

previous rule change that was filed by the Exchange for immediate effectiveness.<sup>6</sup> The Exchange now proposes to rebate dues to any lessor member who received such a payment from the Exchange during the period August 1, 2008,<sup>7</sup> through April 30, 2009.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>9</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes the proposed rebate of member dues is equitable and reasonable in that it would help the Exchange place a lessor member who received compensation from the Exchange for an open lease under the ITP program prior to May 1, 2009, in a similar position as if the lessor's membership had been leased, consistent with Exchange Rule 3.27(d).

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2009-028 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-CBOE-2009-028. 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 the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-CBOE-2009-028 and should be submitted on or before June 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 59933; File No. SR-NASDAQ-2009-028]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change to Reduce Fees for NASDAQ Basic Data Feeds

May 15, 2009.

## I. Introduction

On March 27, 2009, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to reduce the fees for NASDAQ Basic, a real time data feed combining both NASDAQ's Best Bid and Offer ("QBBO") and the NASDAQ Last Sale. The proposed rule change was published for comment in the **Federal Register** on April 14, 2009.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

## II. Description of the Proposal

NASDAQ Basic is a "Level 1" data product containing quotation information from the NASDAQ Market Center and last sale data from the NASDAQ Market Center. NASDAQ Basic was approved on March 16, 2009,<sup>4</sup> as a pilot program and includes fees for usage and distribution of the data. NASDAQ Basic is available in three forms, NASDAQ Basic for NASDAQ, NASDAQ Basic for NYSE, and NASDAQ Basic for Alternext. NASDAQ Basic is designed to meet the needs of current and prospective subscribers that do not need or are unwilling to pay for the consolidated data provided by the consolidated Level 1 products.

<sup>10</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> See Securities Exchange Act Release No. 59712 (April 6, 2009), 74 FR 17273.

<sup>4</sup> See Securities Exchange Act Release No. 59582 (March 16, 2009) 74 FR 12423 (March 24, 2009) (SR-NASDAQ-2008-102) ("Pilot Approval Order").

<sup>6</sup> See SR-CBOE-2009-027.

<sup>7</sup> The ITP program was approved by the Commission on July 17, 2008. See Securities Exchange Act Release No. 58178 (July 17, 2008), 73 FR 42634 (July 22, 2008).

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

NASDAQ assesses a monthly fee for distributors of NASDAQ Basic in addition to applicable monthly per user fees. Currently, each Distributor of NASDAQ Basic for NASDAQ-listed stocks currently pays a monthly fee of \$1,500 for either internal or external distribution, each Distributor of NASDAQ Basic for NYSE-listed stocks pays a monthly fee of \$250 for internal distribution or \$625 for external distribution, and each Distributor of NASDAQ Basic for Alternext-listed stocks pays a monthly fee of \$250 for internal distribution or \$625 for external distribution. In addition, each Distributor that receives Direct Access to the NASDAQ Basic pays a monthly fee of \$2,000 for NASDAQ-listed stocks, \$1,000 for NYSE-listed stocks, and \$1,000 for Alternext-listed stocks.

NASDAQ proposes to reduce the distribution fees for NASDAQ Basic. First, NASDAQ proposes to make all three feeds available for a single monthly Distributor Fee of \$1,500, rather than add separate fees for NYSE- and Alternext-listed securities. Second, NASDAQ proposes to eliminate the fee for Direct Access to NASDAQ Basic, currently set forth in Rule 7047(b). Finally, NASDAQ proposes to credit each Distributor of NASDAQ Basic up to \$1,500 per month based upon that Distributor's monthly usage fees. For example, a Distributor that reports \$1,500 or more of monthly usage of NASDAQ Basic will pay no net Distributor Fee, whereas a Distributor that reports \$1,000 of monthly usage will pay a net of \$500 for the Distributor Fee.

### 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.<sup>5</sup> In particular, it is consistent with Section 6(b)(4) of the Act,<sup>6</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,<sup>7</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,<sup>8</sup> which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,<sup>9</sup> adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.<sup>10</sup>

This proposal would reduce the distribution fees for NASDAQ Basic by charging a single monthly Distributor Fee of \$1,500 for all three NASDAQ Basic feeds, eliminating the fee for Direct Access to NASDAQ Basic, and providing a credit to each Distributor of NASDAQ Basic up to \$1,500 per month based upon that Distributor's monthly usage fees. The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market data fees.<sup>11</sup> The Commission recently found that NASDAQ was subject to competitive forces in setting fees for NASDAQ Basic in the Pilot Approval Order.<sup>12</sup> There are a variety of alternative sources of information that impose significant competitive pressures on NASDAQ in setting the terms for distributing NASDAQ Basic. The Commission believes that the availability of those alternatives, as well as NASDAQ's compelling need to attract order flow, imposed significant competitive pressure on NASDAQ to act equitably,

<sup>8</sup> 15 U.S.C. 78f(b)(6).

<sup>9</sup> 17 CFR 242.603(a).

<sup>10</sup> NASDAQ is an exclusive processor of NASDAQ Basic under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes information with respect to quotations or transactions on an exclusive basis on its own behalf.

<sup>11</sup> See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) ("NYSE Arca Order"). In the NYSE Arca Order, the Commission describes the competitive factors that apply to non-core market data products. The Commission hereby incorporates by reference the data and analysis from the NYSE Arca Order into this order.

<sup>12</sup> See Pilot Approval Order, *supra* note 4.

fairly, and reasonably in setting the terms of its proposal.

Because NASDAQ was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NASDAQ-2009-028), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

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## DEPARTMENT OF STATE

[Public Notice: 6632]

**Title: 60-Day Notice of Proposed Information Collection: Form DS-3097, Exchange Visitor Program Annual Report, and OMB Control Number 1405-0151**

**ACTION:** Notice of request for public comments.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Exchange Visitor Program Annual Report.
- *OMB Control Number:* 1405-0151.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Private Sector Exchange, ECA/EC.
- *Form Number:* Form DS-3097.
- *Respondents:* Designated J-1 program sponsors.
- *Estimated Number of Respondents:* 1,460.
- *Estimated Number of Responses:* 1,460 annually.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78f(b)(5).