

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58897; File No. SR-NASDAQ-2008-018)

November 3, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto to Remove from Rule 7019 the Fees for Receiving Index Values

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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to remove from the Nasdaq rulebook references to the fees charged by Nasdaq for receiving index values. On September 5, 2008, Nasdaq filed Amendment No. 1 to the proposed rule change. On September 25, 2008, Nasdaq filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on October 3, 2008.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2.

Nasdaq distributes values for indexes and exchange traded funds (“ETFs”) through an index dissemination service. Through this service, Nasdaq calculates and disseminates the values of Nasdaq indexes, such as the Nasdaq-100, and, on occasion, non-Nasdaq indexes. Nasdaq also distributes information related to ETFs, including intra-day asset values. All market participants may subscribe to the index dissemination service.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 58666 (September 26, 2008), 73 FR 57725.

Nasdaq Rule 7019(b) sets forth the fees paid by distributors to receive various Nasdaq Market Center data feeds. Nasdaq proposes to delete the portion of Rule 7019(b) that relates to fees for the index dissemination service.

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.<sup>4</sup> The Commission believes that it is reasonable for Nasdaq to delete the portion of Rule 7019(b) that relates to fees for the index dissemination service, as, based on representations made by Nasdaq, the index dissemination service does not appear to be a facility of a national securities exchange within the meaning of the Act. Removing the provisions of Rule 7019(b) that relate to the index dissemination service is thus consistent with the requirements of Section 6(b) of the Act,<sup>5</sup> as the fees charged by Nasdaq in connection with the index dissemination service do not fall within the scope of the rules that must be filed with the Commission pursuant to Section 19(b)(1) of the Act<sup>6</sup> and Rule 19b-4 thereunder.<sup>7</sup>

If, however, Nasdaq were to propose to tie pricing for the index dissemination service to exchange services, or otherwise modify the index dissemination service such that it falls within the definition of facility of an exchange in the Act,<sup>8</sup> Nasdaq would have to file a proposed rule change with the Commission. Similarly, Nasdaq would have to file a proposed rule change with the Commission if it were to condition a company's inclusion in an index on that company's listing market.

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<sup>4</sup> 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).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78s(b)(1).

<sup>7</sup> 17 CFR 240.19b-4.

<sup>8</sup> See 15 U.S.C. 78c(a)(2).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASDAQ-2008-018), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Florence E. Harmon  
Acting Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).