

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55620; File No. SR-NASDAQ-2007-039]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify the Distributor Fee for Nasdaq Index Weighting Information

April 12, 2007.

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> notice is hereby given that on April 4, 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 substantially prepared by Nasdaq. 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 modify distributor fees for Nasdaq Index Weighting Information. The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and [www.nasdaq.com](http://www.nasdaq.com).

#### 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 had 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

The purpose of the proposed rule change is to modify distributor fees for Nasdaq Index Weighting Information.

Nasdaq disseminates Nasdaq Index Weighting data via the Nasdaq Index Dissemination Service ("NIDS") data feed and via the Nasdaq Trader Web site. Nasdaq Index Weighting reports include component and weighting information for a number of Nasdaq indices on a daily basis. Market participants pay a fee to obtain a license to distribute the Index Weighting Information to end users. The fees are based on the number of end users (whether internal or external to the organization) and the frequency of the distribution. The fees permitting distribution with unlimited frequency range from \$1000 for the right to distribute the data to 1-500 subscribers up to \$5,000 for the right to distribute to 10,000+ subscribers. The fees permitting distribution of data once a month, quarter, or year range from \$500 for the right to distribute data to 1-500 subscribers to \$1,000 for the right to distribute to 10,000+ subscribers.

The proposed rule change would decrease the distributor fee for the lowest pricing tier, 1-500 subscribers, from \$1,000 to \$300 in the case of unlimited frequency of distribution, and from \$500 to \$275 in the case of distribution once a month, quarter, or year. Although the fee schedules provide for multiple tiered pricing based on the number of end users, the lowest pricing tier is the most common option selected by existing customers. The proposed fee would apply to distributors receiving the data via any delivery platform, including via NIDS or the Nasdaq Trader Web site. Distributors receiving the data via more than one delivery platform would be charged only once. The remaining tiers of the fee schedules (*i.e.*, fees for 501-999, 1,000-4,999, 5,000-9,999, and 10,000+ subscribers) will not change under this proposal.

Nasdaq believes that the fee decrease would make this data report more attractive to vendors who may already be receiving and distributing other Nasdaq data feeds, thereby promoting the broader dissemination of Index Weighting Information.

##### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the

provisions of Section 6 of the Act,<sup>3</sup> in general, and with Section 6(b)(4) of the Act,<sup>4</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 the Nasdaq operates or controls, and it does not unfairly discriminate between customers, issuers, brokers, or dealers. The proposed rule change reflects demand patterns for Index Weighting Information and is designed to provide an equitable allocation of fees across the customer base of Nasdaq market data distributors. Nasdaq further believes that this rule change would encourage the broader distribution of the Index Weighting data, thus improving transparency and thereby benefiting the investing public.

#### 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 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 such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq 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:

<sup>3</sup> 15 U.S.C. 78f.

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

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

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

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

*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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2007-039 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-NASDAQ-2007-039. 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. 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-2007-039 and should be submitted on or before May 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-55618; File No. SR-NYSE-2007-32]

**Self-Regulatory Organizations; New York Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, Relating to Rule 15B(T) (Protected Bids and Offers of Away Markets)**

April 11, 2007.

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> notice is hereby given that on March 22, 2007, the New York Stock Exchange, LLC ("NYSE" 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 substantially prepared by the NYSE. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. On April 9, 2007, the Exchange filed Amendment No. 1 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**

The Exchange proposes to rescind NYSE Rule 15B(T), a temporary rule which describes the obligations of Exchange member organizations when sending Intermarket Sweep Orders ("ISOs") to the Exchange prior to March 5, 2007, the Trading Phase Date of Regulation NMS under the Act<sup>5</sup> ("Reg NMS"). The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at <http://www.nyse.com>, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange 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. The Exchange 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

On January 26, 2007, the Exchange adopted NYSE Rule 15B(T),<sup>6</sup> which requires member organizations that send ISOs to the Exchange prior to March 5, 2007, the Trading Phase Date of Reg. NMS, to simultaneously send an ISO (or comparable order) for the full displayed size of the top of the book of every other ITS participant displaying a better-priced protected quotation.<sup>7</sup>

Given that ISO requirements are contained in NYSE Rule 13 now that the Trading Phase Date has passed, the Exchange, through this filing, seeks to delete NYSE Rule 15B(T) from Exchange Rules in order to eliminate potential confusion regarding the procedures for member organizations when sending ISOs to the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5) of the Act<sup>8</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>6</sup> See Securities Exchange Act Release No. 55210 (January 31, 2007), 72 FR 5777 (February 7, 2007) (SR-NYSE-2007-08).

<sup>7</sup> See telephone conversation between Craig Hammond, Managing Director, Office of General Counsel, NYSE, and Christopher W. Chow, Special Counsel, Division of Market Regulation Commission, on April 11, 2007.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> 17 CFR 242.600 *et seq.*

<sup>5</sup> 17 CFR 200.30-3(a)(12).