

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55892; File No. SR-NASDAQ-2007-043)

June 11, 2007

Self-Regulatory Organizations; NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 thereto to Remove Provisions Governing the Operation of the ACES Service

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 April 25, 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, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange filed Amendments No. 1 and 2 to the proposed rule change on May 29, 2007, and June 5, 2007, respectively. The Commission is publishing this notice to solicit comment on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to remove from its rules provisions governing the operations of the ACES communications service. Nasdaq’s rule book contains rules pertaining to “facilities” of the exchange, and ACES is not such a “facility” within the meaning of the Act.

Specifically, Nasdaq proposes to delete: (a) the entire Rule 6200 Series (titled ACES), consisting of Rules 6210, 6220, 6230, 6240 and 6250; and (b) the entire Rule 7026 (titled ACES). The Rule book will show the Rule 6200 Series and Rule 7026 as “Reserved.”

The text of the proposed rule change is available at Nasdaq, at the Commission’s Public Reference Room, and at www.nasdaq.com.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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. The Exchange 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

ACES is a neutral communications service that allows market participants to route orders to one another. ACES does not effect trade executions, and it does not report executed trades to “the tape.” Moreover, market participants receiving orders through ACES may execute them in any manner that they deem consistent with duties of best execution and other applicable industry obligations. As the ACES service can be of value to all market participants, both members and non-members of Nasdaq are permitted to use it.

Sections 6(b)³ and 19(b)(1)⁴ of the Act and Rule 19b-4 thereunder⁵ require a national securities exchange to file its rules with the Commission. Section 3(a)(27) of the Act⁶ and Rule 19b-4 define the “rules” of an exchange with reference to its “facilities”: a rule includes “any material aspect of the operation of the facilities” of the exchange or any statement with respect to “the rights, obligations or privileges” of exchange members or persons having or seeking access

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78c(a)(27).

to the facilities of the exchange.⁷ Finally, Section 3(a)(2) of the Act defines “facility,” when used with respect to an exchange, to include:

its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any services thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.⁸

As explained above, ACES does not effect trade executions, and it does not report executed trades to “the tape.” Rather, it merely allows market participants to route orders to one another for execution in any manner that in the participants’ judgment is consistent with their applicable obligations. As such, the Exchange believes that ACES does not constitute a facility of a national securities exchange within the meaning of the Act, and therefore Nasdaq is not required to file rules regarding its operation.

In the past, when Nasdaq’s parent entity, The Nasdaq Stock Market, Inc., was a subsidiary of the National Association of Securities Dealers, Inc. (“NASD”), ACES rules were not included in the NASD Manual, based on an understanding that Commission staff did not consider ACES to be a facility of the NASD. During the process of registering Nasdaq as a national securities exchange, however, Commission staff requested that Nasdaq develop and file rules for ACES to allow Commission staff to enhance its understanding of ACES’s operation.

⁷ 17 CFR 240.19b-4.

⁸ 15 U.S.C. 78c(a)(2) (emphasis added).

Subsequently, Nasdaq has concluded that these rules are not required to be maintained, and therefore Nasdaq is proposing their deletion. If, at a later date, Nasdaq proposes to modify the operations of ACES in a manner that would cause it to fit within the definition of a facility of the exchange, or if Nasdaq proposes to tie ACES fees to fees for or usage of exchange services, Nasdaq would file a proposed rule change with the Commission.

2. Statutory Basis

As explained above, Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act⁹ in that the provisions to be removed from the Nasdaq rules are outside the scope of this Section.

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 on the proposed rule change 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 Exchange consents, the Commission will:

- (A) by order approve the proposed rule change, or

⁹ 15 U.S.C. 78f(b).

- (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-2007-043 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-2007-043. 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 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 Number SR-NASDAQ-2007-043 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.¹⁰

Nancy M. Morris
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).