

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58666; File No. SR-NASDAQ-2008-018)

September 26, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto to Remove from Rule 7019 the Fees for Receiving Index Values

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 March 12, 2008, 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 by Nasdaq. On September 5, 2008, Nasdaq filed Amendment No. 1 to the proposed rule change. On September 25, 2008, Nasdaq filed Amendment No. 2 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 is proposing to remove from the Nasdaq Rule 7019 fees for receiving index values. Nasdaq’s rule book contains rules pertaining to “facilities” of the exchange, and indexes are not such “facilities” within the meaning of the Act.

The text of the proposed rule change to Rule 7019 is below. Proposed deletions are in brackets.

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7019. Market Data Distributor Fees

(a) No change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(b) The charge to be paid by Distributors of the following Nasdaq Market Center real time data feeds shall be:

	Monthly Direct Access Fee	Monthly Internal Distributor Fee	Monthly External Distributor Fee
Issue Specific Data			
Dynamic Intraday
TotalView	\$2,000	\$1,000	\$2,500
OpenView	\$1,000	\$500	\$1,250
[Market Summary Statistics]			
[Intraday]	[\$500]	[\$50]	[\$1,500]
[Real Time Index]			

(c) and (d) No change

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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 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 designs and licenses to financial product issuers and sponsors and to other interested parties a number of Nasdaq-proprietary securities indexes. Nasdaq also calculates the values of Nasdaq and, on occasion, non-Nasdaq indexes and disseminates such values to subscribers. The Nasdaq indexes include broad market indexes, such as the Nasdaq-100 and the

Nasdaq Composite, sectoral indexes, such as Nasdaq Biotechnology, Nasdaq Insurance or Nasdaq Transportation, international indexes, such as Nasdaq Israel and Nasdaq China, and custom co-branded indexes, such as Nasdaq Clean Edge. Some of these indexes include only those components that are listed on Nasdaq, while others may also include components listed on other exchanges.

All market participants, both members and non-members of Nasdaq, are currently able to subscribe to Nasdaq's index dissemination service. Subscribers currently also receive intra-day asset values as well as certain once-a-day information for exchange traded funds ("ETFs").³ The intra-day asset values for ETFs that Nasdaq disseminates can be calculated by Nasdaq itself (subject to negotiating an appropriate agreement on commercial terms with the ETF sponsor) or by a third party.

Nasdaq believes that the business of creating and licensing indexes is highly competitive. Some of Nasdaq's prominent competitors are Dow Jones, Russell, Standard & Poor, as well as many others. It is Nasdaq's understanding that license fees that Nasdaq and its competitors charge for the actual use of their respective indexes in connection with the creation or trading of financial products linked to such indexes have never been subject to Commission oversight. However, Nasdaq's former corporate parent, then known as the National Association of Securities Dealers, Inc. ("NASD"), historically included in its rule book charges for distributing

³ Nasdaq is submitting to the Commission in connection with this filing the list of indexes and ETFs that are currently (as of the date of this filing) included in the Nasdaq index dissemination service. This list changes frequently, and an up-to-date list is available at: <http://www.nasdaqtrader.com/content/productsservices/dataproducts/realtimeindexes/indexsymbols.pdf>.

index values,⁴ and this practice carried over into the Nasdaq rule book when Nasdaq was registered as a national securities exchange in 2006.⁵

Nasdaq believes that by calculating and distributing index and ETF values, it provides information regarding a non-exchange activity.⁶ As such, Nasdaq believes that its index dissemination service is not a facility of a national securities exchange within the meaning of the Act and that it is not required under Section 19(b)(1) of the Act⁷ and Rule 19b-4 thereunder⁸ to file rules regarding the applicable charges.

If, at a later date, Nasdaq proposed to modify the manner in which it disseminates index values causing this service to fit within the definition of a facility of the exchange, or if Nasdaq

⁴ See, e.g., Securities Exchange Act Release No. 34-45685 (Apr. 3, 2002) (approving SR-NASD-2001-86, modifying the index distribution fee, which was included in the NASD Manual).

⁵ See Securities Exchange Act Release No. 34-53128 (Jan. 13, 2006) (approval of Nasdaq's application for registration as a national securities exchange).

⁶ The information used in calculating the values of the Nasdaq indexes is made publicly available, and Nasdaq's status as a self-regulatory organization gives it no special advantage over any other entity that may wish to calculate the values of these indexes. Generally, the "inputs" required to make the calculation include last sale prices and total shares outstanding for the underlying securities, and the weighting of each underlying security in the index. The Nasdaq systems that calculate index values receive the price data in the same manner as other subscribers to the relevant data streams (i.e., from the relevant "Tapes"). The total shares outstanding data are derived from the companies' SEC public filings, from the notifications that Nasdaq-listed issuers are required to submit to Nasdaq in the event of 5% or greater changes in the total shares outstanding, and on occasion from information that issuers may voluntarily communicate to Nasdaq. (In all cases, the current total shares outstanding figures are posted on a Nasdaq website, and any changes to the posted figures are reflected on the website no later than when such changes become effective for index calculations.) Component weightings are normally determined by index owners using their proprietary algorithms. In the case of Nasdaq-owned indexes, component weightings are determined daily by Nasdaq (in its capacity as the index owner). Nasdaq makes these weightings available to the public for purchase.

⁷ 15 U.S.C. 78s(b)(1).

⁸ 17 CFR 240.19b-4.

proposed to tie the fees that distributors pay for receiving index values to fees for or usage of exchange services,⁹ Nasdaq would file a proposed rule change with the Commission.¹⁰

2. Statutory Basis

Nasdaq believes that its index dissemination service is not a facility of a national securities exchange within the meaning of the Act and the terms of this service are not rules that must be filed with the Commission under Section 19(b)(1) of the Act¹¹ and Rule 19b-4 thereunder.¹² Therefore, removing the applicable provisions from the Nasdaq rule book would be consistent with the provisions of Section 6(b) of the Act.¹³

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds

⁹ Nasdaq does not currently tie the fees that distributors pay for receiving index values to fees for or usage of exchange services. Exchange services include, for example, listing and trading.

¹⁰ See Securities Exchange Act Release No. 56237 (Aug. 9, 2007), 72 FR 46118 (Aug. 16, 2007) (approving removal from exchange rule book of provisions governing operation of the ACES system).

¹¹ 15 U.S.C. 78s(b)(1).

¹² 17 CFR 240.19b-4.

¹³ 15 U.S.C. 78f(b).

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization 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-2008-018 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2008-018. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-2008-018 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon
Acting Secretary

¹⁴ 17 CFR 200.30-3(a)(12).