

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55255; File No. SR-NASDAQ-2006-060)

February 8, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Establish NASDAQ Last Sale Data Feeds

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 December 19, 2006, 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 substantially prepared by NASDAQ. On January 26, 2007, NASDAQ submitted 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 create the “NASDAQ Last Sale For NASDAQ” and “NASDAQ Last Sale For NYSE/Amex” data feeds containing last sale activity in US equities within the NASDAQ Market Center and reported to the jointly-operated NASDAQ/NASD Trade Reporting Facility (“NASDAQ TRF”). The text of the proposed rule change is below. Proposed new language is in *italics*.

7039. NASDAQ Last Sale Data Feeds

(a) NASDAQ shall offer two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the Nasdaq/NASD Trade Reporting Facility.

(1) “NASDAQ Last Sale for Nasdaq” shall contain all transaction reports for Nasdaq-listed stocks; and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(2) “NASDAQ Last Sale for NYSE/Amex” shall contain all such transaction reports for NYSE- and Amex-listed stocks.

(b) Distributors of the NASDAQ Last Sale Data Feeds may elect between two alternate fee schedules, depending upon the ability of distributors to maintain either a username/ password entitlement system or a quote counting mechanism or both. All fees for the NASDAQ Last Sale Data Products are “stair-stepped” in that the fees are reduced for distributors with more users but the lower rates apply only to users in excess of the specified thresholds rather than applying to all users once a threshold is met. In addition, there shall be a maximum fee of \$100,000 per month for NASDAQ Last Sale for NASDAQ and \$50,000 per month for NASDAQ Last Sale for NYSE/Amex.

(1) Firms that have the ability to maintain either a username/password entitlement system or quote counting mechanism or both shall elect between paying a fee for each user or a fee for each query. A firm that elects to pay for each query may cap its payment at the monthly rate per user. Firms shall pay the following fees:

(A) NASDAQ Last Sale for NASDAQ

| <u>Users/mo</u> | <u>Price</u> | <u>Query</u> | <u>Price</u> |
|-------------------|------------------------------------|--------------|----------------------------------|
| 1- 9,999 | <u>\$0.60/</u> <u>usermonth</u> | 0 – 10M | <u>\$0.003/</u> <u>query</u> |
| 10,000- 49,999 | <u>\$0.48/</u> <u>usermonth</u> | 10M- 20M | <u>\$0.0024/</u> <u>query</u> |
| 50,000- 99,999 | <u>\$0.36/</u> <u>usermonth</u> | 20M- 30M | <u>\$0.0018/</u> <u>query</u> |
| 100,000+ | <u>\$0.30/</u> <u>usermonth</u> | 30M+ | <u>\$0.0015/</u> <u>query</u> |

(B) NASDAQ Last Sale for NYSE/Amex

| <u>Users/mo</u> | <u>Price</u> | <u>Quotes</u> | <u>Price</u> |
|-------------------|------------------------------------|---------------|----------------------------------|
| 1- 9,999 | <u>\$0.30/</u> <u>usermonth</u> | 0 – 10M | <u>\$0.0015/</u> <u>query</u> |
| 10,000- 49,999 | <u>\$0.24/</u> <u>usermonth</u> | 10M- 20M | <u>\$0.0012/</u> <u>query</u> |

| | | | |
|---------------------------------|------------------------------------|-----------------|------------------------------------|
| - | - | - | - |
| <u>50,000-</u> <u>99,999</u> | <u>\$0.18/</u> <u>usermonth</u> | <u>20M- 30M</u> | <u>\$0.0009/</u> <u>query</u> |
| - | - | - | - |
| <u>100,000+</u> | <u>\$0.15/</u> <u>usermonth</u> | <u>30M+</u> | <u>\$0.000725/</u> <u>query</u> |

(2) Firms that lack the ability to maintain either a username/password entitlement system or quote counting mechanism or both may distribute NASDAQ Last Sale Data Products under alternate fee schedules depending upon whether they distribute data via the Internet or via Television:

(A) The fee for distribution of NASDAQ Last Sale Data Products via the Internet shall be based upon the number of Unique Visitors to a website receiving such data. The number of Unique Visitors shall be validated by a vendor approved by NASDAQ in NASDAQ's sole discretion.

(i) NASDAQ Last Sale for NASDAQ

| <u>Unique Visitors</u> | <u>Monthly Fee</u> |
|------------------------|--------------------------------|
| - | - |
| <u>1-100,000</u> | <u>\$0.036/ Unique Visitor</u> |
| - | - |
| <u>100,000-1M</u> | <u>\$0.03/ Unique Visitor</u> |
| - | - |
| <u>1M+</u> | <u>\$0.024/ Unique Visitor</u> |

(ii) NASDAQ Last Sale for NYSE/Amex

| <u>Unique Visitors</u> | <u>Monthly Fee</u> |
|------------------------|--------------------------------|
| - | - |
| <u>1-100,000</u> | <u>\$0.018/ Unique Visitor</u> |
| - | - |
| <u>100,000-1M</u> | <u>\$0.015/ Unique Visitor</u> |
| - | - |

| | |
|------------|--------------------------------|
| <u>1M+</u> | <u>\$0.012/ Unique Visitor</u> |
|------------|--------------------------------|

(B) Distribution of NASDAQ Last Sale Data Products via Television shall be based upon the number of Households receiving such data. The number of Households to which such data is available shall be validated by a vendor approved by NASDAQ in NASDAQ's sole discretion.

(i) NASDAQ Last Sale for NASDAQ

| <u>Households</u> | <u>Monthly Fee</u> |
|-------------------|----------------------------|
| - | - |
| <u>1-1M</u> | <u>\$0.0096/ Household</u> |
| - | - |
| <u>1M-5M</u> | <u>\$0.0084/ Household</u> |
| - | - |
| <u>5M-10M</u> | <u>\$0.0072/ Household</u> |
| - | - |
| <u>10M+</u> | <u>\$0.006/ Household</u> |

(ii) NASDAQ Last Sale for NYSE/Amex

| <u>Households</u> | <u>Monthly Fee</u> |
|-------------------|----------------------------|
| - | - |
| <u>1-1M</u> | <u>\$0.0048/ Household</u> |
| - | - |
| <u>1M-5M</u> | <u>\$0.0042/ Household</u> |
| - | - |
| <u>5M-10M</u> | <u>\$0.0036/ Household</u> |
| - | - |
| <u>10M+</u> | <u>\$0.003/ Household</u> |

(C) A Distributor that distributes Nasdaq Last Sale Data Products via multiple distribution mechanisms shall pay all fees applicable to each distribution mechanism, provided that there shall be a discount from the applicable Television rate as follows:

(i) 10 percent reduction in applicable Television fees when a Distributor reaches the second tier of Users, Queries, or Unique Visitors for its non-Television users;

(ii) 15 percent reduction in applicable Television fees when a Distributor reaches the third tier of Users, Queries, or Unique Visitors for its non-Television users; and

(iii) 20 percent reduction in applicable Television fees when a Distributor reaches the fourth tier of Users, Queries, or Unique Visitors for its non-Television users.

(c) All Distributors of a Nasdaq Last Sale Data Feed shall also pay a monthly fee of \$1,500.

(d) All Distributors of a Nasdaq Last Sale Data Feed shall also have the ability to distribute the Nasdaq Market Analytics Data Package set forth in Rule 7036 at no additional distributor fee.

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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 had 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

Currently, NASDAQ provides real-time last sale information from its market center to the Security Information Processors (“SIPs”) for the national market system plans governing trading in NASDAQ, New York Stock Exchange LLC (“NYSE”), and American Stock Exchange LLC (“Amex”) listed securities. The SIPs then consolidate NASDAQ’s last sale

information with similar information from other market centers, and disseminate the consolidated last sale data to market data vendors. These consolidated products are known within the securities industry as “Level 1” products.

NASDAQ proposes to create two separate “Level 1” products containing last sale activity within the NASDAQ market and reported to the NASDAQ TRF. First, the “NASDAQ Last Sale for NASDAQ Data Product,” a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the NASDAQ TRF. Second, NASDAQ will also create the “NASDAQ Last Sale for NYSE/Amex Data Product” that provides real-time last sale information including execution price, volume, and time for NYSE and Amex securities executions occurring within the NASDAQ system as well as those reported to the NASDAQ TRF. Both products would also include access to the NASDAQ Market Velocity and NASDAQ Market Forces information for their respective classes of securities, data which is currently available only via a separate, stand-alone data feed product.

NASDAQ developed these product proposals in consultation with industry members and also market data vendors and purchasers. These products are designed to meet the needs of current and prospective subscribers that do not need or are unwilling to pay for the consolidated data provided by the SIP Level 1 products. NASDAQ also proposes to ease the administrative burden of market data vendors that are receiving and using data in new ways, particularly those that provide the data via the Internet and various Television media. Providing investors with new options for receiving market data, as NASDAQ proposes, was a primary goal of the market data amendments adopted in Regulation NMS.

NASDAQ proposes two different pricing models, one for clients that are able to maintain username/password entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. Firms with the ability to maintain username/password entitlement systems and/or quote counting mechanisms will be eligible for a specified fee schedule for the NASDAQ Last Sale For NASDAQ Product and a separate fee schedule for the NASDAQ Last Sale for NYSE/Amex Product. The pricing will be “stair-stepped,” meaning that the tiered fees would be effective for the incremental users in the new tier. For example, a distributor of the NASDAQ Last Sale for NASDAQ Product with 20,000 users would pay \$0.60 for the first 10,000 users and \$0.48 for the next 10,000 users. Distributors may instead elect to pay per query for their users if, for example, a substantial portion of their users request a relatively small number of queries each month. As with consolidated Level 1 data products, firms will be permitted to “cap” their payments for individual queries at the corresponding monthly user rate. NASDAQ believes this allows firms to manage their market data costs better.

Firms that are unable to maintain username/password entitlement systems and/or quote counting mechanisms will also have multiple options for purchasing the NASDAQ Last Sale data. These firms will choose between a “Unique Visitor” model for Internet delivery or a “Household” model for Television delivery. Unique Visitor and Household populations must be reported monthly and must be validated by a third party vendor or ratings agency approved by NASDAQ at NASDAQ’s sole discretion.

The proposed pricing is stair-stepped, meaning that the tiered fees would be effective for the incremental users in the new tier. For example, a distributor of NASDAQ Last Sale for NASDAQ that reports 600,000 Unique Visitors would pay \$0.036 for the first 100,000 visitors and \$0.03 for the next 500,000 visitors. A Distributor that reports 3,000,000 households reached

would pay \$0.0096 for the first 1,000,000 households and \$0.0084 for the next 2,000,000 households.

Industry members have noted to NASDAQ that these Internet and Television media types are converging, and that these two price schedules should therefore be blended. To reflect the growing confluence between these media outlets, NASDAQ proposes to offer a reduction in fees when a single Distributor distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms. Specifically, NASDAQ will discount the applicable fees for distribution of NASDAQ Last Sale Data Products via Television for Distributors that also distribute those products via the Internet and have achieved a new pricing tier for Unique Visitors, Users, or Queries. This acknowledges distributors' perception that as Web sites grow, they may gain overlapping Web site users and Television viewers. NASDAQ proposes that there be a 10% discount to a firm's Television fees when they reach the second tier in Unique Visitors, Users, or Queries, a 15% discount when they reach the third tier, and a 20% discount when they reach the fourth tier.

In addition, NASDAQ proposes to establish a cap of \$100,000 per month for NASDAQ Last Sale for NASDAQ and \$50,000 per month for NASDAQ Last Sale for NYSE/Amex. NASDAQ believes that it is reasonable and appropriate to benefit small and medium-sized vendors by proposing a progressive fee schedule and to benefit large vendors by proposing to cap the monthly fees.

As with the distribution of other NASDAQ proprietary products, all distributors of the NASDAQ Last Sale for NASDAQ and/or NASDAQ Last Sale for NYSE/Amex products would pay a single \$1500/month NASDAQ Last Sale Distributor Fee in addition to any applicable usage fees. The \$1,500 monthly fee will apply to all distributors and will not vary based on

whether the distributor distributes the data internally or externally or distributes the data via both the Internet and Television.

Finally, in order to promote the distribution of the NASDAQ Market Analytics Data Package, described in Rule 7036, NASDAQ proposes that Distributors of the NASDAQ Last Sale Data Products would gain access to the NASDAQ Market Velocity and NASDAQ Market Forces content from the Market Analytics Package at no additional charge. Market Velocity and Market Forces are measures of market activity that provide unique transparency into NASDAQ trading. Market Velocity is a measure of the frequency and size of orders submitted to the trading system, and is akin to the audible noise and visible activity that traders use on a physical trading floor to detect changes in market direction, momentum, or liquidity. Market Forces uses the same order and share volume information used in Market Velocity, but categorizes the orders by whether they are buys or sells, thereby providing an indication of market direction. NASDAQ has made these data points available for separate purchase on a voluntary basis, and proposes to make them available to those that voluntarily subscribers to NASDAQ Last Sale products.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,³ in general, and with Section 6(b)(4) of the Act,⁴ in particular, in that it is designed to provide an equitable allocation of reasonable fees among users and recipients of NASDAQ data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(4).

market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The NASDAQ Last Sale market data products proposed here appear to be precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The NASDAQ Last Sale market data products will offer NASDAQ data in a new form not previously available to market data consumers. It will also offer a data product at a new price point not previously available to market data consumers. The product is completely optional in that no consumer is required to purchase it and only those consumers that deem the product to be of sufficient overall value and usefulness will purchase it.

To the extent that consumers do purchase NASDAQ Last Sale products, the revenue generated will offset NASDAQ's high fixed costs of operating and regulating a highly efficient and reliable platform for the trading of U.S. equities. It will also help NASDAQ recapture the significant costs it incurred in developing that platform.

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. NASDAQ believes that, as a general matter, the Commission has long held the view that "competition and innovation are essential to the health of the securities markets. Indeed, competition is one of the hallmarks of the national market system."⁵ The Commission has also stated "that the notion of competition is inextricably tied with the notion of economic efficiency,

⁵ See Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

and the Act seeks to encourage market behavior that promotes such efficiency, lower costs, and better service in the interest of investors and the general public.”⁶

The Commission goes on to state its belief “that the appropriate analysis to determine a proposal’s competitive impact is to weigh the proposal’s overall benefits and costs to competition based on the particular facts involved, such as examining whether the proposal would promote economically efficient execution of securities and fair competition between and among exchange markets and other market centers, as well as fair competition between the participants of a particular market.”⁷

NASDAQ believes that the current proposal is designed to increase transparency and the efficiency of executions by enabling vendors to provide additional market data in a cost efficient manner. NASDAQ believes that there is significant competition for the provision of market data to broker-dealers and other market data consumers, as well as competition for the orders that generate the data. NASDAQ fully expects its competitors to quickly respond to this proposal as they have responded to other NASDAQ data products in the past. Moreover, market forces have shaped the market data fees that NASDAQ has charged for its market data product in the past and will continue to shape those fees in the future.

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

⁶ See Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291, 41298 (July 20, 2006).

⁷ Id.

such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which NASDAQ 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-2006-060 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 Number SR-NASDAQ-2006-060. 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. 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-2006-060 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.⁸

Florence E. Harmon
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).