

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52089; File No. SR-NASD-2005-071)

July 20, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto 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")¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 1, 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 filed this proposal pursuant to 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. Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization. On June 9, 2005, Nasdaq filed an amendment to the proposed rule change.⁵ On July 8, 2005, Nasdaq filed a second amendment to the proposed rule

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 Partial Amendment dated June 9, 2005 ("Amendment No. 1). Amendment No. 1 made minor, technical corrections to the discussion section on page 4 of the original filing.

change.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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. The proposal modifies the fee schedule applicable to orders in Nasdaq-listed stocks and exchange-traded funds listed on the American Stock Exchange that are entered into the Nasdaq Market Center or Nasdaq's Brut Facility and routed to another market center for execution. The text of the proposed rule change is available on Nasdaq's Web site (<http://www.nasdaq.com>), at Nasdaq'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 purpose of this proposed rule change is to modify the fee schedule applicable to orders in Nasdaq-listed stocks and exchange-traded funds listed on the American Stock Exchange that are

⁶ See Partial Amendment dated July 8, 2005 ("Amendment No. 2"). Amendment No. 2 made minor changes to the rule text quoted on pages 6 and 15 of the original filing.

entered into the Nasdaq Market Center or Nasdaq's Brut Facility and routed to another market center for execution. Routing charges are tiered, based upon the volume of shares on the Nasdaq Market Center and Brut books that are accessed during a month and the volumes of shares routed, and the volume of liquidity provided.

The routing charges are currently as follows: (i) if a market participant provides a daily average of 2,000,000 or fewer shares of liquidity during a month, its routing charge is \$0.003 per share executed; (ii) if a market participant provides a daily average of more than 2,000,000 but fewer than 10,000,001 shares of liquidity during a month, its routing charge is \$0.0028 per share executed; (iii) if a market participant provides a daily average of more than 10,000,000 but fewer than 20,000,001 shares of liquidity during a month, or provides a daily average of more than 20,000,000 shares of liquidity during a month but accesses and/or routes a daily average of 50,000,000 or fewer shares during the month, its routing charge is \$0.0027 per share routed; and (iv) if a market participant provides a daily average of more than 20,000,000 shares of liquidity during a month and accesses and/or routes a daily average of more than 50,000,000 shares during the month, its routing charge will be \$0.0025 per share executed. In anticipation of the expected lower trading volumes at all market centers during the summer months, and in order to ensure that Nasdaq's pricing structure remains competitive, Nasdaq is lowering the 50,000,000 share threshold for the \$0.0027 and \$0.0025 pricing tiers to 40,000,000 shares. Thus, the most favorable routing fee would be available to any market participant that provides a daily average of more than 20,000,000 shares of liquidity during a month and access and/or routes a daily average of more than 40,000,000 shares during a month.

2. Statutory Basis

Nasdaq believes that its proposed rule change is consistent with Section 15A of the Act,⁷ in general, and furthers the objectives of Section 15A(b)(5) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members. According to Nasdaq, the proposed rule change in routing fees is a response to anticipated lower trading volumes during the summer months and will ensure that the Nasdaq's fee schedule continues to provide for an equitable allocation of fees consistent with the fee schedule applicable in the past.

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 on the proposed rule change 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 immediately effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹⁰ in that 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 such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

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, as amended, 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-2005-071 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-071. 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

¹¹ The effective date of the original proposed rule change is June 1, 2005. The effective date of Amendment No. 1 is June 9, 2005. The effective date of Amendment No. 2 is July 8, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on July 8, 2005, the date on which Nasdaq submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

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 Nasdaq's Office of the Secretary. 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-2005-071 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

Jill M. Peterson
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).