

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50647; File No. SR-NASD-2004-158)

November 8, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish Fee for Direct ECN Connections to the Nasdaq Market Center

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 October 22, 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 establish a fee for direct connections by electronic communication networks (“ECNs”) to the Nasdaq Market Center. Nasdaq will

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).

implement the proposed rule change immediately. The text of the proposed rule change is below. Proposed new language is in italics.

7000. CHARGES FOR SERVICES AND EQUIPMENT

7010. System Services

(a) – (e) No change

(f) Nasdaq Workstation™ Service

(1) (A) The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and communications linkages prescribed for the Nasdaq Workstation II Service:

Service Charge	\$2,035/month per service delivery platform (“SDP”) connected via T1 circuits
	\$1,000/month per SDP connected via Digital Subscriber Line (“DSL”), plus \$1,000 per DSL early termination fee if service is terminated within 60 days of installation
Display Charge	\$525/month per logon for the first 150 logons
	\$200/month for each additional logon
Additional Circuit/SDP Charge	\$3,235/month
PD and SDP Maintenance	

Monthly maintenance agreement	\$55/presentation device (“PD”) logon or SDP/month
Hourly fee for maintenance Provided without monthly maintenance agreement	\$195 per hour (two hour minimum), plus cost of parts
<u>ECN Direct Connection</u>	<u>\$1,000 per port pair per month</u>

(B) – (D) No change.

(2) No change.

(g) – (w) 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

Currently, ECNs connect to Nasdaq through an application programming interface (“API”) protocol that relies upon a Service Delivery Platform (“SDP”), a server machine containing Nasdaq-installed software that is located at the premises of the ECN. Nasdaq is now introducing an option for ECNs to connect to Nasdaq through a dedicated

point-to-point linkage to Nasdaq Market Center host computers, rather than through an SDP. Nasdaq believes that allowing ECNs to establish a direct connection will enhance their ability to interact with the Nasdaq Market Center in an efficient manner, and that those ECNs that continue to quote in Nasdaq will respond favorably to being allowed to establish direct connections. In fact, one such ECN has already commenced testing such a connection and is prepared to avail itself of the service once it is made available. Accordingly, Nasdaq is proposing to offer such connections at a fee of \$1,000 per port pair per month, as an alternative to an SPD/API connection. This fee compares favorably with the current fee of \$2,035 per SPD per month.⁵

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁶ in general, and Sections 15A(b)(5) of the Act,⁷ 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 will provide ECNs with a cost-effective means to establish direct connections, which can be expected to improve the speed and certainty of execution in the market, to the benefit of all market participants.

⁵ NASD Rules provide that order-delivery ECNs must respond to messages sent to them by the system within 5 seconds on average, and in no event later than 30 seconds for any one message. Nasdaq recently filed a related proposed rule change to NASD Rule 4710 to provide that the response time of an order-delivery ECN may be measured either by the ECN's SDP (in the case of ECN's using SDPs) or by the Nasdaq Market Center (in the case of ECNs opting to establish direct connections. See SR-NASD-2004-156 (October 15, 2004).

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(5).

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

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 Act⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder,⁹ because it establishes or changes a due, fee, or other charge. 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 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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

⁸ 15 U.S.C. 78s(b)(3)(a)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

- 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-2004-158 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-2004-158. 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-2004-158 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.¹⁰

Jill M. Peterson
Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(12).