

### 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)(iii) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4<sup>13</sup> thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such 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.

Under Rule 19b-4(f)(6) of the Act,<sup>14</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date, so that proposal may take effect upon filing. The Commission believes that the proposed rule change does not raise any new regulatory issues and, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date, so that the pilot may continue without interruption.<sup>15</sup>

### 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](mailto:rule-comments@sec.gov). Please include File

Number SR-CBOE-2007-20 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-CBOE-2007-20. 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 the principal office of the CBOE. 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-CBOE-2007-20 and should be submitted on or before April 11, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55443; File No. SR-NASDAQ-2006-048]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Establish a Data Entitlement Named "Depth Feed" Consisting of Data Feeds Nasdaq TotalView and Nasdaq OpenView, and To Establish a Distribution Charge for Depth Feed

March 12, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 16, 2006, 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 substantially 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 the fee schedule for distribution of data from the Nasdaq Market Center. Specifically, Nasdaq is proposing to establish a data entitlement named "Depth Feed" consisting of two data feeds: Nasdaq TotalView and Nasdaq OpenView. Nasdaq also proposes to establish a distribution charge for Depth Feed.

The text of the proposed rule change is available at Nasdaq, [www.nasdaq.com](http://www.nasdaq.com), and the Commission's Public Reference Room.<sup>3</sup>

#### 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. 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.

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

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

<sup>3</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://www.complinet.com/nasdaq>.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> *Id.*

<sup>15</sup> For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

1. Purpose

Nasdaq offers data products that firms may purchase and redistribute either within their own organizations or to outside parties. Nasdaq assesses "distributor fees" that are designed to encourage broad distribution of the data, and to allow Nasdaq to recover the relatively high fixed costs associated with supporting connectivity and contractual relationships with distributors. Currently, Nasdaq has the following approved distributor fees in place for both TotalView and OpenView:<sup>4</sup>

- TotalView and OpenView Direct Access Fee: \$2,500 per month each;
- TotalView and OpenView Internal Distribution Fee: \$1,000 per month each;
- TotalView and OpenView External Distribution Fee: \$2,500 per month each.

Thus, for example, if a firm receives TotalView and OpenView directly from Nasdaq and distributes the data externally, the firm currently pays \$10,000 per month in distributor fees (\$2,500 for direct access to TotalView, \$2,500 for direct access to OpenView, \$2,500 to externally distribute TotalView, and \$2,500 to externally distribute OpenView).

Nasdaq proposes to combine the distribution of TotalView and OpenView data into a single entitlement for distribution purposes. Specifically, Nasdaq proposes to establish the "Depth Feed Distributor Fees," a consolidated entitlement with a pricing structure comprised of three components:

- Depth Feed Direct Access Fee: \$2,500 per month for any organization that receives an intraday Nasdaq market center depth data product directly from Nasdaq. A distributor receiving this data indirectly via a re-transmission vendor is not liable for the Direct Access Fee.
- Depth Feed Internal Distribution Fee: \$500 per month for internal distributors with distribution of TotalView and/or OpenView data to 10 or fewer subscribers, \$1,000 per month for internal distributors with distribution of TotalView and/or OpenView data to greater than 10 subscribers. As with the current Internal Distribution Fees, this fee will be applicable to any organization that receives an intraday Nasdaq market

center depth data product (either directly from Nasdaq or through a retransmission vendor) and distributes the data solely within its own organization.

- Depth Feed External Distribution Fee: \$1,000 per month for external distributors distributing TotalView and/or OpenView data to 50 or fewer subscribers; \$2,500 per month for external distributors distributing TotalView and/or OpenView data to more than 50 and less than or equal to 100 subscribers, and \$4,500 per month for external distributors distributing TotalView and/or OpenView data to more than 100 recipients. As is the case today, this fee will be applicable to any organization that receives an intraday Nasdaq market center depth data product (either directly from Nasdaq or through a retransmission vendor) and distributes the data outside its own organization.

Under the new schedule, the firm that receives TotalView directly from Nasdaq and distributes the data externally will pay a range of \$3,500–\$7,000 per month, depending upon the number of end users, a significant reduction from the currently approved fees. The only firms that would be assessed higher fees would be firms that currently distribute either TotalView or OpenView but not both, and distribute that data to more than 100 subscribers; a resulting increase of \$2,000 per month. For that incremental \$2,000 per month, those firms, of which there are currently 17, will gain the ability to distribute both NYSE-/Amex-listed and Nasdaq-listed depth information to their subscribers where they had previously provided only one of them.

An organization that receives the Nasdaq Market Center full depth data directly from Nasdaq will pay the Direct Access Fee plus the higher of either the Internal Distribution or External Distribution Fee (but not both). An organization that only receives the Nasdaq Market Center full depth data indirectly from a retransmission vendor will pay either the Internal Distribution or External Distribution fee (but not both). As with past distributor fee structures, the External Distribution Fee is higher than the Internal Distribution Fee to reflect the fact that external distributors typically have broader distribution of the data than internal distributors.

On balance, market data distributors will pay less to distribute the new consolidated Depth Feed than they pay today for distributing TotalView and OpenView. Specifically, many TotalView and OpenView distributors will receive a fee decrease, including

firms that distribute both entitlements to their external customers who pay \$10,000 monthly today but only \$5,000 monthly under the proposed rule change. Other distributors will experience no fee change, including those that distribute either TotalView or OpenView to 10 or more internal recipients.

A small number of vendors will experience a small fee increase of \$2,000—specifically, those vendors that distribute only one of the two current entitlements to more than 100 external recipients. If current distribution patterns continue, this fee increase will apply to 11 vendors. Nasdaq notes that the number of affected vendors is a small percentage of the total vendor population. Currently, over 1,500 vendors distribute Nasdaq proprietary data. Of those, 975 vendors distribute real-time data, and, of those, 160 vendors distribute full depth-of-book data. Thus, in a vendor population of over 1,500, only 11 will experience a fee increase.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable charges among the persons distributing Nasdaq depth of book information. Nasdaq further believes that this proposed rule change will encourage broader redistribution of the Nasdaq depth of book information, 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, as amended. As a general matter, the Commission has long held the view that "competition and innovation are essential to the health of the securities markets. Indeed, competition is one of the hallmarks of the national market system."<sup>7</sup> The Commission has also stated "that the notion of competition is inextricably tied with the notion of economic efficiency, and the Act seeks to encourage market behavior that promotes such efficiency, lower costs,

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (SR-NASD-99-53).

<sup>4</sup> See Securities Exchange Act Release No. 51814 (June 9, 2005), 70 FR 35151 (June 16, 2005) (SR-NASDAQ-2004-185).

and better service in the interest of investors and the general public.”<sup>8</sup>

The proposed rule change is designed to increase transparency and the efficiency of executions by enabling vendors to provide additional market data in a cost efficient manner. There is significant competition for the provision of market data to broker-dealers and other market data consumers, as well as competition for the orders that generate the data. Nasdaq fully expects its competitors to quickly respond to this proposal as they have responded to other Nasdaq data products in the past.

Moreover, market forces have shaped the market data fees that Nasdaq has charged for this product in the past and will continue to shape those fees in the future. Over time, Nasdaq has continually decreased the cost of data distribution to promote continued growth in the use of depth of book data.

#### 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 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](mailto:rule-comments@sec.gov). Please include File

No. SR-NASDAQ-2006-048 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-2006-048. 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 available publicly. All submissions should refer to File Number SR-NASDAQ-2006-048 and should be submitted on or before April 11, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55463; File No. SR-NASDAQ-2006-041]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to Proposed Rule Change as Modified by Amendment No. 1 To Modify an Aspect of the Definition of Independent Director

March 13, 2007.

#### I. Introduction

On October 3, 2006, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) 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 to modify an aspect of Nasdaq's definition of “independent director.” The proposed rule change was published for comment in the **Federal Register** on November 28, 2006.<sup>3</sup> The Commission received no comment letters on the proposal as published. On March 2, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change. The Commission is publishing notice of Amendment No. 1 to the proposed rule change and granting approval to the proposed rule change as modified by Amendment No. 1 on an accelerated basis.

#### II. Description of the Proposed Rule Change

Under current Nasdaq Rule 4200(a)(15)(B), a director of a listed issuer is generally precluded from being considered independent if that director has received more than \$60,000 in compensation from the issuer during any period of twelve consecutive months within the three years preceding the determination of independence.<sup>4</sup> The proposed rule change would raise this amount to \$100,000, the same figure specified by the New York Stock Exchange (“NYSE”) in its comparable independence standard.<sup>5</sup>

<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. 54797 (November 20, 2006), 71 FR 68855 (“Notice”).

<sup>4</sup> See Nasdaq Rule 4200(a)(15)(b).

<sup>5</sup> See Section 303A.02(b)(ii) of the NYSE Listed Company Manual. See also Amendment No. 1 to the proposed rule change.

<sup>8</sup> Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291, 41298 (July 20, 2006) (SR-NASDAQ-2006-001).

<sup>9</sup> 17 CFR 200.30-3(a)(12).