

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50119; File No. SR-NASD-2004-113)

July 29, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of
Proposed Rule Change by the National Association of Securities Dealers, Inc. to Modify
Nasdaq Market Center Pricing

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 July 26, 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 the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the rule effective upon Commission receipt of this filing. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for trading of Nasdaq-listed securities in the Nasdaq Market Center. Nasdaq plans to implement the proposed rule change on August 2, 2004.

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).

The text of the proposed rule change is below.⁵ Proposed new language is in italics; proposed deletions are in brackets.

Rule 7010. System Services

(a) – (h) No change.

(i) Nasdaq Market Center order execution

(1) The following charges shall apply to the use of the order execution services of the Nasdaq Market Center by members for Nasdaq-listed securities:

Order Entry

Non-Directed Orders (excluding

Preferred Orders) No charge

Preferred Orders:

Preferred Orders that access

a Quote/Order of the member

that entered the Preferred Order No charge

Other Preferred Orders \$0.02 per order entry

Directed Orders \$0.10 per order entry

Order Execution

Non-Directed or Preferred Order that

accesses the Quote/Order of a market

⁵ The proposed rule change is marked to show changes from the rule as it appears in the NASD Manual available at www.nasdaq.com, and also reflects the proposed rule changes in SR-NASD-2004-076. See Securities Exchange Act Release No. 50074 (July 23, 2004).

participant that does not charge an access fee to market participants accessing its Quotes/Orders through the Nasdaq Market Center:

Charge to member entering order:

Average daily shares of liquidity provided through the Nasdaq Market Center by the member during the month:

400,000 or less	\$0.003 per share executed (but no more than \$120 per trade for trades in securities executed at \$1.00 or less per share)
400,001 to 5,000,000	\$0.0027 per share executed (but no more than \$108 per trade for trades in securities executed at \$1.00 or less per share)
5,000,001 or more	\$0.0026 per share executed (but no more than \$104 per trade for trades

in securities executed at \$1.00 or less
per share)

Credit to member providing
liquidity:

Average daily shares of
liquidity provided through
the Nasdaq Market Center
by the member [from April
15 to April 30, 2004, or]
during [any] the month
[thereafter]:

[20] <u>18</u> ,000,000 or less	\$0.002 per share executed (but no more than \$80 per trade for trades in securities executed at \$1.00 or less per share)
---------------------------------	---

[20] <u>18</u> ,000,001 or more	\$0.0025 per share executed (but no more than \$100 per trade for trades in securities executed at \$1.00 or less per share)
---------------------------------	---

Non-Directed or Preferred Order that

accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the Nasdaq Market Center:

Charge to member entering order:

Average daily shares of liquidity provided through the Nasdaq Market Center by the member during the month:

400,000 or less	\$0.001 per share executed (but no more than \$40 per trade for trades in securities executed at \$1.00 or less per share)
-----------------	--

400,001 or more	\$0.001 per share executed (but no more than \$40 per trade for trades in securities executed at \$1.00 or less per share, and no more than \$10,000 per month)
-----------------	---

Directed Order	\$0.003 per share executed
----------------	----------------------------

Non-Directed or Preferred Order
entered by a member that accesses
its own Quote/Order submitted under
the same or a different market participant
identifier of the member

No charge

Order Cancellation

Non-Directed and Preferred

Orders

No charge

Directed Orders

\$0.10 per order cancelled

(2) – (3) No change.

(j) – (u) 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 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

Nasdaq recently implemented reduced pricing for execution of Non-Directed and Preferred Orders for Nasdaq-listed securities in the Nasdaq Market Center, by reducing order execution fees and increasing liquidity provider credits for members that provide significant liquidity through the Nasdaq Market Center.⁶ Under the fee schedule currently in effect, the per share fee charged to a member to access liquidity and the credit for providing liquidity during a particular month both depend on the extent to which such member provided liquidity through the Nasdaq Market Center during that month. Thus, if a member provides a daily average of more than 5,000,000 shares of liquidity through the Nasdaq Market Center during a month, the member currently pays \$0.0026 per share executed in trades during that month in which the member accesses liquidity provided by a market participant that does not charge an access fee (i.e., in which the member's Non-Directed or Preferred Orders access the Quotes/Orders of other market participants).⁷ If a member provides a daily average of 400,001 to 5,000,000 shares of liquidity during a month, the member pays \$0.0027 per share executed in trades executed during the month in which the member accesses liquidity provided by a market participant that does not charge an access fee.⁸ Finally, if a

⁶ Securities Exchange Act Release No. 49603 (April 22, 2004), 69 FR 23844 (April 30, 2004) (SR-NASD-2004-062); Securities Exchange Act Release No. 48972 (December 22, 2003), 68 FR 75301 (December 30, 2003) (SR-NASD-2003-185).

⁷ Transactions in a security priced under \$1.00 ("low-priced trades") are subject to fee caps applicable to trades in excess of 40,000 shares. Accordingly, when the fee that the member pays is \$0.0026, the maximum per transaction charge for a low-priced trade is \$104.

⁸ When the fee that the member pays is \$0.0027, the maximum per transaction charge for a low-priced trade is \$108.

member provides a daily average of 400,000 or fewer shares during a month, the member pays \$0.003 per share executed during the month.⁹

Similarly, the fee paid by a member to access the Quote/Order of a market participant that charges an access fee depends upon the shares of liquidity provided by the member during that month. If a member provides a daily average of more than 400,000 shares of liquidity during a month, the member will pay \$0.001 per share executed for trades during the month in which the member accesses liquidity provided by a market participant that charges an access fee;¹⁰ however, the member's total charge for that month will be capped at \$10,000. If a member provides a daily average of 400,000 shares of liquidity or less during a month, the member will also pay \$0.001 per share, but no monthly cap will be applicable.¹¹

Finally, the credit provided to a member that provides the liquidity for an execution and does not charge an access fee also depends upon the shares of liquidity provided by the member during the month. Under the current fee schedule, during a month in which a member that does not charge an access fee provides a daily average of more than 20,000,000 shares of liquidity, the credit for transactions in which the member provided liquidity is \$0.0025 per share executed.¹² For firms providing lower levels of liquidity, the credit is \$0.002 per share executed.¹³

⁹ When the fee that the member pays is \$0.003, the maximum per transaction charge for a low-priced trade is \$120.

¹⁰ The maximum per transaction charge for a low-priced trade is \$40.

¹¹ The maximum per transaction charge for a low-priced trade is \$40.

¹² When the credit is \$0.0025, the maximum credit for a low-priced trade is \$100.

¹³ When the credit is \$0.002, the maximum credit for a low-priced trade is \$80.

During the course of 2004, the volume of trades in Nasdaq-listed securities through all venues that trade them has been steadily decreasing. Thus, marketwide volumes have decreased from an average daily volume of approximately 2.3 billion shares in January 2004, to approximately 1.9 billion shares in April, to 1.7 billion shares during the second week of July. As a result, it has become increasingly difficult for members to achieve the average daily volume requirement of more than 20 million shares required for the enhanced liquidity provider credit. In response, Nasdaq is proposing to change the threshold at which the \$0.0025 per share credit becomes available from 20,000,001 shares per day to 18,000,001 shares per day. Nasdaq is also deleting references to the last half of April 2004 in the current rule text, which were originally needed to allow the implementation of SR-NASD-2004-062 during the middle of the month of April.¹⁴ Because SR-NASD-2004-113 will take effect at the beginning of August 2004 and will therefore be in effect for an entire month, similar references are not needed.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,¹⁵ in general, and with Section 15A(b)(5) of the Act,¹⁶ 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. The proposed rule change bases the level of

¹⁴ See note 6, supra.

¹⁵ 15 U.S.C. 78o-3.

¹⁶ 15 U.S.C. 78o-3(b)(5).

credits for providing liquidity through the Nasdaq Market Center on the extent to which a member provides liquidity during the month, thereby taking account of the lower per share costs and enhanced revenue opportunities associated with higher volumes of liquidity provision. The change will adjust the level of liquidity provision at which an enhanced credit of \$0.0025 per share is made available, to take account of a decrease in marketwide trading volumes.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁷ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹⁸ because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ 17 CFR 240.19b-4(f)(2).

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.

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:

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. Please include File Number SR-NASD-2004-113 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-2004-113. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. 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-2004-113 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.¹⁹

Margaret H. McFarland
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).