$0.30 to members providing liquidity in the capacity of "firm" or "market maker" (as opposed to "customer") through NOM for options that are not included in Options Penny Pilot Program.

*Third*, Nasdaq is modifying NASDAQ Rule 7050 with respect to all options to change the distinction between orders that interact with other members' orders and those that interact with orders from the same firm. Specifically, Nasdaq will charge a fee of \$0.10 per executed contract when a member order executes against the order entered by the same firm. Similarly, Nasdaq will not offer a credit or charge a fee when a member order provides liquidity to an order entered by the same firm.

*Fourth*, Nasdaq is eliminating the special pricing currently offered for Price Improving Orders. Going forward, Price Improving Orders will be subject to the standard fee schedule set forth in NASDAQ Rule 7050 as amended by this proposed rule change.

Nasdaq believes that the proposed fees are competitive, fair and reasonable, and non-discriminatory in that they apply equally to all similarly situated members and customers. As with all fees, Nasdaq may adjust these proposed fees in response to competitive conditions by filing a new proposed rule change.

2. Statutory Basis

<sup>6</sup> An order that takes liquidity is one that is entered into NOM and that executes against an order resting on the NOM book.

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)(5) of the Act,<sup>8</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. As one of seven options market in the national market system, Nasdaq's fees must be competitive and low in order for Nasdaq to attract order flow, execute orders, and grow as a market. Nasdaq believes that its fees are fair and reasonable and consistent with the Exchange Act.

#### *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. To the contrary, Nasdaq has designed its fees to compete effectively for the execution of options contracts and to reduce the overall cost to investors of options trading.

#### *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**

Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and Rule 19b-4(f)(2) thereunder,<sup>10</sup> Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge applicable only to members, which renders the proposed rule change effective upon filing. Nasdaq will make the proposed pricing schedule operational on April 13, 2009.

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-2009-034 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-2009-034. 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 such filing also will be available for inspection and copying at the principal office 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 No. SR-NASDAQ-2009-034 and should be submitted on or before May 26, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-10118 Filed 5-1-09; 8:45 am]

BILLING CODE 8010-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59823; File No. SR-NYSE-2009-40]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending the Exchange's Timely Alert Policy**

April 27, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 8, 2009, New York Stock Exchange, LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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**

The Exchange proposes to amend Section 202.06 of the Listed Company Manual to provide that companies can comply with the Exchange's immediate release policy by disseminating the information by any Regulation Fair Disclosure ("Regulation FD") compliant method (or combination of methods). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### **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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

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