

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53006; File No. SR-NASD-2005-148)

December 22, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Fees For Non-NASD Members Using Nasdaq's INET Facility

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> notice is hereby given that on December 9, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and at the same time is granting accelerated approval of the proposed rule change.

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

Nasdaq proposes to modify the pricing for non-members using Nasdaq's INET Facility. Nasdaq requests approval to implement the proposed rule change retroactively to December 9, 2005. The text of the proposed rule change is below. Proposed new language is underlined.

\* \* \* \* \*

**7010. System Services**

(a) - (v) No Change.

**(w) INET System Order Execution**

(1) No Change.

---

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

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

(2) The fees applicable to non-members using Nasdaq’s INET Facility shall be the fees established for members under Rule 7010(w), as established by SR-NASD-2005-128 and amended by SR-NASD-2005-147, and as applied to non-members by SR-NASD-2005-128 and SR-NASD-2005-148.

\* \* \* \* \*

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR-NASD-2005-147,<sup>3</sup> which applies to NASD members, Nasdaq modified the fee schedule for its INET Facility. In this filing, Nasdaq is proposing to apply the same modification to non-NASD members that use Nasdaq’s INET Facility. In summary, SR-NASD-2005-147: (1) corrected the credit and fee schedule for American Stock Exchange (“Amex”) and New York Stock Exchange (“NYSE”) order executions that were incorrectly inverted in the original fee schedule; (2) codified current INET fees for orders executed as part of the Nasdaq Opening or Closing Cross Process; (3) codified current INET fee practices of revenue sharing for Tape B

---

<sup>3</sup> SR-NASD-2005-147, which Nasdaq filed with the Commission on December 9, 2005, was effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and Rule 19b-4(f)(2) thereunder.

securities; (4) codified the current INET fee structure governing connectivity and terminal charges for its facilities; and (5) established a new uniform, tiered fee-structure for orders routed to the NYSE through DOT. Nasdaq states that an important objective of this proposal is to ensure uniform treatment under NASD's rules of members and non-members alike. Nasdaq requests that the Commission approve this filing retroactively as of December 9, 2005, and that the approval be granted on an accelerated basis.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>4</sup> in general, and with Section 15A(b)(5) of the Act,<sup>5</sup> in particular, in that the proposed rule change 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. Nasdaq states that an important objective of this proposal is to ensure uniform treatment under the NASD's rules of members and non-members alike.

### 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

Nasdaq states that written comments were neither solicited nor received.

## III. Solicitation of Comments

---

<sup>4</sup> 15 U.S.C. 78o-3.

<sup>5</sup> 15 U.S.C. 78o-3(b)(5).

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-NASD-2005-148 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-148. 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 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-2005-148 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.<sup>6</sup> Specifically, the Commission believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act,<sup>7</sup> 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 facilities or system which it operates or controls.

The Commission notes that this proposal would retroactively modify pricing for non-NASD members using Nasdaq's INET Facility to December 9, 2005. This proposal would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that became effective December 9, 2005, pursuant to SR-NASD-2005-147.

The Commission finds good cause for approving the proposed rule change prior to the 30<sup>th</sup> day of the date of publication of the notice thereof in the Federal Register. The Commission notes that the proposed fees for non-NASD members are identical to those in SR-NASD-2005-147, which implemented those fees for NASD members and which became effective as of December 9, 2005. 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. Therefore, the Commission finds that there

---

<sup>6</sup> The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78q-3(b)(5).

is good cause, consistent with Section 19(b)(2) of the Act,<sup>8</sup> to approve the proposed change on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-NASD-2005-148), is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Jonathan G. Katz  
Secretary

---

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).