

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49872; File No. SR-NASD-2004-075)

June 16, 2004

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 There to Eliminate Certain Transaction Charges for ITS Securities

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 April 29, 2004, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“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 by Nasdaq. Nasdaq has filed this proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. On June 4, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 C.F.R. 240.19b-4(f)(2).

⁵ See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated June 3, 2004. Amendment No. 1 clarifies the proposed rule text and replaces the proposed rule change in its entirety.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010(d)(2) (“Computer Assisted Execution Service”) to eliminate certain transaction charges for the use of SuperMontage to trade Intermarket Trading System (“ITS”) securities. Nasdaq will implement the proposed rule change on May 3, 2004.

The text of the proposed rule change appears below. New language is in italics.

* * * * *

7010. System Services

(a) through (c) No change.

(d) Computer Assisted Execution Service

The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per transaction charge plus equipment related charges.

(1) No change.

(2) Transaction Charges and Credits

(A) No change.

(B) No change.

(C) There shall be no charge for an order entered by a member that accesses its own Quote/Order submitted under the same or a different market participant identifier of the member.

(e) through (u) No change.

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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

The Commission recently approved Nasdaq's proposal to replace the Computer Assisted Execution System ("CAES") with SuperMontage for the trading of all ITS securities.⁶ The purpose of this proposed rule change is to modify certain transaction charges under NASD Rule 7010(d) for the trading of ITS securities to conform with similar transaction charges under NASD Rule 7010(i) for Nasdaq-listed securities. Currently, under NASD Rule 7010(d)(2)(B), Nasdaq charges for orders to buy or sell ITS securities not listed on the New York Stock Exchange. Nasdaq charges a per share fee based on the average daily share volume executed in CAES or through the ITS/CAES linkage during a month. The fees are as follows: (1) \$0.0027 per share if the average daily share volume is 0 to 499,999; and (2) \$0.0025 per share if the average daily share volume is 500,000 or more. Under the current rule, these fees are subject to a maximum charge of \$75 per execution. Nasdaq is proposing to eliminate these transaction charges for orders entered by a member that accesses its own Quote/Order submitted under the

⁶ See Securities Exchange Act Release No. 49349 (March 2, 2004), 69 FR 10775 (March 8, 2004).

same or a different market participant identifier of the member for the trading of all ITS securities. Nasdaq believes that the proposed rule change reflects more accurately the existing market price levels for similar services, and, as such, will result in a more equitable allocation among members of the charges associated with the trading of ITS securities. Nasdaq also expects that the proposal will encourage greater use of SuperMontage for trading ITS securities, thereby contributing to greater competition among the available venues for executions of orders for ITS securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁷ in general, and with Section 15A(b)(5) of the Act,⁸ which requires that the rules of the NASD provide 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 NASD operates or controls. Nasdaq believes that it has proposed a pricing structure that is responsive to market demands. In addition, Nasdaq believes that the proposed rule change supports the efficient use of existing systems and ensures that the charges associated with such use are allocated equitably.

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.

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(5).

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and Rule 19b-4(f)(2) thereunder,¹⁰ because it establishes or changes a due, fee, or other charge imposed by the Association. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.¹¹

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 for (<http://www.sec.gov/rules/sro.shtml>); or

⁹ 15 U.S.C. 78s(b)(3)(a)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on June 4, 2004, the date Nasdaq submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2004-075 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-075. 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 the filing also will be available for inspection and copying at the principal office of NASD. 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-NASD-2004-075 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).