added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: November 2, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–26721 Filed 11–2–09; 4:15 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60899; File No. SR–NASDAQ–2009–081]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify the Fees for Listing on the Nasdaq Stock Market and the Fee for Written Interpretations of Nasdaq Listing Rules

October 28, 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 October 6, 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. 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 the fees for listing on the Nasdaq Stock Market.

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 modifications to the application, entry and annual fees currently charged to issuers listed on the Nasdaq Global and Global Select Markets[3] and to the fee for a written interpretation of Nasdaq listing rules, as set forth below.

Nasdaq Global and Global Select Application, Entry and Annual Fees

Nasdaq currently imposes a $5,000 application fee on a company applying to list on the Nasdaq Global or Global Select Markets.[4] This fee helps offset the cost of Nasdaq's review of the company's application. Nasdaq proposes to increase this fee to $25,000. The application fee would continue to be credited against entry fees upon listing, and thus this change would not affect the overall fees a company pays to list, but would better reflect the level of effort and cost associated with the review of an application and provide a stronger disincentive for frivolous applications.

Nasdaq also proposes to modify the entry fee a company pays when listing on the Nasdaq Global or Global Select Market. Currently, those fees are charged in three tiers, based on the number of shares the company has outstanding, and range from $100,000 to $150,000. Nasdaq proposes to create an additional tier for companies issuing over 50 million to 100 million shares and to increase the entry fee by $25,000 to $75,000, depending on the number of shares to be listed. The effect of adding a new tier will be to increase the number of shares a company must have outstanding before the company must pay a higher listing fee.[5] Nasdaq believes that the proposed increase to the entry fees would reflect the overall rise in costs since these fees were last increased in January 2002[6] and take into account a number of new initiatives by Nasdaq since that time, including Nasdaq's new online listing application center[7] and the IPO cross (an open auction process, which is used for every initial public offering on Nasdaq and maximizes transparency at the opening of trading of an initial public offering).[8]

In addition, Nasdaq proposes to modify the annual fee imposed on domestic and foreign issues and American Depositary Receipts (ADRs) listed on the Nasdaq Global and Global Select Markets. The proposed change would result in revised annual fees for domestic and foreign issues ranging from $35,000 to $99,500, based on their shares outstanding, and a maximum increase of $5,000, depending on the company's total shares outstanding.[9] In addition, Nasdaq proposes to combine two of the existing seven fee tiers to create a new tier for companies with over 10 million to 50 million shares outstanding. As a result, there would be no fee increase for approximately 25% of Nasdaq companies.[10] Annual fees for domestic companies were last increased in January 2007.[11] The revised fee applicable to ADRs would result in an annual increase ranging from $8,775 to $20,000, and the revised fee would range from $30,000 to $50,000, depending on the number of ADRs outstanding.[12] In addition, Nasdaq proposes to expand the size of the tiers of shares outstanding on which the fees are based, so that companies are more likely to be in a lower tier.[13] Annual fees for ADRs were last increased in February 2004.[14] Nasdaq believes that the proposed increases to the annual fees would reflect the overall rise in costs since the last increases and take into account a number of regulatory and other initiatives implemented by Nasdaq since that time, including substantial enhancements to Nasdaq's

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Fees for the Global and Global Select Market are set forth in Rule 5910. Because the Global Select Market is a segment of the Global Market, the same fees apply to securities listed on the Global Select Market as apply to securities listed on the Global Market. *See* Rules 5005(a)(25) and (29).

[4] The application fee is non-refundable.

[5] The Commission notes that, under the current fee structure, companies pay an entry fee of $150,000 for any issuances over 50 million shares. Therefore, the Commission notes that, under Nasdaq's proposal, the entry fees will increase to $200,000 for companies issuing over 50 million shares to 100 million shares and to $225,000 for those companies issuing over 100 million shares.

[6] *See* Securities Exchange Act Release No. 45206 (December 28, 2001), 67 FR 621 (January 4, 2002) (approving SR–NASD–2001–76).

[7] *https://listingapplications.nasdaqomx.com/*.

[8] Rules 4120(c)(7)(B) and 4753. The IPO cross is the process by which an initial public offering is released for trading. Prior to the IPO cross, trading is halted in the security.

[9] The current annual fees range from $30,000 to $95,000. Rule 5910(c).

[10] Companies with from 25 million to 50 million shares outstanding would not face a fee increase under the proposed change.

[11] *See* Securities Exchange Act Release No. 55202 (January 30, 2007), 72 FR 6017 (February 8, 2007) (approving SR–NASDAQ–2006–40).

[12] The current annual fees range from $21,225 to $30,000. Rule 5910(d).

[13] The current tiers of over 10 million—25 million ADRs outstanding, over 25 million—50 million ADRs outstanding, and over 50 million ADRs outstanding would be changed to over 10 million—50 million ADRs outstanding, over 50 million—75 million ADRs outstanding and over 75 million ADRs outstanding.

[14] *See* Securities Exchange Act Release No. 49169 (February 2, 2004), 69 FR 6009 (February 9, 2004) (approving SR–NASD–2003–178).

website to facilitate compliance by listed companies.[15] In addition, the change to the ADR fees would reduce the disparity in fees paid by ADR issuers and other Nasdaq-listed companies.

Fee for Written Interpretations of Nasdaq Listing Rules

Nasdaq also proposes to change the fee for written interpretations of Nasdaq listing rules. In connection with such a request today, a company is required to submit a non-refundable fee of $5,000 for a regular request, which is generally completed within four weeks from the date Nasdaq receives all information necessary to respond to the request, or $15,000 for an expedited request, in which the company requests a response by a specific date that is less than four weeks after the date Nasdaq receives all necessary information.

Since January 1, 2008, nearly 75% of all requests were submitted on an expedited basis. However, Nasdaq staff responded to many requests that were not submitted on an expedited basis in less than four weeks and some requests submitted on an expedited basis have taken longer than requested. In each case, Nasdaq staff attempts to respond as quickly as possible and, since adopting this process, Nasdaq has observed that the level of effort in each case, whether submitted on an expedited basis or not, is virtually the same. As such, Nasdaq proposes to eliminate the alternative for a non-expedited request and require all companies seeking an interpretation to pay $15,000. Nasdaq believes that this amount is reasonable given the level of attention required by these requests and that the fee change will not discourage such requests given the relatively few companies that have opted for non-expedited requests. Further, Nasdaq proposes to modify the timeframes stated in the rule in which Nasdaq will respond to interpretive requests. As revised, the rule would state that Nasdaq will respond to all requests for a written interpretation within four weeks from the date Nasdaq receives all information necessary to respond to the request,[16] although Nasdaq will attempt to respond by a sooner date if the Company so requires. Nasdaq believes that this modified time frame, which is similar to the time frame now provided for non-expedited requests, better aligns the rule with Nasdaq's experience as to the amount of time it takes to make appropriate decisions as to the application of the rules and respond to interpretive requests.[17]

Implementation

The revised annual fee schedule will be effective January 1, 2010.[18] The application and entry fee schedule will be effective for companies that apply for listing after SEC approval of the proposed rule change; thus a company that applied and paid the application fee prior to SEC approval would be charged an entry fee according to the fee schedule in effect at the time of its application. The change to the interpretive fees will be effective upon approval.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[19] in general and with Sections 6(b)(4) and 6(b)(5) of the Act[20] in particular. The proposed rule change is consistent with Section 6(b)(4) in that it provides for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls, and with Section 6(b)(5) of the Act, which requires rules that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq's proposed fees are consistent with fees charged by competing listing markets and include a competitive service offering. The proposed fees will apply equally to similarly situated companies.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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–2009–081 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–2009–081. 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

[15] *See http://www.nasdaq.com/services/insidenasdaq.stm.* This website includes over 375 frequently asked questions about Nasdaq's listing rules, over 80 decisions of the Nasdaq Listing and Hearing Review Council, and summaries of over 275 interpretations issued by the Nasdaq staff in response to requests for written interpretations, as discussed below. This material provides transparency to Nasdaq's application of the listing rules and serves as a valuable resource to listed companies.

[16] The Commission notes that under the proposal, Rule 5602 regarding Written Interpretations of Nasdaq Listing Rules states that "A response to a request for a written interpretation *generally* will be provided within four weeks from the date Nasdaq receives all information necessary to respond to the request * * *" (emphasis added).

[17] The Commission notes that Nasdaq has stated that it does not charge companies for oral interpretation requests of their rules. Telephone conversation on October 28, 2009 between Arnold Golub, Vice President and Associate General Counsel, Nasdaq and Sharon Lawson, Senior Special Counsel, Commission.

[18] Following the date of approval of the proposed rule change until January 1, 2010, Nasdaq would include language at the start of Rule 5910 on its website notifying users that amendments to the rule have been approved and will be effective January 1, 2010. This notice will allow users to click a link to view the text of the rule as it will be in effect on January 1, 2010, showing the revisions made by this filing. As such, Nasdaq believes there will be no confusion as to the currently applicable rule language (and fees) and users also will be able to see the approved fees that will become effective on January 1, 2010.

[19] 15 U.S.C. 78f.

[20] 15 U.S.C. 78f(b)(4) and 78f(b)(5).

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–2009–081 and should be submitted on or before November 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–26513 Filed 11–3–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60893; File No. SR–NASDAQ–2009–089]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Its Optional Anti-Internalization Functionality

October 28, 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 October 14, 2009, The NASDAQ Stock Market LLC (the ''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal 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 its optional anti-internalization functionality.

The text of the proposed rule change is below. Proposed new language is *italicized* and proposed deletions are in brackets.[4]

* * * * *

4757. Book Processing

(a) System orders shall be executed through the Nasdaq Book Process set forth below:

(1)–(3) No Change.

(4) Exception: Anti-Internalization—Market participants may direct that quotes/orders entered into the System not execute against quotes/orders entered under the same MPID. In such a case, *a market participant may elect from the following options;*

(i) if the interacting *quotes/*orders from the same MPID are equivalent in size, both quotes/orders will be cancelled back to their entering parties. If the interacting *quotes/*orders from the same MPID are not equivalent in size, share amounts equal to the size of the smaller of the two *quotes/*orders will be cancelled back to their originating parties with the remainder of the larger quote/order being retained by the System for potential execution[.]*; or*

(ii) regardless of the size of the interacting quotes/orders, cancelling the oldest of them in full.

* * * * *

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 provide an additional alternative to its voluntary anti-internalization functionality. Under the proposal, market participants will be given an additional option when entering quotes and orders using the same market participant identifier (''MPID'') that they do not wish to have automatically interact with each other in the System. This option will direct the System to not execute any part of the interacting quotes/orders from the same MPID and, instead, cancel the oldest of the interacting quotes/orders back to the entering party.

Anti-internalization processing is available only on an individual MPID-wide basis with only a single option being allowed per MPID. Market participants direct that a particular version of anti-internalization processing be applied to a particular MPID, which is then applied by the system to all quotes/orders entered using that MPID.

Anti-internalization functionality is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act (''ERISA'') that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts. It can also assist market participants in reducing execution fees potentially resulting from the interaction of executable buy and sell trading interest from the same firm. Nasdaq notes that use of the functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers. As such, market participants using anti-internalization functionality will need to take appropriate steps to ensure that public customer orders that do not execute because of the use of anti-internalization functionality ultimately receive the same execution price (or better) they would have originally obtained if execution of the order was not inhibited by the functionality.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections [sic] 6(b)(5) of the Act,[6] in particular, in that the

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[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Changes are marked to the rules of The NASDAQ Stock Market LLC found at *http://nasdaqomx.cchwallstreet.com*.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).