

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to Nasdaq,⁶ and, in particular, with Section 6(b)(5) of the Act.⁷

The Commission believes that the proposed rule change is reasonable and would align Nasdaq's "bright line" test with respect to a director's receipt of compensation from the issuer more closely with the equivalent rule of the NYSE. The Commission notes that, under the proposed rule change, a Nasdaq listed issuer's board would still have the responsibility to make an affirmative determination that an independent director has no relationship whatsoever with the issuer that would impair his or her independence, even when the director has passed the "bright line" test of the rule and has not accepted (and has no family member who has accepted) more than \$100,000 in compensation from the issuer during the relevant period.⁸

IV. Solicitation of Comments Concerning the Proposed Rule Change

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change, 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-2006-041 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-2006-041. 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 the Exchange. 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-2006-041 and should be submitted on or before April 11, 2007.

V. Accelerated Approval of the Proposed Rule Change

Nasdaq has requested that the Commission approve the proposed rule change as modified by Amendment No. 1 on an accelerated basis.⁹ Pursuant to Section 19(b)(2) of the Act,¹⁰ the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

The Commission hereby finds good cause to approve the proposed rule change as amended by Amendment No. 1 on an accelerated basis. The proposed rule change as published in the Notice would have raised the amount of compensation that precludes a director from being an "independent director" from \$60,000 to \$120,000. Amendment No. 1 established the compensation threshold at \$100,000. The Commission believes that this change raises no new regulatory issues and aligns Nasdaq's rule with the equivalent rule of the NYSE. The Commission believes that no reasonable purpose would be served by delaying implementation of the proposal.

Accordingly, pursuant to Section 19(b)(2) of the Act,¹¹ the Commission

finds good cause to approve the proposed rule change as modified by Amendment No. 1 prior to the 30th day after notice in the **Federal Register**.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (File No. SR-NASDAQ-2006-041), as modified by Amendment No. 1, be, and it hereby is, approved.

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

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55457; File No. SR-NASDAQ-2006-064]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto To Modify the Fee for Connecting to a Nasdaq Data Center Over the Internet

March 13, 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 December 22, 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 substantially prepared by Nasdaq. On January 19, 2007, Nasdaq submitted Amendment No. 1 to the proposed rule change. On February 22, 2007, Nasdaq submitted Amendment No. 2 to the proposed rule change.³ 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 proposes to amend Rule 7034 to modify the fee for connecting to a Nasdaq data center over the Internet. The text of the proposed rule change is

¹² *Id.*

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 2 replaced and superseded the original filing and Amendment No. 1 in their entirety.

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

⁸ See Nasdaq Rule 4200(a)(15) and IM-4200—"Definition of Independence." See also Notice, *supra* note 3, at note 8.

⁹ See Amendment No. 1.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ *Id.*

available at Nasdaq, the Commission's Public Reference Room, and <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 this filing is to change the fee that Nasdaq charges for an Internet port used in the delivery of market data (Internet ports are currently available to connect to Nasdaq systems via the INET protocols) and to make certain conforming and clerical changes in the text of Nasdaq Rule 7034, which sets out charges for Nasdaq connectivity via the INET protocols.

Following the recently completed consolidation of Nasdaq's three order books and corresponding matching engines—INET, Brut, and SuperMontage—into a single book ("SingleBook") within the Nasdaq Market Center ("NMC"), Nasdaq users have retained the ability to connect with the NMC using the legacy access protocols of all three systems. Access to the NMC via secure Internet connectivity is one of several options available to INET protocol users both for entering orders and for receiving market data. (The number of customers currently using an Internet port to receive market data is relatively small. Legacy SuperMontage and Brut protocols do not currently include Internet access.) Other NMC connectivity options include extranet connectivity, where a user contracts directly with a third-party extranet provider, and private line connectivity, where a user leases a circuit directly from a third-party provider.

Today, Nasdaq charges INET protocol users an additional \$200 (in addition to the established charges for port pairs) for each port used to connect to a Nasdaq data center over the Internet because making such ports available

requires Nasdaq to procure and maintain appropriate telecommunications circuits connecting its data centers to the points-of-presence of an Internet service provider. By contrast, in the case of extranet and private circuit connections, Nasdaq is not responsible for the outside telecommunications circuits.

Since the introduction of Nasdaq's SingleBook, the volume of market data being delivered from Nasdaq to subscribers has increased from a peak of approximately 5Mbs at the end of October of 2006 to a peak of approximately 25Mbs as of the date of this filing. Consequently, in order to continue to adequately support Internet market data connections, Nasdaq expanded its available Internet bandwidth. In light of the expanded Internet bandwidth requirements, Nasdaq proposes to increase its Internet port fee from \$200 to \$600 per Internet port that is used to deliver market data. The additional Internet port fee with respect to Internet ports used for order entry will remain unchanged at the current \$200 level.

The proposed rule change also eliminates from the rule text references to the locations of data centers (because the relevant fees will not vary based on data center location) and it eliminates the reference to and pricing for Instinet Portal (a product now available from INET's former owner, Instinet, which INET was supporting on a transitional basis). Finally, the proposed rule change makes a clerical correction to the currently incomplete reference to SR-NASDAQ-2006-024 in the existing rule text.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Sections 6(b)(4) of the Act,⁵ in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using any facility or system which Nasdaq operates or controls.

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:

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-2006-064 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-2006-064. 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

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4).

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-2006-064 and should be submitted on or before April 11, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55461; File No. SR-NASDAQ-2007-017]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for Nasdaq Members Using the Nasdaq Market Center

March 13, 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 February 28, 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. Nasdaq has filed the proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal 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 modify the pricing for Nasdaq members using the

Nasdaq Market Center. Nasdaq will implement this rule change on March 1, 2007. The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and <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 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

This filing modifies the pricing schedule for trading securities through the Nasdaq Market Center. The changes reflect (i) The increase in volumes traded through the Nasdaq Market Center as a result of Nasdaq beginning to trade non-Nasdaq exchange-listed securities through the Nasdaq Market Center as of February 12, 2007, and (ii) responses to the competitive environment in which Nasdaq operates. Specifically, because much of the volume in non-Nasdaq securities that had formerly traded through the NASD ITS/CAES System has moved to the Nasdaq Market Center, the proposed rule change deletes language under which Nasdaq considered a member's volume in ITS/CAES in determining its fees for using the Nasdaq Market Center. Similarly, Nasdaq is modifying its existing charge for reporting transactions executed through the Nasdaq Market Center to reflect the increase in the volume of the Nasdaq Market Center occasioned by its beginning to trade non-Nasdaq securities. Currently, the \$0.029 per side fee applies to members with an average daily volume during a month of less than 10,000 transaction reports; the threshold is being raised to 15,000 transaction reports.

Nasdaq is also modifying its fees for routing to the New York Stock Exchange LLC ("NYSE") to reflect an NYSE proposal to charge \$0.0025 per share for routing orders to other markets.⁵ When

Nasdaq routes an order to NYSE and is charged this fee by NYSE, Nasdaq proposes to pass the fee on to its members on a direct basis. Finally, in order to ensure that Nasdaq's overall fees remain competitive, Nasdaq is lowering its lowest fee for removing liquidity and/or routing from \$0.0027 per share executed to \$0.0026. The fee is charged to members with an average daily volume through the Nasdaq Market Center in all securities during the month of (i) More than 35 million shares of liquidity provided, and (ii) more than 55 million shares of liquidity accessed and/or routed; or members with an average daily volume through the Nasdaq Market Center in all securities during the month of (i) More than 25 million shares of liquidity provided, and (ii) more than 65 million shares of liquidity accessed and/or routed. Members with lower volumes pay \$0.0028 or \$0.003 per share executed, depending on their volume levels.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Sections 6(b)(4) of the Act,⁷ in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using any facility or system which Nasdaq operates or controls. Nasdaq believes that the fees reflect the fact that Nasdaq has begun to trade non-Nasdaq exchange-listed securities through the Nasdaq Market Center, and also reflect fee changes by Nasdaq's competitors and the overall competitive environment in which Nasdaq operates.

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.

⁶ 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).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See File No. SR-NYSE-2007-18 (February 22, 2007).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).