

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58145; File No. SR-NASDAQ-2008-016)

July 11, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Establish Fees for Nasdaq Market Pathfinders Service

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 27, 2008, 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 prepared substantially by Nasdaq. 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 filing with the Commission a proposed rule change to establish fees to make Nasdaq Market Pathfinders service available via either a web-based data product or via a data feed that will provide aggregated market activity of certain market participants referred to as “Pathfinders.”

The text of the proposed rule change is below. All text is new.

**7044. Nasdaq Market Pathfinders Service**

(a) The Nasdaq Market Pathfinders Service will allow participating subscribers to view a real time data product that tracks the aggregated market activity of certain market participants who are aggressively buying and/or selling.

(b) Standard Charge.

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

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

(1) 30-Day Free-Trial Offer. Nasdaq shall offer all new and potential new Nasdaq Market Pathfinders subscribers a 30-day waiver of the user fees for the service. This waiver may be provided only once to a specific new subscriber or potential subscriber.

(2) The following charges shall apply to Nasdaq Market Pathfinders subscribers and to new subscribers after the conclusion of the 30-day waiver period:

(A) Professional subscriber access to view and print the web reports shall be available for a fee of \$50/month;

(B) Non-professional subscriber access to view and print the web reports shall be available for a fee of \$10/month; and

(C) Access to the data feed shall be available to any subscriber for a fee of \$2,500/month. Subsequent subscriber licenses will cost the fees set forth in (b)(1) and (2), above.

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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 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

Nasdaq proposes to establish fees for a new data service that tracks the aggregated buying and selling patterns of market participants, or “Pathfinders,” that are aggressively buying or selling stocks traded on Nasdaq transaction systems. Nasdaq has created the new product to address what it perceives to be a demand for a Nasdaq product that provides a real time indication of how aggressively these market participants are buying or selling a particular stock.

To determine Pathfinders, Nasdaq identifies market participants that are taking a position (bullishly lengthening their position or bearishly shortening their position) over an extended period of time. The Nasdaq Market Pathfinders product will capture the aggregate sentiment of this well informed group by indicating the number of Pathfinders bullish versus bearish in a particular stock and the ratio of shares bought versus sold by Pathfinders.

The Nasdaq Market Pathfinders information will be updated periodically for every issue traded by Nasdaq. At each update, Nasdaq will identify Pathfinders over several time periods such as: the past five minutes, the past one hour, and the past two hours. Net trading activity is calculated for all market participants over such time periods and those that have been consistently lengthening or shortening their position in a stock over that time period are identified as Pathfinders.

Pathfinders are kept anonymous and the aggregation of their buy versus sell shares is used to determine whether this group is bullish or bearish on a particular security. Pathfinder

information will be used in an aggregate manner that does not directly or indirectly identify a particular Pathfinder as the source of the information.

To calculate the Pathfinder statistics, Nasdaq begins by determining which market participants to designate as Pathfinders. To do this Nasdaq calculates the total shares bought and sold by each market participant in each security. Nasdaq then compares the number bought and sold, for example 9,000 shares bought and 1,000 shares sold (a buy—sell ratio of 9:1). A Pathfinder is a market participant that has an extreme buy—sell ratio, for example having a buy—sell ratio of 9:1 or 1:9. Any market participant meeting that standard will be considered to be a Pathfinder.

In the second stage, Nasdaq will calculate the aggregate buy—sell ratio for all the Pathfinders as a group. There must be a minimum of three Pathfinders identified in a stock for a time period. If fewer than three are identified, then Nasdaq will not distribute Pathfinders data because it could compromise the identity and buying and selling behavior of an individual market participant.

The aggregate buy—sell ratio for Pathfinders is expressed in two ways. The first is the ratio of the number of Pathfinders predominantly buying compared to Pathfinders predominantly selling. The second is the ratio of shares bought to shares sold by Pathfinders as a group. For example, if only one Pathfinder is buying and five are selling then the buy—sell ratio is 1:5 in the count of Pathfinders buying to selling. If the one Pathfinder buying has bought 100,000 shares while the five selling have sold only 10,000 shares total, then the ratio is 10:1 in the volume of Pathfinder buying to selling.

The Nasdaq Market Pathfinders service will provide subscribers with the ability to detect changes in market sentiment in stocks traded on Nasdaq transaction systems, and thereby to

gauge market sentiment based on those buying and selling patterns. The information will be disseminated in a data feed that provides the current Pathfinders' situation for each stock over multiple time periods. In some stocks and time periods there will not be any market participants that qualify as Pathfinders. In those cases, the Nasdaq Market Pathfinders product will indicate a neutral situation.

There will be two main areas in which this service will be deployed. The first level of service will enable users to access the product through the web with a graphical user interface linked to the data. A single subscriber will be able to construct a variety of custom queries and view and print this data. The second level of service will allow a subscriber to gain direct access to the raw data via the Nasdaq Market Pathfinders data feed.

Given the purely voluntary nature of this service, Nasdaq anticipates that this filing will not be contentious in that no firm or individual will be forced to purchase the product or pay a fee to which they object. Further, the 30-day free-trial period will allow the subscriber community to assess the business use and value of the new service prior to making a decision whether or not to purchase the product for a longer period.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>3</sup> in general, and with Section 6(b)(4) of the Act,<sup>4</sup> in particular, in that the proposal 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, and it does not unfairly discriminate between customers, issuers, brokers or dealers. Use of

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<sup>3</sup> 15 U.S.C. 78f.

<sup>4</sup> 15 U.S.C. 78f(b)(4).

Pathfinders service is voluntary and the subscription fees will be imposed on all purchasers equally based on the professional/non-professional status of issuers and/or the level of service selected. The proposed fees will cover the costs associated with establishing the service, responding to customer requests, configuring Nasdaq's systems, programming to user specifications, and administering the service, among other things.

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, as amended.

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.

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, or
- 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](mailto:rule-comments@sec.gov). Please include File No. SR-NASDAQ-2008-016 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2008-016. 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 a.m. and 3:00 p.m. 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-2008-016 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

Florence E. Harmon  
Acting Secretary

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<sup>5</sup> 17 CFR 200.30-3(a)(12).