

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49905; File No. SR-NASD-2004-077)

June 23, 2004

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto 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 18, 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 CFR 240.19b-4(f)(2).

⁵ See letter from Edward S. Knight, Executive Vice President, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated June 17, 2004. Amendment No. 1 clarifies the proposed rule text and the statutory basis of the proposed rule change, 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 modify certain transaction charges and credits related to the trading of Intermarket Trading System (“ITS”) securities on the Nasdaq market center. In particular, Nasdaq proposes to eliminate transaction charges for the trading of all securities listed on the American Stock Exchange LLC (“Amex”), except for Exchange Traded Funds (“ETFs”).

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

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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) No change.

(2) Transaction Charges and Credits

(A) [Orders to buy or sell securities listed on the New York Stock Exchange: no charge and no credit.]

[(B)] Orders to buy or sell Exchange Traded Funds [securities not] listed on the American Stock Exchange [New York Stock Exchange]:

Average daily share volume

Fee per share executed for orders

executed in CAES or through the ITS/CAES linkage during a month (both NYSE & AMEX listed securities):	entered into CAES or commitments sent through the ITS/CAES linkage if such an order or commitment is executed in whole or in part:
0 to 499,999	\$0.0027, with a maximum of \$75 per execution
500,000 or more	\$0.0025, with a maximum of \$75 per execution
Average daily share volume executed in CAES or through the ITS/CAES linkage (both NYSE & AMEX listed securities):	Liquidity rebate per share executed for orders/quotes posted into CAES, if such an order/quote is executed in whole or in part:
1 or more	\$0.002, with a maximum of \$37.50 per execution

The term "Exchange Traded Funds" shall mean Portfolio Depository Receipts, Index Fund Shares, and Trust Issued Receipts as such terms are defined in Rule 4420 (i), (j), and (l), respectively.

(B) There shall be no charge or credit for orders to buy or sell all other listed securities.

(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 purpose of this proposed rule change is to eliminate transaction charges under NASD Rule 7010(d) for the trading of all ITS securities, except ETFs listed on the Amex. According to Nasdaq, the elimination of these charges will encourage members to make greater use of the Nasdaq market center to trade exchange-listed securities, thereby increasing competition in this market segment, and benefiting members as well as the investing public. Nasdaq is also proposing to eliminate the liquidity provider credit under NASD Rule 7010(d), since there will be no transaction charges for ITS securities. Under the proposed rule change the current transaction charges for Amex-listed ETFs will remain the same. Nasdaq expects that the proposal will make the Nasdaq market center more economically feasible for members and encourage greater use of these systems for the trading of ITS securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,⁶ in general and with Section 15A(b)(5) of the Act,⁷ 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. Nasdaq believes that the market for trading listed securities, other than Amex-listed ETFs, has favored the elimination of transaction fees to remain competitive with other markets with similar fee structures.⁸ Nasdaq seeks to eliminate transaction fees for ITS securities to increase competition in this market segment, and to encourage its members to use Nasdaq's systems to trade exchange listed securities, thereby increasing liquidity. According to Nasdaq, the trading of Amex-listed ETFs in electronic venues, such as Nasdaq, is more prevalent than the trading of other exchange-listed securities. Nasdaq believes that its current fee schedule is already competitive with other markets that trade Amex-listed ETFs. Therefore, Nasdaq is retaining the current fee schedule for Amex-listed ETFs. In addition, Nasdaq believes that the proposed pricing structure is equitable and reasonable because it offers to all market participants a competitive pricing option in the trading of ITS securities.

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(5).

⁸ For example, according to Nasdaq, Inet ATS, Inc.'s pricing structure does not assess any execution fees for the trading of New York Stock Exchange, Inc. and Amex-listed securities, other than Amex-listed ETFs. See Inet ATS, Inc. Fee Schedule available at <http://www.inetats.com/prodserv/bd/fee/fee1504.asp> (visited on Jun. 16, 2004).

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

Nasdaq does not believe that the proposed rule change, as amended, 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

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:

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 18, 2004, the date Nasdaq submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

Electronic comments:

- Use the Commission's Internet comment for (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2004-077 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-2004-077. 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-2004-077 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).