

In addition, the Commission notes that the Exchange's existing rules applicable to position and exercise limits for full-value broad-based index options are used to calculate the position and exercise limits for reduced-value options. The Exchange proposes to amend its rules for those specified broad-based index options that do not have position and exercise limits to specifically state that there will not be position and exercise limits on the reduced-value options on those same broad-based index options. The Exchange also proposes to amend its rules to state that reduced-value options will be aggregated with full-value options when calculating reporting requirements.

The Exchange also is making technical corrections to its rules to reflect that there are no position and exercise limits for XEO options. The Commission notes that position and exercise limits for XEO options were previously eliminated and CBOE is simply updating its rules to reflect this fact.¹⁶

The Commission finds good cause, consistent with section 19(b)(2) of the Act,¹⁷ to grant accelerated approval of the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes, as stated above, that RUT has similar characteristics to the other broad-based indexes for which position and exercise limits have been eliminated for options on those indexes. Specifically, the Commission believes that the enormous market capitalization of RUT and the deep, liquid market for the underlying component securities significantly reduce concerns regarding market manipulation or disruption in the underlying market. The Commission received no comments regarding the proposed rule change and the Commission believes that the proposed rule change raises no new regulatory issues of material concern. The Commission believes that accelerating approval of the proposed rule change will allow CBOE members and their customers greater hedging and investment opportunities with respect to RUT options without further delay.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-CBOE-2007-

79), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56345; File No. SR-NASDAQ-2007-058]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Step-Outs and Transfers of Sales Fees

August 31, 2007.

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 June 7, 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 prepared primarily by Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6)⁴ thereunder so that the proposal was effective upon filing with the Commission. 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 offer functionality to allow Nasdaq members to process (i) step-outs and (ii) transfers of Rule 7002 Sales Fees and similar fees of other self-regulatory organizations ("SROs") and proposes to establish fees for these services.

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 is proposing to allow Nasdaq members to process step-outs and transfers of Rule 7002 Sales Fees and similar fees of other self-regulatory organizations ("SROs") through the Nasdaq Exchange and is proposing to establish fees for these services.

Step-Outs

A step-out is a mechanism for transferring a broker's position in a security in a manner that does not constitute a trade. In one form of a step-out, a party to a previously executed trade transfers its position in the trade to one or more other parties. For example, a broker that buys a large block of stock on behalf of several broker-dealer customers may "step-out" of the trade to transfer and allocate its position to the customers. Thus, under this form of a step-out, there is a single trade on a securities market, coupled with an arrangement between one of the trade counterparties and one or more additional parties to shift the settlement obligations for the trade to the additional parties. In another form of step-out, a broker uses a clearing-only report to transfer its position from an account at one clearing broker to an account at another clearing broker for its own internal accounting purposes.

Historically, when The Nasdaq Stock Market, Inc. ("Nasdaq Inc.") operated as a facility of the National Association of Securities Dealers ("NASD"), step-outs were effected through non-tape, clearing-only trade report entries into the Automated Confirmation Transaction Service ("ACT"). Now that Nasdaq is fully operational as a national securities exchange, ACT serves both as the mechanism for reporting trades that are automatically executed through the Nasdaq Market Center to the tape and has also been licensed for use by the NASD/NASDAQ Trade Reporting Facility ("NASD/NASDAQ TRF") as a technology platform for collecting over-the-counter ("OTC") trade reports and reporting them to the tape. In this dual role, ACT continues to accept step-out entries regardless of whether the underlying trade occurred on the

¹⁶ See XEO Approval Order, *supra* note 9; see also SPX/OEX/DJX Permanent Approval Order, *supra* note 4.

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

Nasdaq Market Center or was an OTC trade reported to the NASD/NASDAQ TRF.

Since step-outs are not trades, they are not an inherent OTC activity. Rather, an exchange may appropriately offer step-out capability to its members as a value-added service. Nasdaq notes that the New York Stock Exchange ("NYSE") and the American Stock Exchange offer step-out functionality to their members. Nasdaq is proposing to allow step-out capability under its rules with respect to any trade to which a Nasdaq member is a party regardless of the market on which the trade was executed.⁵

However, the parties to a step-out under Nasdaq rules must all be Nasdaq members and must be parties to an agreement such as the NASD's new Uniform Trade Reporting Facility Service Bureau/Executing Broker Agreement under which the broker transferring the position has received authorization from the transferee broker to act on its behalf. Each party to a step-out under Nasdaq rules will pay \$0.029. If the parties to the step-out also transfer the obligation to pay a Sales Fee or similar fee, the party transferring the fee will also pay the fee transfer charge discussed below.

Step-out reporting would also continue to be permitted by NASD under the NASD/NASDAQ TRF framework. However, it is Nasdaq's understanding that NASD expects to submit a proposed rule change to the Commission in the near future under which the NASD/NASDAQ TRF would be available for step-outs only when the original trade was reported to it. By contrast, Nasdaq members could use the Nasdaq exchange to effect step-outs from trades executed in any venue, including trades reported to a trade reporting facility.

Transfers of Sales Fees

Under Rule 7002, Nasdaq charges a sales fee to its members to defray the costs of the fees that it must pay to the Commission under Section 31(b) of the Act.⁶ Other self-regulatory organizations charge similar fees. Nasdaq is proposing to adopt rules under which a member may transfer the obligation to pay a sales fee or similar fee associated with a particular trade to another member either at the time of the step-out or at

some other time.⁷ ACT has historically been used for transfers of the obligation to pay the fees of other SROs, including NASD's transaction fee under Schedule A, Section 3 of the NASD By-Laws.⁸ Since Nasdaq became operational as an exchange, ACT has also been used for transfers of sales fee obligations but under the framework of the NASD/NASDAQ TRF. Nasdaq believes that transfers of obligations to pay sales fees and similar fees may appropriately be conducted pursuant to Nasdaq's rules as an exchange since they are not inherently an OTC function.

Accordingly, the proposed rule recognizes that ACT may be used to transfer the obligation to pay sales fees and similar fees if the clearing firms for the trades to which the fees relate are party to an agreement authorizing such transfers between themselves and/or the firms on whose behalf they clear trades. Nasdaq will impose a charge equal to 10% of the transferred fee with a minimum charge of \$0.025 and a maximum charge of \$0.25. The fee would be paid by the transferring party. An NASD member may continue to use ACT to transfer the obligation to pay an NASD transaction fee under the NASD/NASDAQ TRF framework. However, such action would have to be performed pursuant to NASD rules. NASD has informed Nasdaq that it expects to file a proposed rule change to permit the transfer of the obligation to pay NASD fees under that framework.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act⁹ and in particular with Sections 6(b)(4) of the Act¹⁰ because the proposal 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. Nasdaq believes that offering step-out and fee transfer functionality benefits its members by enhancing the efficiency of their post-trade operations. Nasdaq's proposed fees are reasonable and are comparable to Nasdaq Inc.'s prior fees for non-tape submissions to ACT. Nasdaq also notes that its proposed fee step-out fee of \$0.029 per side compares

favorably to NYSE's published step-out fee of \$0.25 per trade.

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 on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder¹² because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate. Nasdaq believes that the filing may appropriately be designated as "non-controversial" because Nasdaq is proposing a clearer framework for offering value-added services that have consistently been offered through Nasdaq's ACT system. Nasdaq also notes that the NYSE and Amex currently offer their members comparable capabilities for conducting step-outs. 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.

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

⁵ The report of a step-out submitted to ACT pursuant to the proposed rule will be marked as a Nasdaq Exchange entry so as to clearly distinguish it from an NASD/Nasdaq TRF entry, which also is reported through ACT. The rule further stipulates that a non-tape, clearing-only submission may not be used for the purpose of reporting a trade execution.

⁶ 15 U.S.C. 78ee(b).

⁷ For example, a fee transfer may occur independent of a step-out in a situation where a party to a riskless principal transaction transfers the obligation to pay the resulting Sales Fee to its customer.

⁸ Such transfers are indirect. Thus, if Broker A sold shares on Exchange B, Broker A would pay the resulting fee to Exchange B but could impose an offsetting obligation on Broker C for reimbursement.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2007–058 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–2007–058. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at Nasdaq's principal office and on Nasdaq's Web site at http://nasdaq.complinet.com/file_store/pdf/rulebooks/NASDAQ_SR-NASDAQ-2007-058.pdf. 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–2007–058 and should be submitted on or before October 2, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–17783 Filed 9–10–07; 8:45 am]

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UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final action regarding technical and conforming amendments to federal sentencing guidelines effective November 1, 2007.

SUMMARY: On May 1, 2007, the Commission submitted to Congress amendments to the federal sentencing guidelines and published these amendments in the **Federal Register** on May 21, 2007. *See* 72 FR 28558. The Commission has made technical and conforming amendments, set forth in this notice, to commentary provisions related to those amendments.

DATES: The Commission has specified an effective date of November 1, 2007, for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the United States government, is authorized by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal courts. Section 994 also directs the Commission to review and revise periodically promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. *See* 28 U.S.C. 994(o), (p). Absent an affirmative disapproval by Congress within 180 days after the Commission submits its amendments, the amendments become effective on the date specified by the Commission (typically November 1 of the same calendar year). *See* 28 U.S.C. 994(p).

Unlike amendments made to sentencing guidelines, amendments to commentary may be made at any time and are not subject to congressional review. To the extent practicable, the Commission endeavors to include amendments to commentary in any submission of guideline amendments to Congress. Occasionally, however, the Commission determines that technical and conforming changes to commentary are necessary in order to execute correctly the amendments submitted to Congress. This notice sets forth technical and conforming amendments to commentary related to the amendments submitted to Congress on

May 1, 2007, that will become effective on November 1, 2007, absent congressional action to the contrary.

Authority: USSC Rules of Practice and Procedure 4.1.

Ricardo H. Hinojosa,
Chair.

Retroactive Application of Amendment 5 Submitted to Congress on May 1, 2007 (*see* 72 FR 28558; USSG App. C (Amendment 702))

1. Amendment: Section 1B1.10(c) is amended by striking “and” and by inserting “, and 702” before the period.

Reason for Amendment: Amendment 5 submitted to Congress on May 1, 2007 (*see* 72 FR 28558; USSG App. C (Amendment 702)) corrects typographical errors in subsection (b)(13)(C) of § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) and subsection (b)(1) of § 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien). As stated in the reason for amendment accompanying Amendment 5, this amendment adds Amendment 5 to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range) as an amendment that the court may consider for retroactive application.

Technical and Conforming Amendments

2. Amendment: The Commentary to § 2A3.4 captioned “Statutory Provisions” is amended by striking “Provisions” and inserting “Provision”.

Section 2A3.5(b)(1)(A), as added by Amendment 4 submitted to Congress on May 1, 2007 (*see* FR 72 28558; USSG App. C (Amendment 701)), is amended by inserting a comma after “minor”.

Chapter Two, Part D is amended in the heading by inserting “AND NARCO–TERRORISM” after “DRUGS”.

The Commentary to § 2D1.1 captioned “Application Notes”, as amended by Amendment 9 submitted to Congress on May 1, 2007 (*see* 72 FR 28558; USSG App. C (Amendment 706)), is further amended by striking subdivision (D) of Note 10 and inserting the following:

“(D) Determining Base Offense Level in Offenses Involving Cocaine Base and Other Controlled Substances.—

(i) In General.—If the offense involves cocaine base (“crack”) and one or more other controlled substance, determine the base offense level as follows:

¹³ 17 CFR 200.30–3(a)(12).