

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55608; File No. SR-NASDAQ-2007-032)

April 10, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Lower Fees for Distributors of Certain Market Data from the Nasdaq Market Center

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 March 30, 2007, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. The Exchange has filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it 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 is proposing to modify Nasdaq Rule 7019(b) to lower the distributor fees that are applicable to distributors of Nasdaq TotalView and OpenView data, Nasdaq’s full depth of book data feeds for Nasdaq securities and for NYSE and Amex securities.⁵ The text of the proposed rule change is available at Nasdaq, the Commission’s Public Reference Room, and www.nasdaq.com.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The proposed rule change does not alter the Monthly Internal Distributor Fee and the Monthly External Distributor Fee for TotalView.

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

On February 12, 2007, Nasdaq completed the implementation of the new Nasdaq Market Center Execution System, commonly known as "Single Book." The Single Book is the product of the integration of Nasdaq's three separate execution platforms into a single platform trading all Nasdaq, NYSE, and Amex securities.

A by-product of this integration and the new system is a re-alignment of Nasdaq's data feeds. Under the previous systems, market data for Nasdaq securities was disseminated on one set of data feeds and market data for NYSE and Amex securities was disseminated on another. Because the Single Book processes Nasdaq, NYSE, and Amex securities on a single platform, the market data for all securities is disseminated on a single, unified set of data feeds. For example, full depth of book data for Nasdaq securities was previously disseminated via one feed and full depth data for NYSE and Amex securities was disseminated via another. Starting February 12, 2007, market participants' best bids and offers for all securities are disseminated together via various unified data feeds. Full depth of book data for Nasdaq securities and for NYSE and Amex securities are now also disseminated via a unified full depth of book feed, made available in various formats.

In November 2006, Nasdaq filed SR-NASDAQ-2006-048,⁶ a proposed rule change to lower the distributor fees applicable to the full depth feed emanating from the Single Book which has not yet been approved. Therefore, Nasdaq continues to assess its previously-approved fees to its current data feeds. This situation results in economic continuity in that market data recipients will continue to pay the same amount if they continue to receive the same market data elements. Thus, for example, a professional user that receives full depth of book for both Nasdaq and NYSE/Amex stocks in the past paid \$70 for the Nasdaq data and \$6 for the NYSE/Amex data, and will continue to pay that amount in the future.

Nasdaq continues to assess the currently approved distributor fees for both TotalView and OpenView to recipients of the Single Book depth of book feeds. Currently, pursuant to Rule 7019(b), TotalView and OpenView are each subject to separate monthly distributor fees of \$2,500 per month plus either \$1,000 per month for internal distributors or \$2,500 per month for external distributors. In other words, an external distributor of both TotalView and OpenView would pay \$10,000 per month.

Prior to the Single Book, each distributor chose whether it would distribute TotalView, OpenView, or both. Beginning February 12, 2007, the full depth data feeds contained all of the data previously disseminated separately via both TotalView and OpenView. This motivated Nasdaq to propose in SR-NASDAQ-2006-48 a unified fee schedule with a lower distributor fee for TotalView. In the absence of approval of that proposal, beginning April 1, 2007, the first fee-liable billing cycle following the full launch of the Single Book, this will result in higher distributor fees for many vendors because the TotalView and OpenView data elements are

⁶ See Securities Exchange Act Release No. 55443 (March 12, 2007), 72 FR 13325 (March 21, 2007).

included in the unified full depth data feeds, and each set of data continues to be liable for its own separate distributor fee.

In order to avoid this impact, Nasdaq is proposing to lower the current fees until such time as SR-NASDAQ-2006-048 is decided. Due to the variables affecting the level of distributor fees paid by each vendor – whether it distributes TotalView, OpenView, or both and whether it distributes the data internally, externally, or both – it is impossible to replicate exactly the fee schedule proposed for the unified feed. Nasdaq has, however, spent significant time and energy assessing the vendor population and has attempted to lower the fees so as to minimize the aggregate impact on the overall vendor community.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and with Section 6(b)(4) of the Act,⁸ in particular, in that lowering the distribution fees for Nasdaq full depth of book feeds for Nasdaq and NYSE and Amex securities will encourage broader dissemination of that data and thereby increase transparency in those securities.

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.

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.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹¹ However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would permit Nasdaq to implement the proposed rule change on April 1, 2007, enabling many vendors to avoid paying higher distributor fees. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.¹³

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement. The Commission has determined to grant this request.

¹² Id.

¹³ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such 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. Please include File Number SR-NASDAQ-2007-032 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2007-032. 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 the 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-2007-032 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Florence E. Harmon
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).