

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52825; File No. SR-NASD-2005-127)

November 22, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify NASD Rule 7010 to Change the Fee Structure for the “Browse/Query” function in the Trade Reporting Service of the Nasdaq Market Center

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 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 designated this proposal as one establishing or changing a due, fee or other charge imposed by Nasdaq under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 Substance of the Proposed Rule Change

Nasdaq proposes to modify the fee structure for the “Browse/Query” function in the trade reporting service of the Nasdaq Market Center.<sup>5</sup> Nasdaq will implement the proposed rule change on November 1, 2005.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> The proposed rule change applies only to NASD member firms.

The text of the proposed rule change is available on the NASD's Web site at <http://www.nasd.com>, Office of the Secretary, NASD, 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

Nasdaq customers using the trade reporting service of the Nasdaq Market Center can view a summary of their trade reporting activity by using the "Browse/Query" function of the Nasdaq Workstation.<sup>6</sup> The legacy "Browse/Query" function would only display 18 records per request. In order to view the next 18 records, Nasdaq customers would have to use the "More" function. Nasdaq currently charges customers \$.288 per initial request and per each subsequent use of the "More" function. Thus, Nasdaq customers would incur additional incremental costs as they increased their trade reporting activity.

Nasdaq has implemented new technology that modifies the "Browse/Query" function. The modified "Browse/Query" function has been renamed the "Query" function and each "Query"

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<sup>6</sup> The "Browse/Query" function is also provided in Nasdaq Workstation II (NWII) and application protocol interface (API) services. NWII and API services, however, will be retired as of November 30, 2005 and December 31, 2005 respectively.

request now provides a complete summary of all trade reporting activity per request. Nasdaq customers no longer have to use the “More” function to view the next 18 records. Under the proposed rule change, users of the new “Query” function will be charged \$.50 per request.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>7</sup> in general, and with Section 15A(b)(5) of the Act,<sup>8</sup> in particular, in that it provides for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Further, Nasdaq believes that the proposed fee structure for the new “Query” function is reasonable because the new “Query” function provides more information per request than the old “Browse/Query” function. Nasdaq believes the new fee structure is also equitable because it applies to all users of the “Query” function on an equal basis. Although the fee for the new “Query” function is more than the fee for the old “Browse/Query” function, Nasdaq believes its customers will benefit from an overall reduction in their costs because they will not incur additional incremental charges to view all of their trade reporting activity.

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

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

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.

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<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

### 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 Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>10</sup> in that it establishes or changes a due, fee or other charge imposed by Nasdaq. 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-127 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-2005-127. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

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. 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-2005-127 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.<sup>11</sup>

Jonathan G. Katz  
Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).