

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58752; File No. SR-NASDAQ-2008-080)

October 8, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees for Access to the Clearly Erroneous Functionality of the Nasdaq Regulation Reconnaissance Service.

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 October 6, 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. Pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing.

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 establish fees for access to the Clearly Erroneous functionality provided by the Nasdaq Regulation Reconnaissance Service.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 C.F.R. 240.19b-4(f)(2).

The text of the proposed rule change is below. Proposed new language is underlined.⁵

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7041. Nasdaq Regulation Reconnaissance Service

(a) No change.

(b) The Clearly Erroneous Viewer will be available to non-Regulation Reconnaissance Service subscribers for a subscription fee of \$100 per MPID, per month.

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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 proposes to establish fees for limited access to the Clearly Erroneous Module of the Nasdaq Regulation Reconnaissance Service ("Reg Recon"). Reg Recon is currently available as an add-on to the Nasdaq Workstation and Weblink ACT 2.0. Reg Recon includes a Clearly Erroneous Module, which gives a subscribing firm real-time alerts when the firm has potentially erroneous trades.

⁵ Changes are marked to the rule text that appears in the electronic NASDAQ Manual found at <http://nasdaqomx.cchwallstreet.com>.

The Clearly Erroneous Module also offers Reg Recon subscribers an automated filing functionality, whereby a user can select their erroneous trades and electronically file them with Nasdaq's Market Watch Department in lieu of locating the form on the Nasdaq website and manually entering in all of the required information.

Nasdaq proposes to offer access to the Clearly Erroneous Module through the Clearly Erroneous Viewer, which will provide users with the same functionality as the Clearly Erroneous Module without having to pay for the full suite of functionality provided by the Nasdaq Workstation and Weblink ACT 2.0. Regulation NMS monitoring is typically conducted by a small number of people within a firm's compliance group, and often requires look-ups in ACT and/or Time and Sales, both of which are offered by Nasdaq Workstation and Weblink ACT 2.0. Responsibility for a firm's clearly erroneous filings, however, is typically spread out across a much larger group of individuals at a firm. These individuals do not need the additional functionality that is provided by the Nasdaq Workstation or Weblink 2.0, yet to access the Clearly Erroneous Module firms must pay the full amount for the Nasdaq Workstation or Weblink ACT 2.0, currently \$475 per user, per month and \$375 per month, respectively⁶. As such, Nasdaq is proposing to offer the Clearly Erroneous viewer for a subscription fee of \$100 per user, per month. The proposed fee 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.

2. Statutory Basis

⁶ Weblink users with up to an average of twenty transactions per day each month are charged a fee of \$200 per month.

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)(4) of the Act,⁸ 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 the Nasdaq operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. Use of the Clearly Erroneous Viewer is voluntary 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.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and subparagraph (f)(2) of Rule 19b-4 thereunder.¹⁰ At any

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

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

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-2008-080 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-2008-080. 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

¹⁰ 17 CFR 240.19b-4(f)(2).

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 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 available publicly. All submissions should refer to File Number SR-NASDAQ-2008-080 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.¹¹

Florence E. Harmon
Acting Secretary

¹¹ 17 CFR 200.30-3(a)(12).