

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62925; File No. SR-NASDAQ-2010-096)

September 16, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval to a Proposed Rule Change Relating to the National Quotation Dissemination Service

I. Introduction

On August 2, 2010, New The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NASDAQ Rule 7017(b) to re-establish retroactively from January 1, 2008, a pilot program reducing the monthly fee that non-professional users pay to receive the National Quotation Dissemination Service (“NQDS”) from \$50 to \$10. The proposed rule change was published for comment in the Federal Register on August 9, 2010.³ The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

NASDAQ is proposing to re-establish retroactively from January 1, 2008 through July 27, 2010,⁴ the fee reduction pilot program that reduced the monthly fee that non-professional users pay to receive NQDS from \$50 to \$10, to correct for the lapse in the pilot and to prevent the collection of the additional \$40 in monthly fees from investors for the period during which

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 62629 (August 3, 2010), 75 FR 47871 (“Notice”).

⁴ On July 27, 2010, NASDAQ filed a proposed rule change to make the pilot fee reduction permanent. See Securities Exchange Act Release No. 62614 (July 30, 2010), 75 FR 47668 (August 6, 2010).

the pilot had lapsed.⁵ 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.⁶ On September 5, 2001, August 30, 2002, August 18, 2003, and August 23, 2004, January 24, 2006, and March 29, 2007, NASDAQ, filed proposed rule changes to extend the pilot for additional one-year periods.⁷

NASDAQ believes that continuing the reduction of NQDS for non-professional users demonstrates NASDAQ's continued commitment to provide data to non-professional market participants and individual investors.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸

⁵ 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 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. For a more detailed discussion of NQDS, see Notice.

⁶ See Securities Exchange Act Release No. 43190 (August 22, 2000), 65 FR 52460 (August 29, 2000).

⁷ See Securities Exchange Act Release Nos. 44788 (September 13, 2001), 66 FR 48303 (September 19, 2001); 46446 (August 30, 2002), 67 FR 57260 (September 9, 2002); 48386 (August 21, 2003), 68 FR 51618 (August 27, 2003); 50318 (September 3, 2004), 69 FR 54821 (September 10, 2004); 53531 (March 21, 2006), 71 FR 15506 (March 28, 2006); and 55668 (April 25, 2007), 72 FR 24347 (May 2, 2007).

⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

In particular, it is consistent with Section 6(b)(4) of the Act,⁹ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of a national securities exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,¹¹ which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,¹² adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.¹³

The Commission notes that the proposed rule change involves the retroactive application of a fee reduction pilot that benefits non-professional market participants and that has been in effect in practice since 2000. The Commission approved the reduced fee pilot at its inception in

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(8).

¹² 17 CFR 242.603(a).

¹³ NASDAQ is an exclusive processor of its NQDS data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes data on an exclusive basis on its own behalf.

2000, and subsequently extended the pilot as cited above. NASDAQ charged the reduced fee, although its NQDS fee reduction pilot had expired, during the period from January 1, 2008 through July 27, 2010, at which time NASDAQ filed an immediately effective proposal that made the reduced NQDS fee for non-professionals permanent. The Commission notes that no comments were received from any market participants, including NASDAQ members, information vendors, investors, non-professionals, or any other interested parties, on the initial pilot filing in 2000, on any of the pilot's extensions, on the immediately effective filing for permanent approval of the reduced fee, or on this filing. For the reasons discussed above, the Commission believes that retroactive approval of the fee reduction pilot from January 1, 2008 is appropriate.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-NASDAQ-2010-096), be, and it hereby is, approved.

Florence E. Harmon
Deputy Secretary

¹⁴ 15 U.S.C. 78s(b)(2).