

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51499; File No. SR-NASD-2005-035)

April 6, 2005

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Modify Pricing for NASD Members Using the Nasdaq Market Center and Nasdaq's Brut 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 March 28, 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, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii)<sup>3</sup> of the Act and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 NASD members using the Nasdaq Market Center and Nasdaq's Brut Facility. Nasdaq states that it will implement the proposed rule change on April 1, 2005. The text of the proposed rule change is available

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

on the NASD's Web site (<http://www.nasd.com>), at the NASD's Office of the Secretary, and at the Commission's Public Reference Room.

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 Nasdaq Market Center and Brut Facility combined fee structure is based upon multiple volume-based usage tiers that take into account the volume of a market participant across both systems. Currently, market participants must provide more than 500,000 shares of average daily liquidity each month to reduce their per-share execution costs or routing charges. In order to receive a higher liquidity provider credit, users must provide in excess of 1,000,000 shares of average daily liquidity each month in Nasdaq and/or Brut.

Nasdaq stated that, in this filing, it proposes to: (1) increase to just over 2,000,000 shares the amount of average daily liquidity needed to be provided by a market participant to have its per-share execution or routing costs reduced; and (2) increase to 2,000,000 shares the number of shares of average daily liquidity needed to be provided

each month before a market participant becomes eligible for an increased liquidity provider credit. The resulting modified fee structure<sup>5</sup> is summarized below:

<b>Charge to member entering order:</b>	
Average daily shares of liquidity provided through the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month:	
Greater than 10 million	\$0.0027 per share executed (but no more than \$108 per trade for trades in securities executed at \$1.00 or less per share)
Greater than 2,000,000 but less than or equal to 10,000,000	\$0.0028 per share executed (but no more than \$112 per trade for trades in securities executed at \$1.00 or less per share)
2,000,000 or less	\$0.0030 per share executed (but no more than \$120 per trade for trades in securities executed at \$1.00 or less per share)

<sup>5</sup> The fees currently in Rule 7010(i) are applicable to non-members that use Nasdaq's Brut Facility. Nasdaq will seek to apply the same fee schedule proposed here for non-members that use Brut. Accordingly, Nasdaq is submitting a separate filing (SR-NASD-2005-038) to make the proposed rule changes contained in this filing applicable to non-members.

<b>Credit to member providing liquidity:</b>	
Average daily shares of liquidity provided through the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month:	
Greater than 20 million	\$0.0025 per share executed (but no more than \$100 per trade for trades in securities executed at \$1.00 or less per share)
Greater than 2,000,000 but less than or equal to 20,000,000	\$0.0022 per share executed (but no more than \$88 per trade for trades in securities executed at \$1.00 or less per share)
Less than or equal to 2,000,000	\$0.0020 per share executed (but no more than \$80 per trade for trades in securities executed at \$1.00 or less per share)

<b>Routed Orders</b>	
Any order entered by a member that is routed outside of both the Nasdaq Market Center and Nasdaq's Brut Facility and that does not attempt to execute in Nasdaq's Brut Facility prior to routing	\$0.004 per share executed
Any other order entered by a member that is routed outside of both the Nasdaq Market Center and Nasdaq's Brut Facility	
Average daily shares of liquidity provided through the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month and average daily shares accessed through and/or routed from the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month (excluding orders routed outside of both the Nasdaq Market Center and Nasdaq's Brut Facility that do not attempt to execute in Nasdaq's Brut Facility prior to routing):	
Greater than 20 million shares of liquidity provided and greater than 50 million shares accessed or routed	\$0.0025 per share executed

Greater than 10 million but less than or equal to 20 million shares of liquidity provided and any amount accessed or routed, OR greater than 20 million shares of liquidity provided and 50 million or fewer shares accessed and/or routed	\$0.0027 per share executed
Greater than 2,000,000 but less than or equal to 10,000,000 shares of liquidity provided and any amount accessed and/or routed	\$0.0028 per share executed
Less than or equal to 2,000,000 shares of liquidity provided and any amount accessed and/or routed	\$0.0030 per share executed

Nasdaq believes that the proposed changes to its fee structure are reasonable, and draw an appropriate balance between the value-added benefits provided to the users by the Nasdaq Market Center and Brut systems and the fees imposed for such services.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>6</sup> in general, and with Section 15A(b)(5) of the Act,<sup>7</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

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<sup>6</sup> 15 U.S.C. 78q-3.

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

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 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The forgoing rule change is subject to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such 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.<sup>10</sup>

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:

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(C).

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-2005-035 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-2005-035. 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 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-2005-035 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.<sup>11</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).