

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52758; File No. SR-NASD-2005-126)

November 9, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Modify the Pricing for Non-Members Using 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 October 26, 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 and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and at the same time is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for non-members using Nasdaq's Brut Facility ("Brut"). Nasdaq requests approval to implement the proposed rule change retroactively as of November 1, 2005. The text of the proposed rule change is below. Proposed new language is underlined. Proposed deletions are in [brackets].

* * * * *

7010. System Services

(a) – (h) No change.

(i) Nasdaq Market Center and Brut Facility Order Execution

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(1) - (5) No change.

(6) The fees applicable to non-members using Nasdaq's Brut Facility shall be the fees established for members under Rule 7010(i), as amended by SR-NASD-2005-019, SR-NASD-2005-035, SR-NASD-2005-048, [and]SR-NASD-2005-071, and SR-NASD-2005-125, and as applied to non-members by SR-NASD-2005-020, SR-NASD-2005-038, SR-NASD-2005-049, [and]SR-NASD-2005-072, and SR-NASD-2005-126.

(j) - (v) 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 III 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

In SR-NASD-2005-125, which applies to NASD members, Nasdaq has modified the fee schedule applicable to execution and routing of orders in exchange-traded funds ("ETFs") listed on exchanges other than the American Stock Exchange ("Amex"). In this filing, Nasdaq is proposing to apply the same modification to non-NASD members that use Nasdaq's Brut Facility.

Nasdaq states that, prior to NASD-2005-125, execution and routing of Nasdaq-listed stocks and Amex-listed ETFs has been subject to the fee schedule in NASD Rule 7010(i)(1), whereas execution and routing of other exchange-listed securities, including other exchange-listed ETFs, had generally not been subject to per order routing and execution charges. Because an increasing number of ETFs are being listed on exchanges other than the Amex, however, Nasdaq states that it has concluded that it is necessary to apply the same fee schedule to all ETFs, to ensure that its fees are commensurate with the volumes of shares being routed and executed through its systems.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,³ in general, and with Section 15A(b)(5) of the Act,⁴ in particular, in that the proposed rule change 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 applies to non-members that use Nasdaq's Brut Facility a fee change that is being implemented for NASD members that use the Nasdaq Market Center and/or Nasdaq's Brut Facility. Accordingly, Nasdaq believes that the proposed rule change promotes an equitable allocation of fees between members and non-members using Nasdaq's order execution facilities. Nasdaq states that the proposed change reflects the increased extent to which ETFs are being listed on exchanges other than the Amex and would result in the application of the same fee schedule to all ETFs, regardless of where they are listed.

³ 15 U.S.C. 78o-3.

⁴ 15 U.S.C. 78o-3(b)(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

Nasdaq states that written comments were neither solicited nor received.

III. 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-2005-126 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-2005-126. 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 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-2005-126 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.⁵ Specifically, the Commission believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act,⁶ which requires that the rules of the self-regulatory organization provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facilities or system which it operates or controls.

⁵ The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78q-3(b)(5).

The Commission notes that this proposal would retroactively modify pricing for non-NASD members using the Nasdaq's Brut Facility to be implemented as of November 1, 2005. This proposal would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that became effective October 26, 2005, pursuant to SR-NASD-2005-125 and that Nasdaq stated it would implement on November 1, 2005.

The Commission finds good cause for approving the proposed rule change prior to the 30th day of the date of publication of the notice thereof in the Federal Register. The Commission notes that the proposed fees for non-NASD members are identical to those in SR-NASD-2005-125, which implemented those fees for NASD members and which became effective as of October 26, 2005. The Commission notes that this change will promote consistency in Nasdaq's fee schedule by applying the same pricing schedule with the same date of effectiveness for both NASD members and non-NASD members. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,⁷ to approve the proposed change on an accelerated basis.

⁷ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-NASD-2005-126), is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jonathan G. Katz
Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).