

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59871; File No. SR-NASDAQ-2009-045)

May 6, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish the Trade Reporting File Upload Service and Related Fees.

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 May 1, 2009, 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. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to establish a new service and related fees for use by Nasdaq Members. The new Trade Reporting File Upload service will enable subscribers to upload multiple trades in one file for submission to ACT via the NASDAQ Workstation or Weblink ACT 2.0.

The text of the proposed rule change is below. Proposed new language is in italics.³

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Changes are marked to the rules of The NASDAQ Stock Market LLC found at <http://nasdaqomx.cchwallstreet.com>. The Commission notes that deletions are in brackets.

7033.[Reserved] Trade Reporting File Upload

The Trade Reporting File Upload service allows subscribing members to upload multiple trade reports in batches to the Automated Confirmation Transaction (ACT) service via the Nasdaq Workstation or WeblinkACT 2.0.

The Trade Reporting File Upload service is available to members for a fee of \$25 per user, per month.

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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 a new add-on service to the Nasdaq Workstation and Weblink ACT 2.0, and establish related fees. Nasdaq's Trade Reporting File Upload service is a new tool that gives firms the ability to upload multiple trades in one file for submission to ACT via the NASDAQ Workstation or Weblink ACT 2.0. Member firms typically use internal systems that report trades automatically. When member firms encounter connectivity issues or other problems that prevent their automated systems from reporting trades, all unreported trades must be submitted to avoid a violation of the trade reporting rules once the problem is resolved. Member firm automated trade reporting systems are not designed to enter such unreported trades, and as a consequence,

member firms must manually enter the unreported trades to ACT via the NASDAQ Workstation or Weblink ACT 2.0. The manual entry of unreported trades can be a very laborious and time-consuming process, depending on the number of trades that were not reported through the member firm's automated system. Member firms requested that Nasdaq develop an automated process for submitting these trades, and in response Nasdaq has developed the Trade Reporting File Upload service.

The Trade Reporting File Upload service allows member firms to upload unreported trade data into a single file of up to 500 trades through the Nasdaq Workstation or Weblink ACT 2.0.⁴ Once submitted, the trades are reviewed by the service for data entry errors. Each trade within the file that is accepted by the system will receive a discrete ACT control number for tracking purposes. Trades that are rejected are marked as "error" so that users can edit the information and resubmit each rejected trade. Rejected trades do not result in the rejection of the entire file.

The Trade Reporting File Upload service can only be accessed using a Nasdaq Workstation or Weblink ACT 2.0 user account. Member firms subscribing to the Trade Reporting File Upload service are charged a monthly fee per user, which provides access to the service for each Nasdaq Workstation and Weblink ACT 2.0 user account selected for subscription to the Trade Reporting File Upload service. Nasdaq proposes to offer the Trade Reporting File Upload service to each subscriber for a subscription fee of \$25 per user, per month. Use of the Trade Reporting File Upload service is voluntary and the subscription fee will be imposed on all purchasers equally based on the number of users

⁴ Subscribers to the Trade Reporting File Upload service must identify the unreported trades and provide a list of such trades in comma separated value format, also known as "CSV".

selected. The proposed fee will be applied to offset 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. To the extent that costs are covered by the proposed fee, the proposed fee may also provide Nasdaq with a profit.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and Section 6(b)(4) of the Act,⁶ in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the Nasdaq operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. As noted, use of the Trade Reporting File Upload service is voluntary and the subscription fees will be imposed on all purchasers equally based on the number of users. The proposed fee will be allocated to 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, and may provide Nasdaq with a profit to the extent costs are covered.

Nasdaq also believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act⁷ because it 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 facilitating transactions in

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78f(b)(5).

securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Trade Reporting File Upload service will assist subscribing member firms to quickly upload reportable trades after recovering from a failure of their internal automated reporting system. As a result, member firms will be able to avoid a reporting violation that may otherwise result from using the time consuming manual entry process.

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

Pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder,⁹ Nasdaq has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for thirty days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Nasdaq has provided the Commission written notice of its intent to file the proposed rule change,

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

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. Nasdaq believes that the filing may appropriately be designated for filing under Rule 19b-4(f)(6) because the filing provides a useful enhancement to an existing facility of Nasdaq that is designed to assist members in complying with reporting obligations and avoiding rule violations, and establishes a reasonable fee for such enhancement.

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-2009-045 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2009-045. 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 Nasdaq. 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-2009-045 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.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).