For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.11
Kevin M. O’Neill, Deputy Secretary.

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ’s Fee Schedule Governing Order Routing

August 6, 2012.

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 July 31, 2012, The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change 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 the Substance of the Proposed Rule Change

NASDAQ proposes to modify NASDAQ’s fee schedule governing order routing, NASDAQ will implement the proposed change on August 1, 2012. The text of the proposed rule change is available at http://nasdaq.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, 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 III [sic] below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts 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 making a minor modification to the schedule governing fees for use of its routing services. Effective August 1, 2012, the NASDAQ OMX PSX (“PSX”) facility of NASDAQ OMX PHXL LLC (“PHXL”) has increased the fees that it charges for accessing liquidity.3 Accordingly, NASDAQ is making a conforming change to the fee that it charges for routing directed orders to PSX, increasing the charge from $0.0005 per share executed to $0.0029 per share executed.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,4 in general, and with Sections 6(b)(4) and (5) of the Act,5 in particular, 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, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. All similarly situated members are subject to the same fee structure, and access to NASDAQ is offered on fair and non-discriminatory terms. The change is reasonable because the proposed fee for routing directed orders to PSX reflects the fact that PSX is increasing the fee that it charges NASDAQ with respect to such orders.6 The change is consistent


6 Depending on the listing venue of the security, NASDAQ will be charged either $0.0019 or $0.0027 per share executed. NASDAQ believes that it is appropriate to charge a markup with respect to directed orders to reflect the costs of offering routing services and the value of such services. Notably, in all instances NASDAQ charges a markup with respect to the special processing associated with the use of directed orders. NASDAQ further notes that it does not currently charge a markup with respect to non-directed orders that are routed to PSX, so the markup with respect to directed orders provides an opportunity with an equitable allocation of fees because it will bring the economic attributes of routing directed orders to PSX more in line with the cost of executing orders there. Finally, the change is not unfairly discriminatory because it applies solely to members that opt to route directed orders to PSX.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that the proposed rule change reflects this competitive environment because it is designed to ensure that the fees for use of the NASDAQ routing facility to route to PSX reflect an increase in the cost of such 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. Because the market for order execution is extremely competitive, members may readily opt to disfavor NASDAQ’s routing services if they believe that alternatives offer them better value. The proposed change is designed to ensure that the charges for use of the NASDAQ routing facility to route to PSX reflect an increase in the cost of such routing, thereby ensuring that it does not incur a loss when routing to PSX.

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.7 At any time to recoup a portion of the general costs associated with operating a routing service. Although the amount of the markup varies depending on the listing venue of the security, NASDAQ believes that it is not inappropriate to charge a uniform fee for the service of routing directed orders to a particular venue, and further notes that the fee for routing directed orders to PSX is lower than the $0.0035 per share executed fee for routing directed orders to other venues.

within 60 days of the filing of the proposed rule change, the Commission
summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall
institute proceedings to determine whether the proposed rule should be
approved or 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 email to rule-comments@sec.gov. Please include File Number SR–
NASDAQ–2012–093 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–2012–093 on the subject line.

To help the Commission process and review your comments more efficiently,
please use only one method. The Commission will post all comments on
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 Web site viewing and
printing 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 offices 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–2012–093, and should be submitted on or before
August 31, 2012.

For the Commission, by the Division of
Trading and Markets, pursuant to delegated
authority.8

Kevin M. O’Neill,
Deputy Secretary.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67602; File No. SR–ISE–
2012–52]

Self-Regulatory Organizations;
International Securities Exchange,
LLC; Order Granting Approval of
Proposed Rule Change To Allow
Competitive Market Makers To Use
Their Membership Points To Enter
Multiple Quotes in an Options Class

August 6, 2012.

I. Introduction

On June 6, 2012, International
Securities Exchange, LLC (“Exchange”
or “ISE”) filed with the Securities and
Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the
Securities Exchange Act of 1934
(“Act”)1 and Rule 19b–4 thereunder,2 a
proposed rule change to allow
Competitive Market Makers (“CMMs”)
to use their membership points to enter
multiple quotes in an options class. The
proposed rule change was published for comment in the Federal Register
on June 23, 2012.3 The
Commission received no comment letters on the proposed rule change. This order
approves the proposed rule change.

II. Description of the Proposal

The Exchange’s structure of CMM
appointments allows market makers
flexibility in choosing the options
classes to which they are appointed.4

On a quarterly basis, the Exchange
assigns point values to options classes
based on their percentage of overall
industry volume (not including
exclusively traded index options).5 A

CMM is allowed to seek appointments
to options classes that total twenty
points for the first CMM trading right
owned or leased by a member, and ten
points for each subsequent CMM trading
right owned or leased by the same
member.6

The Exchange proposes to adopt .03
of the Supplementary Material to Rule
802 (Appointment of Market Makers) to
allow CMMs to seek appointment to
options classes in which it or an
affiliated market maker holds a CMM or
Primary Market Maker appointment.
Thus, the proposed rule would allow
CMMs to use their membership points

to enter multiple quotes in an options
class, provided that such Member has
sufficient CMM points for each such
appointment. The Exchange states that
the quoting requirements for CMMs
would be applicable to each set of
quotes that the CMM enters, and CMMs
will not be permitted to aggregate
multiple quotes in an options class
in order to meet the quoting requirements
under ISE rules.

III. Discussion and Commission
Findings

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.7 Specifically, the
Commission finds that the proposal is
consistent with Section 6(b)(5) of the
Act,8 which requires, among other
things, that the rules of a national
securities exchange be designed to
prevent fraudulent and manipulative
acts and practices, to promote just and
equal opportunity for participation
in transactions and to protect investors
and the public interest.

The proposal allows CMMs to seek
appointment to options classes in which
it or an affiliated market maker holds a
CMM or Primary Market Maker
appointment. The Commission believes
that the proposal is consistent with the
Act. The Commission notes that the
proposal should allow CMMs more
flexibility in using their membership
points. The proposal may also promote


(June 19, 2012), 77 FR 37944.

(October 12, 2011), 76 FR 64417 (October 18,

5 See ISE Rule 802(c)(1).

6 CMMs can select the options classes to which
they seek appointment, but the Exchange retains the
authority to make such appointments and to remove
appointments from CMMs based on their
performance. See ISE Rule 802(d).

7 In approving this proposed rule change, the
Commission has considered the proposed rule’s impact on efficiency, competition, and capital


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