

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58392; File No. SR-NASDAQ-2008-019)

August 20, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change as Modified by Amendment No. 1 Thereto to Remove from the Nasdaq Rules Fee Provisions Relating to Nasdaq's Mutual Fund Quotation Service

On March 12, 2008, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to remove from the Nasdaq rulebook references to the fees charged by Nasdaq in connection with its Mutual Fund Quotation Service ("MFQS"). On July 3, 2008, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on July 14, 2008.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

Through the MFQS, Nasdaq collects price data for mutual funds, money market funds, and unit investment trusts.⁴ This price data includes information such as net asset value, offer/market price, and capital gains distributions.⁵ Price data may be submitted to Nasdaq by either the fund itself, or by a third-party service facilitator, such as a pricing agent.⁶ This pricing data is then transmitted to print media and/or market data vendors, depending on the level of service for which

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58102 (July 3, 2008), 73 FR 40410.

⁴ See MFQS User Guide at www.nasdaqtrader.com.

⁵ Id.

⁶ Id.

the fund qualifies.⁷ The data interface for the MFQS is separate from the Nasdaq trading system interface.⁸

Nasdaq Rule 7033 (a) through (d) sets forth the fees that Nasdaq charges money market funds, mutual funds, and unit investment trusts for participating in the MFQS. Nasdaq Rules 7019(b) and 7033(e) set forth the distribution and access fees that Nasdaq charges for MFQS information, which is transmitted via the Mutual Funds Dissemination Service (“MFDS”). Nasdaq proposes to delete Rule 7033 in its entirety from its rulebook, and the portion of Rule 7019(b) that relates to MFQS fees.

The Commission has carefully reviewed the proposed rule change and 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.⁹ The Commission believes that it is reasonable for Nasdaq to delete the portion of Rule 7019(b) that relates to MFQS fees, and Rule 7033 in its entirety as, based on representations made by Nasdaq, neither the MFQS nor the MFDS appear to be facilities of a national securities exchange within the meaning of the Act. Removing these provisions is thus consistent with the requirements of Section 6(b) of the Act,¹⁰ as the fees charged by Nasdaq in connection with the MFQS do not fall within the scope of the rules that must

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Id.

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See e-mail from Alex Kogan, Associate General Counsel, Nasdaq, to Andrew Madar, Attorney-Advisor, Commission, dated August 15, 2008.

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In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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15 U.S.C. 78f(b).

be filed with the Commission pursuant to Section 19(b)(1) of the Act¹¹ and Rule 19b-4 thereunder.¹²

If, however, Nasdaq were to propose to tie pricing for the MFQS or the MFDS to an exchange activity, or otherwise modify the MFQS or MFDS such that they fall within the definition of facility of an exchange in the Act,¹³ Nasdaq would have to file a proposed rule change with the Commission.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASDAQ-2008-019), as modified by Amendment No. 1, be, and it hereby is, approved.

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

Florence E. Harmon
Acting Secretary

¹¹ 15 U.S.C. 78s(b)(1).

¹² 17 CFR 240.19b-4.

¹³ See 15 U.S.C. 78c(a)(2).

¹⁴ 17 CFR 200.30-3(a)(12).