

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55609; File No. SR-NASDAQ-2007-033)

April 10, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Waive Fees for Distributors of Certain Market Data from the Nasdaq Market Center

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 March 30, 2007, 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 Nasdaq. The Exchange has filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it 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 Substance of the Proposed Rule Change

Nasdaq is proposing to modify Nasdaq Rule 7023(c) to waive the distributor fees applicable to Nasdaq OpenView for recipients of the new Nasdaq Level 2 data feed or the new OpenView Basic data feed for a six-month pilot. The text of the proposed rule change is available at Nasdaq, the Commission’s Public Reference Room, and [www.nasdaq.com](http://www.nasdaq.com).

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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

1. Purpose

On February 12, 2007, Nasdaq completed the implementation of the new Nasdaq Market Center Execution System, commonly known as "Single Book." The Single Book is the product of the integration of Nasdaq's three separate execution platforms into a single platform trading all Nasdaq, NYSE, and Amex securities.

A by-product of this integration and the new system is a re-alignment of Nasdaq's data feeds. Under the previous systems, market data for Nasdaq securities was disseminated on one set of data feeds and market data for NYSE and Amex securities was disseminated on another. Because the Single Book processes Nasdaq, NYSE, and Amex securities on a single platform, the market data for all securities is disseminated via more unified data feeds. For example, previously Nasdaq disseminated each market participant's best bid and offer for Nasdaq securities on the Nasdaq Quotation Dissemination Service ("NQDS") and for NYSE and Amex securities on the OpenView feed. Starting February 12, 2007, market participants' best bids and offers for all securities are disseminated via a single data feed, the new Level 2 data feed. Also beginning February 12, 2007, Nasdaq began disseminating OpenView Basic, a new version of its

OpenView feed which contains only the best bid and offer from each Nasdaq market participant quoting in NYSE and Amex securities.

Nasdaq is proposing to waive for six months, beginning April 1, 2007 and ending September 30, 2007, the distributor fee for OpenView which would otherwise apply to distributors of the new Level 2 and OpenView Basic data feeds. Waiving the OpenView distributor fees will encourage adoption of the new Level 2 and OpenView Basic data feeds and wider dissemination of that data. In the case of Level 2, the distributor fee waiver is also appropriate because currently there are many more recipients of NQDS data for Nasdaq stocks than for NYSE and Amex stocks and each will become liable for the OpenView distributor fee based upon their receipt and distribution of the Level 2 data feed. Nasdaq believes it is appropriate to provide these new recipients of OpenView data with a reasonable period of time to become familiar with the new OpenView data.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that waiving the OpenView distribution fee for distributors that receive NASDAQ market data for NYSE and Amex securities via Level 2 or OpenView Basic will encourage broader dissemination of that data and thereby increase transparency in those securities.

### 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.

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<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

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

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 Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>9</sup> However, Rule 19b-4(f)(6)(iii)<sup>10</sup> 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 would permit Nasdaq to implement the waiver of the distributor fee for OpenView on April 1, 2007, for a six-month

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 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 that the Commission waive the 5-day pre-filing notice requirement. The Commission has determined to grant this request.

<sup>10</sup> Id.

period. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.<sup>11</sup>

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 Number SR-NASDAQ-2007-033 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-2007-033. 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

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<sup>11</sup> 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).

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. Copies of the 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-2007-033 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.<sup>12</sup>

Florence E. Harmon  
Deputy Secretary

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