

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61787; File No. SR-NASDAQ-2010-015)

March 26, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change to Apply Retroactively a Correction of a Drafting Error in Rule 7018

I. Introduction

On January 26, 2010, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change that would apply retroactively, to the period from July 24, 2009 through January 25, 2010, the correction made by SR-NASDAQ-2010-014<sup>3</sup> of a “typographical error”<sup>4</sup> formerly in Rule 7018.

The proposed rule change was published for comment in the Federal Register on February 23, 2010.<sup>5</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

In August 2009, Nasdaq filed SR-NASDAQ-2009-072,<sup>6</sup> to make clerical changes designed to streamline and simplify Rule 7018. In the “Purpose” section of the proposed rule change, Nasdaq stated “[n]one of the clerical changes will modify any fee assessed or credit

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 61515 (February 12, 2010), 75 FR 7642 (February 22, 2010).

<sup>4</sup> The Commission notes that the “typographical error” is more accurately characterized as a drafting error by Nasdaq that resulted in the omission and misplacement of rule language.

<sup>5</sup> See Securities Exchange Act Release No. 61524 (February 16, 2010), 75 FR 8160.

<sup>6</sup> Securities Exchange Act Release No. 60430 (August 4, 2009), 74 FR 40279 (August 11, 2009).

earned for trading on the NASDAQ Market Center.” However, due to a drafting error, Exhibit 5 to the proposed rule change (which sets out the actual language of the proposed rule change) introduced changes to the fees for orders in securities listed on the New York Stock Exchange (“NYSE”) that are routed to other venues without attempting to execute in Nasdaq for the full size of the order prior to routing. Nasdaq has been billing members in accordance with the fees that were in place before it filed SR-NASDAQ-2009-072. Nasdaq filed SR-NASDAQ-2010-014<sup>7</sup> to correct the error; that proposed rule change was effective upon filing with the Commission, and changed the fees from the day it was filed (January 26, 2010) going forward. The instant proposed rule change would apply the same changes retroactively to the period from July 24, 2009 through January 25, 2010.

### 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.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and with Section 6(b)(4) of the Act,<sup>10</sup> in particular, in that it 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. The proposed rule change would allow the fee changes implemented by SR-NASDAQ-2010-014 to be applied retroactively throughout the entire period when the error was in the rule.

---

<sup>7</sup> Securities Exchange Act Release No. 61515 (February 12, 2010), 75 FR 7642 (February 22, 2010) (SR-NASDAQ-2010-014).

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

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

Additionally, the proposed rule change would conform the text of the rule to the description of the proposed rule change that Nasdaq provided in SR-NASDAQ-2009-072, thereby eliminating any confusion as to the appropriate fees and Nasdaq's intentions.

In approving the proposed rule change, the Commission notes that it received no comments on the proposal, and that Nasdaq stated it "has been billing members in accordance with the correct fees since the effective date of SR-NASDAQ-2009-072 on July 24, 2009, and accordingly believes that all of its members are cognizant of the correct fee."

The Commission urges Nasdaq to carefully proofread future proposed rule changes before filing them with the Commission, to minimize errors and the additional proposed rule changes required to correct them.

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>11</sup>, that the

---

<sup>11</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-NASDAQ-2010-015), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Florence E. Harmon  
Deputy Secretary

---

<sup>12</sup> 17 CFR 200.30-3(a)(12).