SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62614; File No. SR-NASDAQ-2010-093)

July 30, 2010

Self-Regulatory Organizations; NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Nasdaq Rule 7017(b)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 27, 2010, the NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 proposes to modify Nasdaq Rule 7017(b) to establish on a permanent basis a reduced user fee non-professional users of the National Quotation Dissemination Service.

The text of the proposed rule change is below. Proposed new language is underlined.

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7017. National Quotation Data Service (NQDS)

(a) No Change.

(b) **[**For a pilot period ending December 31, 2007, t] <u>T</u>he charge to be paid by a non-professional for each interrogation or display device receiving all or any portion of the NQDS information disseminated through an authorized vendor shall be $10.00 per month.

(c) No Change.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ disseminates market data feeds in two capacities. First, NASDAQ disseminates consolidated or "core" data in its capacity as Securities Information Processor ("SIP") for the national market system plan governing securities listed on NASDAQ as a national securities exchange ("NASDAQ UTP Plan").[3] Second, NASDAQ separately disseminates proprietary or "non-core" data in its capacity as a registered national securities exchange. Non-core data is any data generated by the NASDAQ Market Center Execution System that is voluntarily disseminated by NASDAQ separate and apart from the consolidated data.[4] NASDAQ has numerous proprietary data products, such as NASDAQ TotalView, NASDAQ Last Sale, and NASDAQ Basic.

The National Quotation Dissemination Service ("NQDS") is a proprietary data product that contains the best bid and offer quotation of each registered market maker quoting in NASDAQ-listed securities on the NASDAQ Stock Market. NQDS data is used not only by

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[3] See Securities Exchange Act Release No.59039 (Dec. 2, 2008) at p. 41.

[4] Id.

firms, associated persons, and other market professionals, but also by non-professionals who receive the service through authorized vendors, including, for example, on-line brokerage firms.

Prior to August 31, 2000, NQDS data was available through authorized vendors at a monthly rate of $50 for professionals and non-professionals users alike. In August 2000, NASDAQ filed a proposed rule change to reduce from $50 to $10 the monthly fee that non-professional users pay to receive NQDS data. The Commission approved the pilot on August 22, 2000, and the fee reduction commenced on August 31, 2000 on a one-year pilot basis.[5] On September 5, 2001, August 29, 2002, August 15, 2003, and August 20, 2004, January 24, 2006, and April 25, 2007, NASDAQ, filed proposed rule changes to extend the pilot for additional one-year periods.[6] Thus, the non-professional fee for NQDS has remained unchanged for roughly 10 years.

NASDAQ is proposing to establish the fee-reduction on a permanent basis effective beginning August 1, 2010.[7] NASDAQ has consistently supported broad, effective dissemination of market information to public investors. NASDAQ notes that the existing proposed fee represents a reduction by 80% of the fees that non-professionals paid for NQDS data prior to

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5 See Securities Exchange Act Release No. 43190 (Aug. 22, 2000); 65 FR 52460 (Aug. 29, 2000).

6 See Securities Exchange Act Release No. 44788 (Sept. 13, 2001); 66 FR 48303 (Sept. 19, 2001). Securities Exchange Act Release No. 46446 (Aug. 30, 2002); 67 FR 57260 (Sept. 9, 2002). Securities Exchange Act Release No. 48386 (Aug. 21, 2003); 68 FR 51618 (Aug. 27, 2003).Securities Exchange Act Release No. 50318 (Aug. 3, 2004); 69 FR 54821 (Sept. 10, 2004); Securities Exchange Act Release No. 53531 (Mar. 21, 2006); 71 FR 15506 (Mar. 28, 2006); Securities Exchange Act Release No. 55668 (Apr. 25, 2007); 72 FR 24347 (May 2,, 2007).

7 NASDAQ is simultaneously filing a proposal for authority retroactively to apply the NQDS non-professional fee pilot for the period from December 31, 2007 through August 1, 2010. See SR-NASDAQ-2010-094 (July 27, 2010). NASDAQ previously sought authority retroactively to assess the NQDS non-professional fee from December 31, 2007 going forward. See SR-NASDAQ-2009-055

August 31, 2000. Continuing the reduction of NQDS for non-professional users demonstrates NASDAQ's continued commitment to individual investors and responds to the demand for real-time market data by non-professional market participants. In addition, NASDAQ member firms often supply real-time market data to their customers through automated means. Thus, NASDAQ member firms' customers will benefit from the continued fee reduction.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The fee reduction enhances the public's access to market data that is relevant to investors when they make financial decisions and encourages increased public participation in the securities markets.

NQDS is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[10]

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8 15 U.S.C. 78f(b).

9 15 U.S.C. 78f(b)(5).

10 Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

By removing “unnecessary regulatory restrictions” on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

NASDAQ’s ability to price NQDS is constrained by (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and free delayed consolidated data, and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary quotation data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including ten self-regulatory organization (“SRO”) markets, as well as internalizing broker-dealers (“BDs”) and various forms of alternative trading systems (“ATSs”), including dark pools and electronic communication networks (“ECNs”). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (“TRFs”) compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex, NYSEArca, and BATS.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders that exist in the marketplace.

Consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated quotation data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available <u>at no cost</u> with a 15- or 20- minute delay. Because consolidated data contains marketwide information, it constrains the fees assessed for proprietary data (such as NQDS data). The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are included in the consolidated data, by highlighting the optional nature of proprietary products.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract "eyeballs" that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. Today, BATS publishes certain data at no charge on its website and via data feeds in order to attract order flow, and it uses market data revenue rebates from the resulting executions to maintain low execution charges for its users.[11] A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, Reuters and Thomson.

In continuing the current price for NQDS, NASDAQ considered the competitiveness of the market for quotation data and all of the implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish a fair, reasonable, and not unreasonably discriminatory fee and an equitable allocation of fees among all users. The existence of numerous alternatives to NQDS, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources ensures that NASDAQ cannot set unreasonable fees, or fees that are unreasonably discriminatory, without losing business to these alternatives. Accordingly, NASDAQ believes that the acceptance of the NQDS product in the marketplace demonstrates the consistency of these fees with applicable statutory standards.

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

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11 However, BATS recently received approval to begin offering and charging for three new data products, which include BATS Last Sale Feed, BATS Historical Data Products, and a data product called BATS Market Insight. See Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 20018 (April 16, 2010) (SR-BATS-2010-002).

amended. As the Commission has recognized,[12] the market for transaction execution and routing services is highly competitive. Broker-dealers currently have numerous alternative venues for their order flow, including multiple competing self-regulatory organization markets, as well as broker-dealers and aggregators such as electronic communications networks. A member firm is able to select any venue of which it is a member or participant to send its order flow. As such, if member firms believe that the proposed fee for Supplemental MPIDs is excessive they may easily choose to move their order flow elsewhere. NASDAQ believes that its proposed fees are comparable to fees assessed by the NYSE for market access, but are set at lower levels than the corresponding NYSE fees. NASDAQ also believes that the proposed fee will encourage efficiency in member firms' use of MPIDs.

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)[13] of the Act. At any time within the 60-day period beginning on the date of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears

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[12] Specifically, the Commission stated: "Exchanges compete not only with one another, but also with broker-dealers that match customer orders within their own systems and also with a proliferation of alternative trading systems ('ATSs') and electronic communications networks ('ECNs') that the Commission has also nurtured and authorized to execute trades in any listed issue. As a result, market share of trading fluctuates among execution facilities based on their ability to service the end customer. The execution business is highly competitive and exhibits none of the characteristics of a monopoly…." Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74775 (December 9, 2008) (SR-NYSEArca-2006-21).

[13] 15 U.S.C. 78s(b)(3)(A).

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. Please include File Number SR-NASDAQ-2010-093 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-2010-093. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2010-093 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.[14]

Florence E. Harmon
Deputy Secretary

[14] 17 CFR 200.30-3(a)(12).