

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53005; File No. SR-NASD-2005-147)

December 22, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for NASD Members Using Nasdaq's INET Facility

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 December 9, 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 the self-regulatory organization under Section 19(b)(3)(A)(ii)<sup>3</sup> of the Act 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 the Substance of the Proposed Rule Change

Nasdaq proposes to make additions and corrections to the fees governing Nasdaq's INET Facility for NASD members. Nasdaq states that it will implement the proposed rule change immediately.

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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).

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in [brackets].

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**7010. System Services**

(a) - (v) **No Change.**

**(w) INET System Order Execution**

(1) For a period of time not to exceed 60 days after INET becomes a facility of Nasdaq, the following charges shall apply to the use of the order execution services of Nasdaq's INET System by Participants for:

**NASDAQ-listed securities**

**Order Execution**

Non-Directed Order that accesses the Quote/Order of a market Participant through Nasdaq's INET System:

Charge to Participant entering order:

Average daily shares of liquidity provided through Nasdaq's INET System by the Participant during the month:

Greater than 60 million shares accessed or routed and 5 million shares provided	\$0.0027 per share executed
Greater than 40 million shares but less than 60 million shares accessed or routed and 5 million shares provided	\$0.0028 per share executed

Less than 5 million shares provided or less than 40 million shares accessed or routed	\$0.0030 per share executed
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Credit to Participant providing liquidity:

Average daily shares of liquidity provided through Nasdaq's INET System by the Participant during the month:

Greater than 30 million shares provided or greater than 30 million shares accessed or routed or greater than 50 million shares combined provided, accessed or routed	\$0.0025 per share executed
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Less than or equal to 30 million shares provided and less than or equal to 30 million shares accessed or routed and less than or equal to 50 million shares combined provided, accessed, or routed	\$0.002 per share executed
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Any order that matches against another order of the same Participant	\$0.00025 per share per side.
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**Routed Orders**

Any other order entered by a Participant that is routed outside of Nasdaq's INET System	\$0.0025 per share executed
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<u>Any other order entered by a Participant that is routed to the NASDAQ Opening or Closing Cross</u>	<u>\$0.001 per share executed</u>
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## AMEX-listed stocks

### Order Execution

Non-Directed Order that accesses the Quote/Order of a market

Participant through Nasdaq's INET System:

Credit to Participant entering order: \$0.0009 [\$0.001] per  
share executed

Charge to Participant providing liquidity: \$0.001 [\$0.0009] per  
share executed

Any order that matches against another order of the same  
Participant No charge

### Routed Orders

Any order entered by a Participant that is routed outside of  
Nasdaq's INET System through DOT \$0.01 per share  
executed

Any order entered by a Participant that is routed outside of  
Nasdaq's INET System other than through DOT \$0.0035 per share  
executed

## AMEX-listed ETFs

### Order Execution

Non-Directed Order that accesses the Quote/Order of a market

Participant through Nasdaq's INET System:

Charge to Participant entering order:

Average daily shares of liquidity provided through  
Nasdaq's INET System by the Participant during the  
month:

Greater than 60 million shares accessed or routed and 5 million shares provided	\$0.0027 per share executed
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Greater than 40 million shares but less than 60 million shares accessed or routed and 5 million shares provided	\$0.0028 per share executed
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Less than 5 million shares provided or less than 40 million shares accessed or routed	\$0.0030 per share executed
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Credit to Participant providing liquidity:

Average daily shares of liquidity provided through  
Nasdaq's INET System by the Participant during the  
month:

Greater than 30 million shares provided or greater than 30 million shares accessed or routed or greater than 50 million shares combined provided, accessed or routed \$0.0025 per share executed

Less than or equal to 30 million shares provided and less than or equal to 30 million shares accessed or routed and less than or equal to 50 million shares combined provided, accessed, or routed \$0.002 per share executed

Any order that matches against another order of the same Participant \$0.00025 per share per side.

### **Routed Orders**

Any order entered by a Participant that is routed outside of Nasdaq's INET System [through DOT] to the AMEX \$0.01 per share executed

Any order entered by a Participant that is routed outside of Nasdaq's INET System [other than through DOT] other than to the AMEX \$0.0035 per share executed

## NYSE-listed stocks

### Order Execution

Non-Directed Order that accesses the Quote/Order of a market

Participant through Nasdaq's INET System:

Credit to Participant entering order: \$0.0009 [\$0.001] per  
share executed

Charge to Participant providing liquidity: [\$0.0009] \$0.001 per  
share executed

Any order that matches against another order of the same Participant No charge

### Routed Orders

[Any order entered by a Participant that is routed outside of Nasdaq's INET System through DOT ] \$0.0005 \$0.01 per  
share executed  
Any order entered by a Participant that is routed outside of Nasdaq's INET System through DOT that is charged a fee by the specialist (billable)

Charge to any order entered by a Participant that is routed outside of Nasdaq's INET System through DOT that is not charged a fee by the specialist (non-billable):

Average daily shares of billable and non-billable NYSE

DOT shares:

Greater than 30 million shares \$0.0001

Greater than 2 million shares but less than or equal to 30 million shares \$0.0003

Greater than 250,000 shares but less than or equal to 2 million shares \$0.0005

Greater than 100,000 shares but less than or equal to 250,000 shares \$0.001

Less than or equal to 100,000 shares \$0.01

Any order entered by a Participant that is routed outside of Nasdaq's INET System other than through DOT \$0.0015 per share executed

Upon Participant's request, added liquidity among Participants that are wholly owned by a common parent may be aggregated.

**Market Data Revenue Sharing for AMEX Listed (Tape B) Securities**

Subscribers that add liquidity to the INET limit order book in Tape B securities (e.g. AMEX listed securities) will receive 50% of the market data revenue paid by the Consolidated Tape Association. INET will distribute the market data revenue based on the number of tape reportable transactions executed by the Participant, as paid to INET.



## **Port Fees:**

### **Connectivity to Harborside Financial Center and Secaucus Datacenters**

- \$400 per month for each OUCH<sup>®</sup>/FIX pair
- \$400 per month for each ITCH<sup>®</sup> data feed pair
- \$400 per month for each DROP<sup>®</sup> pair
- \$400 per month for each Compressed ITCH<sup>®</sup> data feed pair
- \$1000 per month for each Multicast ITCH<sup>®</sup> data feed pair
- Internet Ports: An additional \$200 per month for each Internet port that requires additional bandwidth.

### **Connectivity to Chicago Datacenter**

- \$800 per month for each OUCH<sup>®</sup>/FIX pair
- \$800 per month for each ITCH<sup>®</sup> data feed pair
- \$800 per month for each DROP<sup>®</sup> pair

All port fees, not including Internet Bandwidth surcharges, will be waived for Subscribers that for a calendar month have an average daily share volume for executed orders exceeding 30 million shares of added liquidity.

## **INET Terminal Fees:**

- Each ID is subject to a minimum commission fee of \$50 per month unless it executes a minimum of 100,000 shares.
- Each ID receiving market data is subject to pass-through fees for use of these services. Pricing for these services is determined by the exchanges and/or market center.
- Each ID that is given web access is subject to a \$50 monthly fee.

**Portal Fees:**

- Each ID is subject to a monthly user fee of \$150
- Each ID receiving market data is subject to pass-through fees for use of these services.

Pricing for these services is determined by the exchanges and/or market center.

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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

On December 7, 2005, the Commission approved rules and fees governing Nasdaq's INET Facility.<sup>5</sup> This filing corrects, codifies, and establishes fee and rebate practices for INET subscribers that are NASD members. In summary, Nasdaq states that the filing: (1) corrects the credit and fee schedule for American Stock Exchange ("Amex") and New York Stock Exchange ("NYSE") order executions that were incorrectly inverted in the original fee schedule; (2) codifies current INET fees for orders executed as part of the Nasdaq Opening or Closing Cross Process; (3) codifies current INET fee practices of revenue sharing for Tape B securities;

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<sup>5</sup> See Securities Exchange Act Release No. 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005).

(4) codifies the current INET fee structure governing connectivity and terminal charges for its facilities; and (5) establishes a new uniform, tiered fee-structure for orders routed to the NYSE through DOT.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>6</sup> in general, and with Section 15A(b)(5) of the Act,<sup>7</sup> 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.

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

The foregoing rule change is subject to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. 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

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<sup>6</sup> 15 U.S.C. 78o-3.

<sup>7</sup> 15 U.S.C. 78o-3(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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.<sup>10</sup>

#### 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-2005-147 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-2005-147. 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

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(C).

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-2005-147 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).