

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57973; File No. SR-NASDAQ-2008-050)

June 16, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Regarding Nasdaq Last Sale Data Feeds

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 2, 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 and II below, which Items have been substantially prepared by the Exchange. On June 12, 2008, Nasdaq submitted Amendment No. 1 to the proposed rule change. The Exchange has designated the proposed rule change as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments 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 establish a one-month free service for those data feeds for which Nasdaq has separately proposed fees on a four-month pilot basis in Amendment No. 2 to SR-NASDAQ-2006-060.⁵ Specifically, Nasdaq is proposing to offer the “Nasdaq Last Sale for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 57965 (June 16, 2008).

Nasdaq” and “Nasdaq Last Sale for NYSE/Amex” data feeds (“Nasdaq Last Sale Data Feeds”) containing last sale activity in U.S. equities within the Nasdaq Market Center and reported to the jointly-operated FINRA/Nasdaq Trade Reporting Facility (“FINRA/Nasdaq TRF”) during the month of June 2008 without charge to data distributors. The availability of the products following June 2008 will be subject to Commission approval of the fees proposed in SR-NASDAQ-2006-060.⁶ Accordingly, SR-NASDAQ-2008-050 does not propose fees or charges and will be operative only for June 2008. There is no proposed rule text.

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

In its filing with the Commission, the Exchange 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 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

Currently, investors that wish to view market data to monitor their portfolios generally have two choices: (1) pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. In SR-NASDAQ-2006-060, Nasdaq has proposed to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data via the internet and television at no cost to millions of internet users and television viewers. In Amendment No. 2 to SR-NASDAQ-2006-060, Nasdaq proposes to charge certain fees described

⁶ Id.

in that filing for a four-month pilot period.⁷ In SR-NASDAQ-2008-050, Nasdaq proposes to offer free of charge during the month of June 2008 the same data feeds for which Nasdaq has proposed fees on a four-month pilot basis in SR-NASDAQ-2006-060. The availability of the products following June 2008 will be subject to Commission approval of the fees proposed in SR-NASDAQ-2006-060.

Nasdaq proposes to create two separate “Level 1” products containing last sale activity within the Nasdaq market and reported to the jointly-operated FINRA/Nasdaq TRF. First, the Nasdaq Last Sale for Nasdaq data product is a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the Nasdaq system as well as those reported to the FINRA/Nasdaq TRF. Second, Nasdaq will also create the Nasdaq Last Sale for NYSE/Amex data product that provides real-time last sale information including execution price, volume, and time for NYSE- and Amex-securities executions occurring within the Nasdaq system as well as those reported to the FINRA/Nasdaq TRF.

Nasdaq developed these product proposals in consultation with industry members and also market data vendors and purchasers. These products are designed to meet the needs of current and prospective subscribers that do not need or are unwilling to pay for the consolidated data provided by the SIP Level 1 products. Nasdaq also proposes to ease the administrative burden of market data vendors that are receiving and using data in new ways, particularly those that provide the data via the internet and various television media. Nasdaq believes that providing investors with new options for receiving market data, as Nasdaq proposes, was a primary goal of the market data amendments adopted in Regulation NMS. Nasdaq believes that

⁷ Id.

by offering the data feeds without charge during the month of June 2008, it will demonstrate the value of these products to data distributors and investors.

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)(5) of the Act,⁹ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Nasdaq believes that the Nasdaq Last Sale Data Feeds proposed here appear to be precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

Nasdaq has concluded that offering these products without charge for a one-month period will help to demonstrate the value of the products to distributors and investors.

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.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Three comment letters were filed regarding SR-NASDAQ-2006-060 as originally published for comment. Nasdaq responded to these comments in a letter dated December 13, 2007. Both the comment letters and Nasdaq's response are available on the Commission's website at <http://www.sec.gov/comments/sr-nasdaq-2006-060/nasdaq2006060.shtml>.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹² However, Rule 19b-4(f)(6)(iii)¹³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow Nasdaq to distribute

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested the Commission to waive this five-day pre-filing notice requirement. The Commission hereby grants this request.

¹³ Id.

free of charge its Nasdaq Last Sale Data Feeds for the month of June 2008 without further delay. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.¹⁴

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.¹⁵

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-2008-050 on the subject line.

Paper Comments:

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

¹⁴ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on June 16, 2008, the date on which the Exchange submitted Amendment No. 1.

All submissions should refer to File Number SR-NASDAQ-2008-050. 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 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-2008-050 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Acting Secretary

¹⁶ 17 CFR 200.30-3(a)(12).