

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49648; File No. SR-NASD-2004-067)

May 3, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. to Amend NASD Rule 7010 to Modify the Charges Paid by Members Receiving Nasdaq's Service for Trading Exchange-Listed 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 21, 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 designated this proposal as one establishing or changing a due, fee, or other charge imposed by Nasdaq under Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ 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 certain changes to Rule 7010 to modify the service charges paid by members for the Nasdaq service for trading exchange-listed securities. The text of the proposed

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 CFR 240.19b-4(f)(2).

rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].⁵

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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) Service Charge[s]

[\$100 per month for each market maker terminal receiving CAES.]

\$200 per month per member receiving the service.

(2) No change

(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.

⁵ The proposed rule change is marked to show changes from the rule text in the NASD Manual available at www.nasd.com.

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 seeks to modify the monthly service charge paid by members receiving Nasdaq's Computer Assisted Execution System ("CAES") service⁶ for trading exchange-listed securities by replacing the monthly \$100 per terminal charge with a flat monthly fee of \$200 per member firm, regardless of the number of terminals used by such firm. Nasdaq believes that the proposed rule change will result in a more equitable allocation among members of the charges associated with this service. Nasdaq also believes that the overall decrease in fees for using this service should encourage greater use of Nasdaq in trading exchange-listed securities, and contribute to greater competition for executions of orders in New York Stock Exchange, Inc. and American Stock Exchange LLC-listed 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 Section 15A(b)(5) of the Act,⁸ in particular, 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. By adopting a pricing structure that is responsive to

⁶ CAES is the computer order routing and execution facility for ITS securities. The CAES functionality is offered through the Nasdaq National Market Execution System ("NNMS" or "SuperMontage"). Telephone conversation between Alex Kogan, Office of General Counsel, Nasdaq, and Lisa N. Jones, Special Counsel, Division of Market Regulation ("Division"), Commission, on April 28, 2004.

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(5).

market demands, Nasdaq believes that the proposed amendment 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, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and subparagraph (f)(2) of Rule 19b-4¹⁰ thereunder, because it establishes or changes a due, fee, or other charge imposed by the NASD. 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 the furtherance of the purposes of the Act.

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:

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2004-067 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-2004-067. 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-2004-067 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.¹¹

Margaret H. McFarland
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).