

NASDAQ Updates Processing Fees for Clearly Erroneous Complaints, Effective March 3, 2008



Please Route To: Head Traders; Technical Contacts; Compliance Officers

What you need to know:

- In response to customer feedback from [Regulatory Alert #2008-004](#), NASDAQ has updated its process for charging fees for NASDAQ members who file more than two unsuccessful clearly erroneous complaints during a calendar month, effective **Monday, March 3, 2008**, pending filing with the Securities and Exchange Commission (SEC).
 - Each security listed in a filing is treated as a separate complaint for purposes of this fee.
 - An unsuccessful complaint is one in which NASDAQ does not break any of the trades included in that complaint.
- Following the second unsuccessful complaint, the member shall be assessed a fee of \$250.00 for each additional unsuccessful complaint.
- No fee shall be assessed to a member for filing two or fewer unsuccessful clearly erroneous complaints during a calendar month.

Who you should contact:

NASDAQ MarketWatch at 800.211.4953 or 301.978.8501.

What is changing?

In response to customer feedback from [Regulatory Alert #2008-004](#), NASDAQ® has updated its process for charging fees for NASDAQ members who file more than two unsuccessful clearly erroneous complaints during a calendar month, effective **Monday, March 3, 2008**, pending filing with the Securities and Exchange Commission (SEC). An unsuccessful complaint is one in which NASDAQ does not break any of the trades included in that complaint. The member shall be assessed a fee of \$250.00 for each additional unsuccessful request filed thereafter during the calendar month.

No fee shall be assessed to a member for filing two or fewer unsuccessful clearly erroneous requests during a calendar month. Likewise, fees will not be assessed for requests that are:

- Successful in that NASDAQ breaks at least some of the trades in the security filed on.
- Untimely as filed under the parameters of [Rule 11890\(a\)\(2\)\(A\)](#).
- Withdrawn by the requestor within five minutes of filing and before NASDAQ has performed any substantial work on the request.
- Adjudicated by NASDAQ on its own motion under [Rule 11890\(b\)](#).

If NASDAQ breaks even one trade in a security filed on, there is no fee for the filing with respect to that security. Likewise, the request to adjudicate that security does not count towards the two unsuccessful filing calculation. The fee is calculated on a per-security basis even if there are multiple securities included in the firm's clearly erroneous filing.

For example, if a firm files on trades in three securities and NASDAQ breaks trades in one of the three, NASDAQ would consider the firm to have filed two unsuccessful complaints and one successful complaint. Only the two unsuccessful complaints would be counted for purposes of the fee.

A member is defined by each unique broker Web CRD Number. All MPIDs associated with that Web CRD Number shall be included when calculating the number of unsuccessful clearly erroneous complaints for that member during the calendar month.

Why is NASDAQ charging fees?

While NASDAQ fully believes in providing trade dispute resolution and preventing erroneous trades from occurring, processing each request requires significant time and resources. The number of complaints filed has significantly increased over the last few years:

- In 2005, 2006 and 2007, NASDAQ processed 841, 3,859 and 5,675 clearly erroneous complaints requests, respectively.
- There has also been a significant increase in the number of complaints involving trades routed to or from other market centers, further increasing the complexity of processing filings.

Does NASDAQ provide guidance for firms to use when submitting a Clearly Erroneous complaint?

To guide firms through the adjudication process, NASDAQ has posted [Clearly Erroneous Guidance](#) for filing and numeric trade break thresholds to ensure firms have a reasonable expectation as to the NASDAQ's official decision.

Firms should use this guidance to help determine whether a filing may be appropriate when reviewing losses incurred and the potential application of the fee when the firm's filing threshold has been exceeded.

Why does the fee apply only to unsuccessful complaints?

NASDAQ has issued clear [guidance](#) on which trades are likely to be broken through the clearly erroneous process. NASDAQ wants to incentivize firms to review this guidance and consider seriously whether a clearly erroneous filing is appropriate. NASDAQ will not charge for the first two unsuccessful complaints each month to cover close calls where news or other factors might result in NASDAQ not breaking trades that otherwise meet the numerical thresholds for trade breaks.

What happens if I disagree with the decision?

[Rule 11890](#) offers a process for members to appeal a decision by a NASDAQ officer. The appeal is heard by the Market Operations Review Committee (MORC), a panel of independent persons who are not employees of NASDAQ and who have no economic interest in the trades or the assessment of the fee. If the MORC reverses the officer's decision and breaks the trade, NASDAQ will not assess a fee and the filing will not count towards the monthly calculation of unsuccessful clearly erroneous complaints.

Where can I get additional information?

- NASDAQ MarketWatch at 800.211.4953 or 301.978.8501.
- Contact [NASDAQ Market Sales](#) at 800.846.0477.

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