

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56228; File No. SR-NASDAQ-2007-056)

August 8, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 2 Thereto, To Modify Pricing for Nasdaq Members Using 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 June 1, 2007, 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 by Nasdaq. On July 27, 2007, Nasdaq filed Amendment No. 1. On August 6, 2007, Nasdaq withdrew Amendment No. 1 and filed Amendment No. 2, which replaced the text of the original filing in its entirety. 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 modify pricing for the Nasdaq Market Center. Nasdaq will make the proposed rule change effective retroactively as of February 12, 2007.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change appears below. Proposed new language is underlined and proposed deletions are in brackets.³

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7013. Consolidated Quotation Service and Exchange-Listed Securities Transaction Credit

(a) No change.

(b) Nasdaq members that trade securities listed on [the NYSE ("Tape A") and] Amex ("Tape B") through Nasdaq may receive from Nasdaq transaction credits based on the number of transactions attributed to them. A transaction is attributed to a member if the transaction is executed through the Nasdaq Market Center, and the member acts as liquidity provider (i.e., the member sells in response to a buy order or buys in response to a sell order). A Nasdaq member may earn credits from [one or both] a pool[s] maintained by Nasdaq[, each pool] representing 50% of the revenue paid by the Consolidated Tape Association to Nasdaq for [each of Tape A and] Tape B transactions after deducting the amount that Nasdaq pays to the Consolidated Tape Association for capacity usage. A Nasdaq member may earn credits from the pool[s] according to the member's pro rata share of transactions attributed to Nasdaq members in [each of Tape A and] Tape B for each calendar quarter. Liquidity providers executing transactions in Tape B securities through the Nasdaq Market Center will receive credits with respect to such transactions on an estimated monthly basis[; all other credits under this rule will be paid on a quarterly basis].

7014. [Nasdaq Market Center for Non-Nasdaq Securities] Reserved.

[The charges to be paid by members using the Nasdaq Market Center for trading non-Nasdaq exchange-listed securities through the Nasdaq Market Center shall consist of a fixed

³ Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://nasdaq.complinet.com>.

service charge of \$200 per member per month, transaction charges as provided in Nasdaq Rule 7018 and equipment-related charges as provided elsewhere in the Rule 7000 Series.]

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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 places specified in Item III below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes two retroactive changes to its fee schedule to address transition issues arising from its commencing operations as a national securities exchange for trading non-Nasdaq securities on February 12, 2007. First, Nasdaq proposes to eliminate a monthly fixed fee for trading non-Nasdaq securities through the Nasdaq Market Center, as provided in Rule 7014. That rule states that members trading such securities will pay a fixed service charge of \$200 per member per month, transaction charges as provided in Nasdaq Rule 7018, and equipment-related charges as provided elsewhere in the Rule 7000 Series. Prior to February 12, 2007, Nasdaq's parent corporation, The Nasdaq Stock Market, Inc. ("Nasdaq Inc."), operated multiple platforms for trading non-Nasdaq securities, and charged a \$200 monthly service fee under NASD rules. On February 12, 2007, Nasdaq began to trade non-Nasdaq securities as an exchange on a single platform, but Nasdaq Inc. continued to operate a separate platform for trading non-Nasdaq securities under NASD rules until March 5, 2007. Accordingly, the charge under NASD rules remained in place until March 5, 2007.

Because trading all securities on a single platform governed by a common set of trading rules reduces Nasdaq's costs, and because Nasdaq's pricing now makes few distinctions between the trading of Nasdaq-listed and non-Nasdaq securities, Nasdaq believes that it is appropriate to eliminate the \$200 monthly service charge. Nasdaq seeks to make the change retroactive to February 12, 2007, the date when Nasdaq began trading these securities as an exchange. Making the change retroactive to February 12, 2007 will also ensure that members are not charged duplicative fees (a fee under NASD rules and a fee under Nasdaq rules) for the period from February 12, 2007 to March 5, 2007.

The rule's reference to equipment related charges is now obsolete, since trading through Nasdaq is no longer reliant on equipment provided by Nasdaq for use on the premises of its market participants. Finally, although transaction charges under Rule 7018 are applicable, Nasdaq believes that it is unnecessary to cross-reference them in a separate rule. Accordingly, the rule is being deleted in its entirety.

Second, Nasdaq proposes to correct an oversight with regard to the text of Rule 7013 that arose when Nasdaq began to operate as an exchange for trading non-Nasdaq securities on February 12, 2007. Prior to that time, and until March 5, 2007, Nasdaq Inc. shared market data revenue with NASD members trading non-Nasdaq stocks pursuant to former NASD Rule 7010(c)(2). For the period from February 1, 2006 through March 5, 2007, the text of that rule read as follows:

NASD members that trade securities listed on the NYSE ("Tape A") and Amex ("Tape B") in over-the-counter transactions may receive from the NASD transaction credits based on the number of transactions attributed to them. A transaction is attributed to a member if (i) for Tape B securities, the transaction is executed through CAES, ITS, or

Nasdaq's Brut or Inet Facilities, and the member acts as liquidity provider (i.e., the member sells in response to a buy order or buys in response to a sell order) or (ii) for Tape A and Tape B securities, the transaction is not executed through CAES, ITS, or Nasdaq's Brut or Inet Facilities, and the member is identified as the executing party in a trade report submitted to the NASD that the NASD submits to the Consolidated Tape Association. An NASD member may earn credits from one or both pools maintained by the NASD, each pool representing 50% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions after deducting the amount that the NASD pays to the Consolidated Tape Association for capacity usage. An NASD member may earn credits from the pools according to the member's pro rata share of all over-the-counter transactions attributed to NASD members in each of Tape A and Tape B for each calendar quarter.

The rule text reflected the fact that Nasdaq Inc. provided both electronic transaction execution systems similar to those currently provided by Nasdaq, and over-the-counter trade reporting services similar to those now provided by the NASD/NASDAQ Trade Reporting Facility ("TRF") and TRFs operated by other exchanges. For both Tape A and Tape B securities, the rule provided for sharing of revenues associated with over-the-counter trade reports,⁴ but the rule provided for sharing of revenues associated with electronic system trades

⁴ "[F]or Tape A and Tape B securities, the transaction is not executed through CAES, ITS, or Nasdaq's Brut or Inet Facilities...." ITS/CAES, Brut and Inet were electronic trading systems operated by Nasdaq Inc.

for Tape B securities only.⁵ The rule was amended effective February 1, 2006 to eliminate sharing of revenues associated with electronic system trades for Tape A securities.⁶

Following transition to exchange operation on February 12, 2007, Nasdaq intended to maintain the status quo with respect to revenue sharing. Thus, NASD Rule 7001B, which applies to the NASD/NASDAQ TRF, continues to provide for sharing of revenues associated with over-the-counter trade reports, on terms comparable to those provided under former NASD Rule 7010(c)(2). By contrast, the text of Nasdaq Rule 7013, which was originally adopted through Nasdaq's Form 1 application for registration as a national securities exchange,⁷ was not amended to reflect the elimination of Tape A sharing prior to the time when Nasdaq began to trade non-Nasdaq securities as an exchange on February 12, 2007. The proposed rule change will rectify this oversight, and thereby allow Nasdaq to maintain the status quo with respect to market data revenue sharing, as had been Nasdaq's intent. Nasdaq has not distributed any Tape A revenues for system trades.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and with Section 6(b)(4) of the Act,⁹ in particular, in that the 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.

⁵ “[F]or Tape B securities, the transaction is executed through CAES, ITS, or Nasdaq's Brut or Inet Facilities....”

⁶ Securities Exchange Act Release No. 53256 (February 8, 2006), 71 FR 8020 (February 15, 2006) (SR-NASD-2006-013).

⁷ Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131).

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

Nasdaq believes that the change will eliminate an unnecessary charge with respect to trading of non-Nasdaq securities and thereby make Nasdaq's fees for trading these securities more reasonable. Nasdaq further believes that the change with respect to revenue sharing will allow Nasdaq to maintain the status quo with respect to Tape A revenue sharing that had existed prior to Nasdaq beginning to operate as a national securities exchange for trading non-Nasdaq securities.

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

Nasdaq does not believe that the proposed rule change will impose 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 self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, as amended; or
- B. institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, 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-2007-056 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-2007-056. 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 on official business days between the hours of 10:00 am and 3:00 pm. Copies of such 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-2007-056 and should be submitted on or before [insert date 15 days from 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).