

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51757; File No. SR-NASD-2005-037)

May 27, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto to Modify Certain Fees for Connecting to the Nasdaq Market Center and Nasdaq's Brut Facility for Non-Members

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 March 24, 2005, 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 and II below, which Items have been prepared by Nasdaq. On May 10, 2005, Nasdaq submitted Amendment No. 1 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 and to grant accelerated approval to the proposed rule change, as amended.

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

Nasdaq proposes to amend NASD Rule 7010 to modify certain fees for connecting to the Nasdaq Market Center ("NMC") and Nasdaq's Brut Facility ("Brut"). The text of the proposed change to NASD Rule 7010 is below. Additions are in italics and deletions are in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Form 19b-4, dated May 10, 2005 ("Amendment No. 1"). Amendment No. 1 replaced the original rule filing in its entirety.

* * * * *

7000. CHARGES FOR SERVICES AND EQUIPMENT**7010. System Services**

(a) – (e) No change

(f) Access Services.

The following charges are assessed by Nasdaq for connectivity to the Nasdaq Market Center (NMC) and, where indicated, to Nasdaq's Brut Facility (Brut).

(1) and (2) No change.

(3) Computer to computer interface (CTCI) and Financial Information Exchange

(FIX)

Options	Price
Option 1: Dual 56kb lines (one for redundancy), single hub and router, and optional single FIX port.	\$1275/month
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), dual routers (one for redundancy), and optional single FIX port.	\$1600/month
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), dual routers (one for redundancy), and optional single FIX port. Includes base bandwidth of 128kb.	\$8000/month (CTCI or CTCI/FIX lines) \$4000/month (FIX-only lines)
<u>FIX Trading Port (NMC and Brut)</u> [Charge]	\$[300] <u>400</u> /port/month
<u>FIX Port for Services Other than Trading</u>	<u>\$500/port/month</u>

Dedicated FIX server	\$1,000/ <u>server/month</u>
<u>Dedicated FIX server (Brut)</u>	<u>3,000/server/month;</u> <u>initial term of not less than 12</u> <u>months is required</u>
Option 1, 2, or 3 with Message Queue software enhancement	Fee for Option 1, 2, or 3 (including any Bandwidth Enhancement Fee) plus 20%
Disaster Recovery Option: Single 56kb line with single hub and router and optional single FIX port. (For remote disaster recovery sites only.)	\$975/month
Bandwidth Enhancement Fee (for T1 subscribers only)	\$600/month per 64kb increase above 128kb T1 base
Installation Fee	\$2000 per site for dual hubs and routers \$1000 per site for single hub and router
Relocation Fee (for the movement of TCP/IP-capable lines within a single location)	\$1700 per relocation

FIX connectivity through Options 1, 2, or 3 or the Disaster Recovery Option will not be available to new subscribers that are (i) NASD members after January 1, 2004, or (ii) not NASD members after the effective date of SR-NASD-2003-196.

(4) No change.

(g) – (v) No change.

* * * * *

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 III

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would apply to non-members certain rule changes that were immediately effective with respect to NASD members.⁴ According to Nasdaq, an important objective of this proposal is to ensure uniform treatment under the rules of members and non-members alike. As further described below, these changes modify certain fees and establish new options for connecting to the NMC and Brut.

Today, Nasdaq offers participants Financial Information Exchange ("FIX") protocol connectivity for entering orders to buy and sell securities into the NMC and Brut. Effective April 1, 2005, the port charge for such a connection will be set at \$400 per month for both the NMC and Brut. For NMC users, this represents a \$100 per month increase from the current \$300 monthly charge; for Brut users, this is a new charge,⁵ which is being instituted in order to harmonize NMC and Brut charges for similar services.

This charge better reflects the market conditions and the costs associated with providing the service. The \$100/month increase in the charge for an NMC FIX port is necessary in light of the higher-than-expected infrastructure costs that Nasdaq is currently incurring in providing this service. In estimating its costs, Nasdaq considers the cost of necessary hardware, software, maintenance and staff.

⁴ See SR-NASD-2005-036.

⁵ To assure service quality, a Brut FIX port has been provisioned as a port pair, in which a redundant second port is included for use as backup. Nasdaq does not intend to change this practice at this time. Therefore, a Brut user will receive both ports in the pair for a single payment of \$400/month.

In response to subscriber demand, Nasdaq also intends to make FIX connectivity available for services other than trading (i.e., other than the entry of orders). As such, on April 1, 2005, Nasdaq expects to enable FIX connectivity to the NMC for the purpose of accepting trade reports from those participants that are eligible to submit such reports to the NMC. In the future, it may become possible to use such non-trading FIX connection for additional Nasdaq services.

The proposed port charge for this connection is slightly higher than the charge for a trading port, which is a reflection of current market conditions and costs. It is based on the expected level of demand for this type of service and the expected infrastructure costs (including hardware, software and staff costs). Initially, this port will be used for the purpose of accepting trade reports from those participants that are eligible to submit such reports to the NMC. In the future, it may become possible to use this connection for other existing or to-be-established services. Of course, Nasdaq will submit rule change filings with respect to any new services whenever required to do so pursuant to Section 19(b)(1) of the Act⁶ and Rule 19b-4 thereunder.⁷

Nasdaq is currently offering a dedicated-to-a-specific-firm FIX server that can be used to connect to the NMC. A dedicated server is not necessary for a proper FIX connection to the NMC, but some participants may choose it as an option.⁸ In response to participant interest, Nasdaq is also making available a dedicated FIX server for Brut. The charge for a dedicated Brut FIX server will reflect the costs of providing it. In order to further ensure that all initial costs of activating a dedicated server are allocated properly, Nasdaq intends to require a one-year

⁶ 15 U.S.C. 78s(b)(1).

⁷ 17 CFR 240.19b-4.

⁸ See Securities Exchange Act Release No. 51170 (Feb. 9, 2005), 70 FR 7988 (Feb. 16, 2005) (SR-NASD-2005-002) (explains that Nasdaq will carefully monitor message traffic on all dedicated and non-dedicated servers to ensure that dedicated servers will not provide firms that receive them with any transmission speed advantage).

minimum term for a dedicated Brut FIX server. Users will be responsible for the full first year's charges even if they wish to terminate their contract early.

The monthly charge for a dedicated FIX server at Brut is higher than the charge for a dedicated FIX server at the NMC. This difference in charges is in large part a reflection of the differences in the cost of necessary hardware, maintenance fees, software licensing fees, and staff support costs. A Brut dedicated FIX server also entails higher initial costs, and the requirement of a 12-month minimum term is designed to reduce Nasdaq's financial exposure in the event that a user decides to terminate the arrangement after less than a year (although Nasdaq's expectation is that users that choose the dedicated server option continue with this option for longer than a year). The initial and operating costs of an NMC dedicated FIX server are lower, and in the event of an early termination of this option by a user, the equipment used to provide such service can be more readily (than the Brut equipment) converted to other uses.

Nasdaq carefully monitors incoming and outgoing message traffic on all servers used for Brut access in order to ensure that connectivity to and from Brut is not degraded because of insufficient capacity on such servers. This process will not change with the implementation of dedicated servers. Nasdaq regularly reviews the performance statistics for each user connected to Nasdaq's and Brut's servers. If it appears that a server is reaching its capacity limits (for example, if a particular user is experiencing greater volumes than in the past), Nasdaq would reassign servers and users to ensure that there is no degradation in the speed of transmission. As a result, the choice a user makes between a shared and a dedicated server has no impact on transmission speed. Nasdaq will install additional non-dedicated servers whenever necessary to provide a high level of support across all FIX servers.

A dedicated FIX server at Brut would also be capable of being converted to provide access to the NMC if at any time Nasdaq decided to make the appropriate system modifications. The use of such a server for connectivity to and from the NMC would not confer any transmission speed advantage or disadvantage upon this server's users.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A of the Act,⁹ in general, and Section 15A(b)(5)¹⁰ of the Act, in particular, in that it 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 the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose 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

Nasdaq has neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78o-3(b)(5).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2005-037 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-2005-037. 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 offices of the 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-2005-037 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory

organization.¹¹ In particular, the Commission believes that the proposed rule change is consistent with the requirements of Section 15A(b)(5) of the Act,¹² which requires that the rules of the self-regulatory organization 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 it operates or controls. Specifically, the Commission notes that this proposal would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that was effective pursuant to SR-NASD-2005-036.

The Commission finds good cause for accelerating approval of the proposed rule change, as amended, prior to the thirtieth day after publication in the Federal Register. The Commission notes that the proposed fees for non-NASD members are identical to those in SR-NASD-2005-036, which implemented these fees for NASD members and which became effective pursuant to Section 19(b)(3)(A) of the Act.¹³ The Commission notes that this change will promote consistency in Nasdaq's fee schedule by applying the same pricing schedule with the same date of effectiveness for both NASD members and non-NASD members. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹⁴ to approve the proposed rule change, as amended, on an accelerated basis.

¹¹ The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78o-3(b)(5).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-NASD-2005-037), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland
Deputy Secretary

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).