

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56929; File No. SR-NASDAQ-2007-086)

December 7, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Step-Outs and Transfers of Sales Fees

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> notice is hereby given that on October 31, 2007, 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 primarily by Nasdaq. Nasdaq has filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> so that the proposal was effective upon filing with the Commission. 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: (i) offer, for a fee, a match/compare service for Nasdaq members to process step-outs between themselves and (ii) allow the transfer of Rule 7002 Sales Fees and similar fees of other self-regulatory organizations (“SROs”) without an agreement between the transferring Nasdaq members when such transfers are accompanied by a transfer of the underlying shares.

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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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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

Nasdaq Rule 7038 enables Nasdaq members to utilize Nasdaq's Automated Confirmation Transaction Service ("ACT") to transfer all or a portion of the member's obligation to pay a NASD Rule 7002 sale fee or similar fee of another SRO ("sales fees").<sup>5</sup> In addition, Nasdaq members may also use ACT to process step-outs.<sup>6</sup>

Under the rule change, Nasdaq will modify Nasdaq Rule 7038(c) to specify that when members use ACT to transfer sales fees but do not also transfer the underlying shares, the

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<sup>5</sup> Nasdaq Rule 7038(a). Rule 7002 fees are designed to defray the costs that Nasdaq pays to the Commission under Section 31(b) of the Act. 15 U.S.C. 78ee(b).

<sup>6</sup> Nasdaq Rule 7038(b). A "step-out" is a mechanism for transferring a broker's position in a security in a manner that does not constitute a trade. In one form of a step-out, a party to a previously executed trade transfers its position in the trade to one or more other parties. For example, a broker that buys a large block of stock on behalf of several broker-dealer customers may "step-out" of the trade in order to transfer and allocate its position to its broker-dealer customers. Thus, under this form of a step-out, there is a single trade on a securities market coupled with an arrangement between one of the trade counterparties and one or more additional parties to shift the settlement obligations for the trade to the additional parties. In another form of step-out, a broker uses a clearing-only report to transfer its position from at one clearing broker's account to another clearing broker's account.

clearing firms for the trades in question must be party to an agreement authorizing such transfers between themselves or the firms on whose behalf they clear trades.<sup>7</sup>

Nasdaq is also adding new paragraph (f) to Nasdaq Rule 7038 that will enable Nasdaq members to use ACT's "match/compare" functionality to process step-outs without an agreement between the transferring Nasdaq members when such transfers are accompanied by a transfer of the underlying shares. Nasdaq will assess a fee for this service whereby each party to a matched/compared transfer will be assessed \$0.0144 per 100 shares with a minimum of 400 shares up to maximum of 7,500 shares except in cases where the same participant is on both sides of a transfer in which case the applicable per side fee will be assessed once rather than twice.

Nasdaq states that it believes that the proposed rule change is consistent with the provisions of Section 6 of the Act<sup>8</sup> and specifically with Sections 6(b)(4) and (5) of the Act<sup>9</sup> because 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 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

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<sup>7</sup> Examples of such an agreement include a Nasdaq "Attachment 2" or the Financial Industry Regulatory Authority's ("FINRA") new Uniform Trade Reporting Facility Service Bureau/Executing Broker Agreement.

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

investors and the public interest. Nasdaq believes that offering match/compare functionality in connection with step-outs and reducing paperwork requirements for Sales Fee transfers benefits its members by enhancing the efficiency of their post-trade operations and that its proposed fees are reasonable and comparable to similar Financial Industry Regulatory Authority (“FINRA”) fees for comparison services.<sup>10</sup>

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.

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

Nasdaq did not solicit or receive written comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder<sup>12</sup> because it 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 from the date on which it was filed, or such shorter time as the Commission may designate.

Nasdaq has requested that the Commission waive the 30-day operative delay pursuant to the Commission’s authority under Rule 19b-4(f)(6)(iii)<sup>13</sup> to designate a shorter time when such action is consistent with the protection of investors and the public interest. The Commission

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<sup>10</sup> See NASD Rule 7002B.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 C.F.R. 240.19b-4(f)(6).

<sup>13</sup> 17 C.F.R. 240.19b-4(f)(6)(iii).

hereby grants the request.<sup>14</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest in light of a FINRA rule, which became effective two business days after Nasdaq filed its proposed rule change that requires all shares that underlie a step-out transaction to be have been previously trade-reported to FINRA-only facilities.<sup>15</sup> In order to ensure that firms can use the same method to conduct step-out trades, it is appropriate for Nasdaq to be able to implement its match/compare functionality on an accelerated basis so that it can be in place for firms that wish to do step-outs through the match and compare functionality for shares that were not exclusively reported over-the-counter before the FINRA restriction became effective. Moreover, the Commission notes that the match/compare functionality has long existed at Nasdaq and that the modifications made by this rule change do not raise any novel legal or policy concerns. Accordingly, the Commission designates the proposed rule change to be operative upon filing with the Commission.

Rule 19b-4(f)(6)(iii) requires Nasdaq to notify the Commission 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. Nasdaq has requested that the Commission designate a shorter notification time. The Commission hereby waives the five-day notice period. As explained above, it was necessary for Nasdaq to file its proposed rule change expeditiously so as to avoid any disruption in service to its members.

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

<sup>15</sup> Securities Exchange Act Release No. 55962 (Jun. 26, 2007), 72 FR 36536 (Jul. 3, 2007) [SR-NASD-2007-040]. See also FINRA Regulatory Notice 07-38 (Aug. 2007), available online at [http://www.finra.org/web/groups/rules\\_regs/documents/notice\\_to\\_members/p036643.pdf](http://www.finra.org/web/groups/rules_regs/documents/notice_to_members/p036643.pdf).

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.

#### 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-2007-086 on the subject line.

##### Paper comments:

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

All submissions should refer to File No. NASDAQ-2007-086. 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, 450 Fifth Street, NW, Washington DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at Nasdaq's principal office and on Nasdaq's Web site at [http://nasdaq.complinet.com/nasdaq/display/display.html?rbid=1705&element\\_id=4](http://nasdaq.complinet.com/nasdaq/display/display.html?rbid=1705&element_id=4). 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 submission should refer to File No. SR-NASDAQ-2007-086 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.<sup>16</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).