

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56345; File No. SR-NASDAQ-2007-058)

August 31, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Step-Outs and Transfers of Sales Fees

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 June 7, 2007, 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 prepared primarily by Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6)⁴ thereunder so that the proposal was 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 proposes to offer functionality to allow Nasdaq members to process (i) step-outs and (ii) transfers of Rule 7002 Sales Fees and similar fees of other self-regulatory organizations (“SROs”) and proposes to establish fees for these services.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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 proposing to allow Nasdaq members to process step-outs and transferals of Rule 7002 Sales Fees and similar fees of other self-regulatory organizations ("SROs") through the Nasdaq Exchange and is proposing to establish fees for these services.

Step-Outs

A step-out is a mechanism for transferring a broker's position in a security in a manner that does not constitute a trade. In one form of a step-out, a party to a previously executed trade transfers its position in the trade to one or more other parties. For example, a broker that buys a large block of stock on behalf of several broker-dealer customers may "step-out" of the trade to transfer and allocate its position to the customers. Thus, under this form of a step-out, there is a single trade on a securities market, coupled with an arrangement between one of the trade counterparties and one or more additional parties to shift the settlement obligations for the trade to the additional parties. In another form of step-out, a broker uses a clearing-only report to transfer its position from an account at one clearing broker to an account at another clearing broker for its own internal accounting purposes.

Historically, when The Nasdaq Stock Market, Inc. ("Nasdaq Inc.") operated as a facility of the National Association of Securities Dealers ("NASD"), step-outs were effected through

non-tape, clearing-only trade report entries into the Automated Confirmation Transaction Service (“ACT”). Now that Nasdaq is fully operational as a national securities exchange, ACT serves both as the mechanism for reporting trades that are automatically executed through the Nasdaq Market Center to the tape and has also been licensed for use by the NASD/NASDAQ Trade Reporting Facility (“NASD/NASDAQ TRF”) as a technology platform for collecting over-the-counter (“OTC”) trade reports and reporting them to the tape. In this dual role, ACT continues to accept step-out entries regardless of whether the underlying trade occurred on the Nasdaq Market Center or was an OTC trade reported to the NASD/NASDAQ TRF.

Since step-outs are not trades, they are not an inherent OTC activity. Rather, an exchange may appropriately offer step-out capability to its members as a value-added service. Nasdaq notes that the New York Stock Exchange (“NYSE”) and the American Stock Exchange offer step-out functionality to their members. Nasdaq is proposing to allow step-out capability under its rules with respect to any trade to which a Nasdaq member is a party regardless of the market on which the trade was executed.⁵ However, the parties to a step-out under Nasdaq rules must all be Nasdaq members and must be parties to an agreement such as the NASD’s new Uniform Trade Reporting Facility Service Bureau/Executing Broker Agreement under which the broker transferring the position has received authorization from the transferee broker to act on its behalf. Each party to a step-out under Nasdaq rules will pay \$0.029. If the parties to the step-out also transfer the obligation to pay a Sales Fee or similar fee, the party transferring the fee will also pay the fee transfer charge discussed below.

⁵ The report of a step-out submitted to ACT pursuant to the proposed rule will be marked as a Nasdaq Exchange entry so as to clearly distinguish it from an NASD/Nasdaq TRF entry, which also is reported through ACT. The rule further stipulates that a non-tape, clearing-only submission may not be used for the purpose of reporting a trade execution.

Step-out reporting would also continue to be permitted by NASD under the NASD/NASDAQ TRF framework. However, it is Nasdaq's understanding that NASD expects to submit a proposed rule change to the Commission in the near future under which the NASD/NASDAQ TRF would be available for step-outs only when the original trade was reported to it. By contrast, Nasdaq members could use the Nasdaq exchange to effect step-outs from trades executed in any venue, including trades reported to a trade reporting facility.

Transfers of Sales Fees

Under Rule 7002, Nasdaq charges a sales fee to its members to defray the costs of the fees that it must pay to the Commission under Section 31(b) of the Act.⁶ Other self-regulatory organizations charge similar fees. Nasdaq is proposing to adopt rules under which a member may transfer the obligation to pay a sales fee or similar fee associated with a particular trade to another member either at the time of the step-out or at some other time.⁷ ACT has historically been used for transfers of the obligation to pay the fees of other SROs, including NASD's transaction fee under Schedule A, Section 3 of the NASD By-Laws.⁸ Since Nasdaq became operational as an exchange, ACT has also been used for transfers of sales fee obligations but under the framework of the NASD/ NASDAQ TRF. Nasdaq believes that transfers of obligations to pay sales fees and similar fees may appropriately be conducted pursuant to Nasdaq's rules as an exchange since they are not inherently an OTC function. Accordingly, the

⁶ 15 U.S.C. 78ee(b).

⁷ For example, a fee transfer may occur independent of a step-out in a situation where a party to a riskless principal transaction transfers the obligation to pay the resulting Sales Fee to its customer.

⁸ Such transfers are indirect. Thus, if Broker A sold shares on Exchange B, Broker A would pay the resulting fee to Exchange B but could impose an offsetting obligation on Broker C for reimbursement.

proposed rule recognizes that ACT may be used to transfer the obligation to pay sales fees and similar fees if the clearing firms for the trades to which the fees relate are party to an agreement authorizing such transfers between themselves and/or the firms on whose behalf they clear trades. Nasdaq will impose a charge equal to 10% of the transferred fee with a minimum charge of \$0.025 and a maximum charge of \$0.25. The fee would be paid by the transferring party. An NASD member may continue to use ACT to transfer the obligation to pay an NASD transaction fee under the NASD/NASDAQ TRF framework. However, such action would have to be performed pursuant to NASD rules. NASD has informed Nasdaq that it expects to file a proposed rule change to permit the transfer of the obligation to pay NASD fees under that framework.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act⁹ and in particular with Sections 6(b)(4) of the Act¹⁰ because the proposal 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 offering step-out and fee transfer functionality benefits its members by enhancing the efficiency of their post-trade operations. Nasdaq's proposed fees are reasonable and are comparable to Nasdaq Inc.'s prior fees for non-tape submissions to ACT. Nasdaq also notes that its proposed fee step-out fee of \$0.029 per side compares favorably to NYSE's published step-out fee of \$0.25 per trade.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

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 on the proposed rule change were neither solicited nor received.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder¹² because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate. Nasdaq believes that the filing may appropriately be designated as "non-controversial" because Nasdaq is proposing a clearer framework for offering value-added services that have consistently been offered through Nasdaq's ACT system. Nasdaq also notes that the NYSE and Amex currently offer their members comparable capabilities for conducting step-outs. At any time within 60 days of the filing of the 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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

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-2007-058 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-2007-058. 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 Section, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at Nasdaq's principal office and on Nasdaq's Web site at

http://nasdaq.complinet.com/file_store/pdf/rulebooks/NASDAQ_SR-NASDAQ-2007-058.pdf.

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-2007-058 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.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).