

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55413; File No. SR-NASDAQ-2007-013)

March 7, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 to Assess a Fee for Unsuccessful Appeals Under Rule 11890

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 February 27, 2007, The NASDAQ Stock Market LLC (“Nasdaq” or the “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 substantially prepared by Nasdaq. Nasdaq submitted the proposed rule change under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. On March 1, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. 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 assess a fee for unsuccessful appeals under Rule 11890. Nasdaq expects to implement the proposed rule change as of March 1, 2007.

The text of the proposed rule change is available on the Nasdaq’s Web site at <http://www.nasdaq.com>, at Nasdaq’s Office of the Secretary, and at the Commission’s Public Reference Room.

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)(2).

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 is amending Rule 11890, which covers the breaking of trades determined to be clearly erroneous, to add a new Rule 11890(c)(4) that would assess a fee of \$500.00 for unsuccessful appeals of clearly erroneous adjudications.

Rule 11890(c) provides that the losing party may appeal decisions made by Nasdaq officers on whether or not to break trades. Appeals are heard by the Market Operations Review Committee (“MORC”), a committee of up to 15 volunteers who are not affiliated with Nasdaq. Each appeal is heard by a panel of two or three MORC members who must take time from their work or personal activities to prepare for and hear the appeal. In addition, appeals take significant staff time to perform a number functions including: processing the appeal, contacting the counterparties, communicating with MORC members to determine availability, preparing briefing materials on the circumstances of the trade(s) and communicating the MORC’s decision to the parties. Nasdaq estimates that on average the appeals process takes from four to five person-hours to complete including staff and panel time.

Nasdaq is concerned that some members have abused the appeals process by appealing all decisions in which they are involved regardless of merit or the value of shares at issue. During December 2006 and January 2007, five firms were responsible for 44% of all appeals. Two appeals were for odd lot amounts, including one appeal for just 50 shares. Of the appeals during this two-month period, 77% of appeals were upheld by the MORC and 23% resulted in trade adjustments. These statistics suggest that parties are overusing and abusing the appellate system because there is no downside risk. A number of the appeals involve trades that do not meet the numerical thresholds and other factors used in adjudicating clearly erroneous filings set forth in IM-11890-4 and IM-11890-5. As a result, the MORC is often serving as a redundant decision maker in cases where the outcome is not legitimately in question. This is not the role Nasdaq intended when it established the appeals process using the MORC.

In order to reduce the number of frivolous appeals and to preserve Nasdaq's ability to attract qualified persons to serve on the MORC, Nasdaq is proposing a modest fee of \$500.00 that will be levied only in cases where the MORC upholds the Nasdaq officer's decision. Firms would not be charged for successful appeals. Nasdaq believes that this fee will encourage members to consider whether the facts and economic value at stake merit appellate consideration. Nasdaq notes that NYSE Arca Equities, Inc. ("NYSE Arca") recently adopted a similar \$500.00 appellate fee in order to reduce apparent abuses of the appeals process on that exchange.⁵

⁵ Securities Exchange Act Release No. 54655 (October 26, 2006), 71 FR 64596 (November 2, 2006) (SR-NYSEArca-2006-48).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Section 6(b)(4) of the Act,⁷ in particular, in that the proposed rule change 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. Nasdaq believes that the modest fee of \$500 for an unsuccessful appeal under Rule 11890 will be equitably assessed against members that impose burdens on the time of Nasdaq staff and MORC members by filing appeals that lack merit.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and paragraph (f)(2) of Rule 19b-4⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

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.¹⁰

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-2007-013 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2007-013. 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

¹⁰ For the purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on March 1, 2007, when Amendment No. 1 was filed.

available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the 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-2007-013 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).