

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54959; File No. SR-NASDAQ-2006-056)

December 18, 2006

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Establish Nasdaq Custom Data Feeds

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 12, 2006, 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 substantially 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 establish a new data filtration service – Nasdaq Custom Data Feeds – that will permit entities to request and receive customized data feeds containing data elements from Nasdaq’s current data feeds. The text of the proposed rule change is available at http://nasdaq.complinet.com/file_store/pdf/rulebooks/SR-NASDAQ-2006-056.pdf, at Nasdaq, and at the Commission’s Public Reference Room.³

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Changes are marked to the rule text that appears in the electronic NASDAQ Manual found at www.nasdaqtrader.com.

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

As quoting and trading have become increasingly automated, the rate of market data traffic has increased materially. For example, the rate of message traffic on TotalView has increased by more than 250% since January 1, 2004. Nasdaq notes that the integration of INET, Brut and Nasdaq execution systems into a single system has increased message traffic further. The data feeds of all markets are seeing similar, and in some cases more pronounced, increases in message traffic. These increases strain the capacity of brokers and vendors in two ways, at significant expense. First, the telecommunications bandwidth a firm purchases must be increased to handle the message traffic without material increases in latency or dropped information. Second, once the data is received it must be processed, with resulting hardware expenses.

As a result, participants are seeking to “filter” or reduce the amount of data received without losing information necessary for their trading activities. A service that can filter the data without impacting data performance or integrity is considered valuable, given the savings obtained from lower telecommunications and hardware costs. Moreover, some firms prefer that Nasdaq undertake the filtering prior to delivery rather than accept the full data and filter it themselves. Firms are willing to pay in kind to have “irrelevant” data removed from their data stream, avoiding superfluous, recurring payments to telecommunication providers for what they consider to be “noise.”

To respond to this demand, Nasdaq proposes to establish Nasdaq Custom Data Feeds, a customized data feed service that would allow Nasdaq to accommodate particular subscribers' requests for market data feeds containing a pre-specified combination of data elements otherwise delivered on multiple data feeds. Customized data feeds would allow a customer to receive an entirely unique combination of functionality and content.

There is a variety of firm types that could be interested in customized data feeds. For example, firms whose trading of Nasdaq securities is specific to particular subsets of securities might elect to receive only data associated with those securities. A common example is a trading desk that specializes in trading only Nasdaq-100 securities and corresponding index products. For such firms, receipt of data pertaining to stocks outside the Nasdaq-100 is unnecessary and costly from a hardware and software perspective. Another example would be a firm whose program trading models exclusively track liquidity patterns at the first five price levels on the bid-side and ask-side of the market. For such a firm, receipt of liquidity measures beyond the fifth price level is again unnecessary, resource intensive, and wasteful. Traditional market data vendors, specializing in providing all data to their customers, are poor candidates for either of these types of customized feeds.

Additionally, firms have specific protocols or formats that they prefer when receiving data feeds. Nasdaq, historically, has delivered all data feeds in a uniform format and protocol, but now has the ability to offer more flexibility in the delivery mechanisms. Therefore, Nasdaq would also customize the data using protocols the customer specifies to Nasdaq. For example, market data vendors or subscriber firms having made particular technology architecture investments may benefit from receipt of the Nasdaq data in particular formats. For example, firms having invested in late-model, high-speed processors may very much prefer to receive

single-channel data feeds inclusive of every data point. Such a feed would have the advantage of being much easier and efficient to deploy into single-box architecture. By contrast, firms with earlier-model technology, and/or an architecture with multiple applications reading the data feeds, may prefer “highly channelized” data feeds, such as one channel for securities beginning with the letter A, one for securities beginning with the letter B, etc. This allows the firm to utilize existing capacity and technology investments in a way reflective of the firm’s particular needs.

There are many different customized data feeds that could be requested, though the actual usefulness of customized feeds will ultimately be determined by how technology and bandwidth trends continue to evolve. By charging a fee for the customized data feeds, market participants and market data vendors are expected to request and deploy customized data feeds only in cases where there is a great deal of economic value conferred on the recipient. Customized data feeds will be delivered through Nasdaq’s existing data dissemination architecture under the technological conditions applicable to recipients of the un-filtered data feeds.

Nasdaq will make available the data delivered via any customized data feed at the same time it is made available via its regular data feeds. This fact alone does not determine the speed with which the data would be received at the distributor firm. There are many factors that determine the time that a firm receives, processes, acts upon market data – regardless of when the data is sent or whether the data feed is customized. For example, regardless of the data feed, the amount of bandwidth the firm has purchased will impact how quickly the market data is received. Furthermore, the sheer number of miles and the number of routers and switches between the origin of a data feed and its terminus will impact the time it is ultimately received and processed. Further, the size of the messages (measured in bits), in conjunction with the

processing power of the equipment inside the network and at the subscriber firm also impact the time a firm receives and acts upon the data. In the end, a firm receiving a customized data feed could ultimately receive and process the data via its customized data feed either prior to or subsequent to when it would receive this data from a traditional data feed. It is dependent on all of the above factors. To reiterate, Nasdaq will make available data via both traditional and customized data feeds at the same time.

Nasdaq has based its fee schedule for the customized data feeds on an array of considerations: (1) what types of requests are most likely to be made; (2) the composition and hardware, software, and man-hour costs associated with accommodating those requests – noting that there could be significant variety between the requests; and (3) a minimum level of initial and ongoing support associated with the initiation and maintenance of the customized data feeds. In general, these proposed fees are intended to approximate the average costs for the prospective customized feeds, rather than the cost of any specific customized feed. It is expected that some customized feeds could cost more and some could cost less to build than the initial fee.

The price for customized data feeds will have three components: (1) a \$50,000 initial set-up fee for the establishment and creation of the unique feed; (2) the user and distributor fees for the underlying data entitlement from which the customized data is extracted; and an additional fee of \$1000 per month, per filtered feed. For example, if a firm requests a feed that contains specific data elements from TotalView plus some data elements from the Nasdaq Index Dissemination Feed (“NIDS”), the firm would pay the TotalView distributor fee (currently between \$1,000 and \$5,000 per month), plus the NIDS distributor fee (currently between \$1,500 and \$2,000 per month) plus an additional fee of \$1000 per month for receiving the data in filtered format, in addition to the \$50,000 set-up fee.

This is an optional data product that would only be purchased if a potential customer determines that the perceived benefit of one of these data products outweighs the cost of obtaining it. In other words, supply and demand will determine the ultimate success of these data products. Nasdaq believes this is consistent with, and critical to, the operation of a fair and competitive marketplace. In the order approving Regulation NMS, the Commission voiced its support for proposals that “would allow investors and vendors greater freedom to make their own decisions regarding the data they need.”⁴ Nasdaq believes that the Nasdaq Custom Data Feeds service is precisely the type of product that the Commission envisioned when it determined to grant greater flexibility in the provision and purchase of market data.

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 Section 6(b)(4) of the Act,⁶ 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, and it does not unfairly discriminate between customers, issuers, brokers or dealers. Use of the Custom Data Feeds service is voluntary and the subscription fees will be imposed on all purchasers equally based on the level of service selected. The proposed fees will cover the costs associated with establishing the service, responding to customer requests, configuring Nasdaq’s systems, programming to user specifications, and administering the service, among other things.

⁴ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 at 37566 (June 29, 2005).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

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. As a general matter, the Commission has long held the view that “competition and innovation are essential to the health of the securities markets. Indeed, competition is one of the hallmarks of the national market system.”⁷ The Commission has also stated “that the notion of competition is inextricably tied with the notion of economic efficiency, and the Act seeks to encourage market behavior that promotes such efficiency, lower costs, and better service in the interest of investors and the general public.”⁸

The Commission goes on to state its belief “that the appropriate analysis to determine a proposal's competitive impact is to weigh the proposal's overall benefits and costs to competition based on the particular facts involved, such as examining whether the proposal would promote economically efficient execution of securities and fair competition between and among exchange markets and other market centers, as well as fair competition between the participants of a particular market.”⁹

The Nasdaq Custom Data Feeds service is designed to increase the efficiency of executions by enabling vendors to provide market data in the manner they deem most cost efficient. Vendors will only utilize the service if they conclude that it is economically beneficial to them and to their users. There is significant competition for the provision of market data to broker-dealers and other market data consumers, as well as competition for the orders that

⁷ Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

⁸ Securities Exchange Act Release No. 54155 (July 20, 2006), 71 FR 41291 at 41298.

⁹ Id.

generate the data. Nasdaq fully expects its competitors to quickly copy this innovative new service as they have copied other Nasdaq data products in the past.

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. 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 No. SR-NASDAQ-2006-056 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2006-056. 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. 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-2006-056 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).