

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61524; File No. SR-NASDAQ-2010-015)

February 16, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Apply Retroactively a Correction of a Typographical Error in Rule 7018

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 January 26, 2010, 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 Substance of the Proposed Rule Change

NASDAQ is filing a proposed rule change to apply retroactively to the period from July 24, 2009 through January 25, 2010 the correction made by SR-NASDAQ-2010-014 of a typographical error³ formerly in Rule 7018.⁴ 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, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that the “typographical error” is more accurately characterized as a drafting error by Nasdaq that resulted in the omission and misplacement of rule language.

⁴ See SR-NASDAQ-2010-014 (January 26, 2010), Securities Exchange Act Release No. 61515 (February 12, 2010).

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 recently submitted an immediately effective filing to correct a typographical error in Rule 7018.⁵ The purpose of this filing is [sic] apply the correction of the typographical error retroactively to the period from July 24, 2009 through January 25, 2010.

In SR-NASDAQ-2009-072,⁶ NASDAQ submitted a proposed rule change to make clerical changes designed to streamline and simplify Rule 7018. As stated in the "Purpose" section of NASDAQ's Form 19b-4 filing, "[n]one of the clerical changes will modify any fee assessed or credit earned for trading on the NASDAQ Market Center." However, due to a typographical error, Exhibit 5 introduced inaccuracies into the provisions of the rule describing the fees for orders in securities listed on the New York Stock Exchange ("NYSE") that are routed to other venues without attempting to execute in NASDAQ for the full size of the order prior to routing. This portion of the fee schedule had previously been divided between sections governing fees for orders in NYSE-listed securities executed at NYSE and fees for orders executed at other venues. Both sections had included catch-all provisions governing "other" orders that did not fit into more defined categories of routed orders; these catch-all provisions apply specifically to directed orders that are not designated as intermarket sweep orders (i.e., immediate-or-cancel orders that are directed to route to a venue specified by the member, and that may be executed by the receiving venue only if its quotation is at the national best bid or

⁵ SR-NASDAQ-2010-014 (January 26, 2010).

⁶ Securities Exchange Act Release No. 60430 (August 4, 2009), 74 FR 40279 (August 11, 2009) (SR-NASDAQ-2009-072).

offer). In the case of such orders routed to NYSE, the fee is either \$0.0020 per share executed, or \$0.0019 per share executed for members with an average daily volume through the Nasdaq Market Center in all securities during the month of more than 35 million shares of liquidity provided. In the case of such orders routed to other venues, the fee is \$0.0035 per share executed. However, language describing the fee for routing to other venues was inadvertently deleted, while language describing the fee for routing to NYSE was moved but without language that had formerly limited its applicability to orders sent to NYSE. Accordingly, a reader of the amended rule may conclude that the fee of \$0.0020 or \$0.0019 per share executed is applicable to “other” orders routed to venues other than NYSE.⁷

As noted above, however, the filing that introduced this error in Rule 7018 stated that it was not modifying any fees or credits, and in fact, was filed as a “stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule” under SEC Rule 19b-4(f)(1)⁸ rather than a fee change under SEC Rule 19b-4(f)(2).⁹ Moreover, NASDAQ’s intent not to modify fees through SR-NASDAQ-2009-072 was reflected in the Commission’s notice of the filing on the SEC website¹⁰ and in the Federal Register,¹¹ and the applicable fees have been accurately described in the pricing schedule that appears on NASDAQ’s website.¹² NASDAQ has been billing members in accordance with the correct fees since the effective date of SR-NASDAQ-2009-072 on July 24, 2009, and accordingly believes that all of its members are cognizant of the correct fee. NASDAQ submitted SR-NASDAQ-

⁷ The Commission expects all SROs to carefully review proposed rule changes before they are filed with the Commission.

⁸ 17 C.F.R. 240.19b-4(f)(1).

⁹ 17 C.F.R. 240.19b-4(f)(2).

¹⁰ See <http://www.sec.gov/rules/sro/nasdaq/2009/34-60430.pdf>.

¹¹ See Securities Exchange Act Release No. 60430 (August 4, 2009), 74 FR 40279 (August 11, 2009) (SR-NASDAQ-2009-072).

¹² See <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

2010-014¹³ on an immediately effective basis to correct the error and is now submitting this filing to seek Commission approval to apply the correction retroactively to the period from July 24, 2009 through January 25, 2010.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁴ in general, and with Section 6(b)(4) of the Act,¹⁵ in particular, in that 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 which NASDAQ operates or controls. The proposed rule change will ensure that a recently filed correction of a typographical error in NASDAQ Rule 7018 is applied retroactively throughout the entire period when the error was in the rule.

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

¹³ SR-NASDAQ-2010-014 (January 26, 2010).

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(4).

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. Please include File Number SR-NASDAQ-2010-015 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2010-015. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2010-015 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
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).