

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56683; File No. SR-NASDAQ-2007-081)

October 22, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to Establish a New Service Called Nasdaq Regulation Reconnaissance Service (“Reg Recon”) to Assist Nasdaq Members in Their Efforts to Comply With Applicable Regulatory Requirements

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 September 26, 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 prepared substantially by Nasdaq. On October 15, 2007 Nasdaq filed Amendment No. 1 to the proposed rule change. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission. 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 establish fees for a new real-time surveillance alert and report module to assist Nasdaq member firms with their Regulation NMS (“Reg NMS”) compliance. The text of the proposed rule change is available at www.nasdaq.complinet.com, the Exchange, and the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 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

Nasdaq proposes to establish a new service called Nasdaq Regulation Reconnaissance Service (“Reg Recon”) to assist Nasdaq members in their efforts to comply with applicable regulatory requirements. Specifically, Reg Recon will provide Nasdaq members with individualized real-time surveillance alerts of possible violations of Reg NMS under the Act. Members will also have access to download those surveillance alerts for use as part of their policies and procedures to ensure compliance with Reg NMS obligations. Reg Recon is intended as only one source of assistance for Nasdaq member firms with their Reg NMS compliance and does not purport in any way to ensure or guarantee Reg NMS compliance. Specifically, Reg Recon will be available as an add-on to the Nasdaq Workstation and Weblink ACT 2.0.

Section 12(f) of the Act⁵ permits exchanges to extend “unlisted trading privileges” (“UTP”) to Nasdaq listed securities. Through UTP, other U.S. exchanges are able to quote and trade issues listed on Nasdaq. In addition, registered broker-dealers are permitted to execute transactions in the over-the-counter market and to report those trades to the Alternative Display

⁵ 15 U.S.C. 78I(f).

Facility operated by the Financial Industry Regulatory Authority (“FINRA”) or to any of several Trade Reporting Facilities (“TRFs”) operated jointly by FINRA and one of several national securities exchanges. Under the UTP Plan, all U.S. exchanges that quote and trade Nasdaq listed securities must provide their data to a centralized securities information processor (“SIP”) for data consolidation and dissemination. Nasdaq, in its current role as the SIP for the UTP Plan, supports the UTP Quotation Data Feed (“UQDF”)⁶.

Reg Recon will assist Nasdaq members in two ways. First, it will assist members with compliance with Rule 611 of Reg NMS by providing real-time alerts that are trade reported by the member to the FINRA/Nasdaq TRF and represent potential trade-throughs. Nasdaq will generate these alerts by reading the UQDF data feed and comparing it to the prices of trades reported to the TRF. When that comparison reveals that a potential trade-through has occurred, the Reg Recon functionality will send the member a real-time surveillance alert. Nasdaq expects that firms will use these alerts as part of their compliance procedures to verify that the TRF trade was properly executed and trade reported.

Second, Reg Recon will provide subscribers with Nasdaq Self Help Declarations/Revocations messages (“Notices”). These Notices will alert participants that Nasdaq is experiencing communications issues with a particular market center. It is intended to cause members to perform an independent review of their communications with that market center and assess their trading obligations with respect to that market. Nasdaq has stated that these Notices are not intended to relieve firms of their obligations to conduct independent self-help analysis and to adopt policies and procedures designed to achieve compliance with those

⁶ UQDF provides best bid and offer quotes from the UTP participants, as well as the consolidated national best bid and offer quotes (“NBBOs”) for securities listed on Nasdaq.

obligations.

Both real-time surveillance alerts and the Notices will be available to download each day to allow firms to review their TRF trade reporting activities. The product also provides reports that give users the ability to generate and download reports to view all of their potential TRF trade-throughs and sort by exempt versus non-exempt, intermarket sweep order (“ISO”) versus non-ISO, and Nasdaq Self Help Declarations/Revocations. Additionally, the product gives firms an ability to view their TRF ISO and potential trade-through violations relative to the rest of the industry.

The fee for this product will be a \$1,000/market maker participant identifier/month subscription fee, which Nasdaq believes fairly reflects the value of this product. Use of the Reg Recon Service is voluntary and available only to Nasdaq member firms and the subscription fees will be imposed on all purchasers equally. The proposed fees will cover the costs associated with establishing the service, responding to customer requests, configuring Nasdaq’s systems, programming to user specifications, and administering the service, among other things. Large firms’ order management systems are offering this product at a much higher price, but they have the ability to charge a significant amount more than Nasdaq since firms potentially will need to route to other market centers to comply with the rule and the order management system will have all order information for every market center, not just the TRF data.

The Service is responsive to the requests of market participants seeking to augment their order management system’s solutions, as well as provide a back-up to those solutions, and for smaller firms with less sophisticated trading systems/environments. Nasdaq believes that the product is reasonably priced in light of the amount of quote data that must be processed coupled with the support required to assist firms in understanding the product and, in turn, Reg NMS.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general and with Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Use of the Reg Recon Service is voluntary and is responsive to the requests of market participants seeking to augment their order management system's solutions, as well as provide a back-up to those solutions, and for smaller firms with less sophisticated trading systems/environments.

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 amended.

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 proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

Normally, a proposed rule change filed under Rule 19b-4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹¹ 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 set forth in Rule 19b-4(f)(6)(iii) under the Act.¹² The Commission believes that the earlier operative date is consistent with the protection of investors and the public interest because the proposed rule change permits the Exchange to provide without further delay a voluntary service that responds to the requests of market participants seeking to augment their order management system's solutions. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.¹³

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6). 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 Commission notes that Nasdaq has satisfied the five-day pre-filing notice requirement.

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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.¹⁴

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-2007-081 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-2007-081. 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

¹⁴ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on October 15, 2007, the date on which Nasdaq filed Amendment No.1. See 15 U.S.C. 78s(b)(3)(C).

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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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 available publicly. All submissions should refer to File Number SR-NASDAQ-2007-081 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.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).