

and market demands, Nasdaq believes the proposed rule supports efficient use of existing systems and ensures that the charges associated with such use are allocated equitably. The proposed rule change will apply to NASD members seeking access to the NTF. This fee schedule is identical to the new fee schedule that Nasdaq proposes to charge persons that are not NASD members that also seek access to the NTF.

#### *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, as amended.

#### *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**

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the NASD, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder. 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-2005-076 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NASD-2005-076. 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 the principal office of Nasdaq. 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-2005-076 and should be submitted on or before July 27, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-3536 Filed 7-5-05; 8:45 am]

**BILLING CODE 8010-01-P**

Telephone conversation between Katherine A. England, Assistant Director, Jan Woo, Attorney, Division of Market Regulation, Commission, and Eric Lai, Assistant General Counsel, Nasdaq, dated June 23, 2005.

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

<sup>10</sup> 17 CFR 19b-4(f)(2).

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

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

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

<sup>3</sup> The Commission has made minor technical changes to this notice with Nasdaq's consent.

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51933; File No. SR-NASD-2005-075]

### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Fees for Non-Members Using the New Testing Facility**

June 28, 2005.

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 June 16, 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.<sup>3</sup> Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposed rule change effective upon filing with the Commission.<sup>6</sup> 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 is filing this proposed rule change to simplify the fee schedule for connectivity and testing fees for persons that are not NASD members wishing to access the Nasdaq Testing Facility ("NTF"). Nasdaq will implement the change to NASD Rule 7050(d) on or about August 1, 2005.

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

\* \* \* \* \*

#### **7000. CHARGES FOR SERVICES AND EQUIPMENT**

##### **7050. Other Services**

(a)-(c) No change.

(d) Nasdaq Testing Facility

(1) Subscribers that conduct tests of their *Nasdaq access protocols*

<sup>6</sup> Nasdaq provided the Commission with written notice of its intention to file the proposed rule change on June 14, 2005. The Commission received Nasdaq's submission, and asked Nasdaq to file the instant proposed rule change, pursuant to Rule 19b-4(f)(6) under the Act. 17 CFR 240.19-4(f)(6).

connection (which includes computer-to-computer interface (CTCI), NWII application programming interface (API), Financial Information Exchange (FIX) interface, and Nasdaq Information Exchange (QIX) interface) or market data vendor feeds through the Nasdaq Testing Facility (NTF) shall pay the following charges:

\$285/hour .....	For [an] Active Connection testing using current Nasdaq access protocols [CTCI/NWII API/FIX testing] during the normal operating hours of the NTF;
[\$75/hour] .....	[For an Idle Connection for CTCI/NWII API/FIX testing during the normal operating hours of the NTF, unless such an Idle Connection is over a dedicated circuit;]
No Charge .....	For [an] Idle Connection testing using current Nasdaq access protocols [for CTCI/NWII API/FIX testing if such an Idle Connection is over a dedicated circuit during the normal operating hours of the NTF];
\$333/hour .....	For Active Connection [CTCI/NWII API/FIX] testing using current Nasdaq access protocols [(for both Active and Idle Connections)] at all times other than the normal operating hours of the NTF.

(2)(A) An “Active Connection” commences when the user begins to send and/or receive a transaction to and from the NTF and continues until the earlier of disconnection or the commencement of an Idle Connection.

(B) An “Idle Connection” commences after a Period of Inactivity and continues until the earlier of disconnection or the commencement of an Active Connection. If a Period of Inactivity occurs immediately after subscriber’s connection to the NTF is established and is then immediately followed by an Idle Connection, then such Period of Inactivity shall also be deemed a part of the Idle Connection.

(C) A “Period of Inactivity” is an uninterrupted period of time of specified length when the connection is open but the NTF is not receiving from or sending to subscriber any transactions. The length of the Period of Inactivity shall be such period of time between [5]10 minutes and [10]60 minutes in length as Nasdaq may specify from time to time by giving notice to users of the NTF.

(3)–(5) 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 IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

**A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

**1. Purpose**

Currently, the fees for the NTF are assessed based on Active Testing, where the user is sending and receiving

transactions, and Idle Testing, where the user is connected to the NTF, but not sending or receiving transactions. The current fees for Active Testing and Idle Testing are \$285 per hour and \$75 per hour respectively. The proposed rule change simplifies the NTF fee schedule by eliminating the Idle Testing fees and modifying the parameters for Active Testing. Nasdaq believes that the proposed rule change will make the NTF services more cost-effective for Nasdaq’s customers.

Nasdaq’s customers have historically accessed the NTF through dial-up connections using either Nasdaq’s computer-to-computer interface (CTCI) or the NWII application programming interface (API). As Nasdaq transitions to new technology (i.e., FIX and QIX)<sup>7</sup>, Nasdaq believes that users will increasingly access the NTF using high bandwidth Internet or Extranet connections that are “always on”. The Idle Testing fee was originally designed to discourage customers from needlessly taking a limited number of dial-up connections when no testing was being performed. Some NTF users have created automated connection mechanisms that automatically access the NTF on a periodic basis. These firms sometimes unknowingly maintain idle connections and only discover the problem after days or weeks of idly connecting to the NTF. By eliminating the Idle Testing fee, these users will only be charged when Active Testing occurs, and will not be charged for idle connections.

In addition to eliminating fees for Idle Testing, Nasdaq proposes to change the time period for when an Idle Connection commences from five to 10 minutes in length to 10 to 60 minutes in length. Initially, the period during

<sup>7</sup> FIX (Financial Information Exchange) and QIX (Nasdaq Information Exchange) are new messaging protocols that are used by customers to communicate with Nasdaq’s systems. See Securities Exchange Act Release Nos. 48387 (August 21, 2003), 68 FR 51619 (August 27, 2003) (SR–NASD–2003–117); 48452 (September 5, 2003), 68 FR 53767 (September 12, 2003) (SR–NASD–2003–118); and 51170 (February 9, 2005), 70 FR 7988 (February 16, 2005) (SR–NASD–2005–002).

which a connection needs to remain inactive before it will be deemed idle will be 60 minutes. Nasdaq, however, reserves the right to adjust this time within a range of 10 to 60 minutes by giving notice of the change to NTF subscribers. The proposed rule change also clarifies that the fee schedule for access to the NTF applies to all Active Connection testing regardless of the Nasdaq access protocols used to access the NTF. Thus, the new modified NTF fee schedule will also apply to QIX and other access protocols that Nasdaq may offer in the future.

**2. Statutory Basis**

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>8</sup> in general, and Section 15A(b)(5)<sup>9</sup> of the Act, 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. By modifying the NTF pricing structure to be more responsive to subscriber needs and market demands, Nasdaq believes the proposed rule supports efficient use of existing systems and ensures that the charges associated with such use are allocated equitably. The proposed rule change will apply to non-members (usually service bureaus) seeking access to the NTF. This fee schedule is identical to the new fee schedule that Nasdaq proposes to charge NASD members seeking access to the NTF.

**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, as amended.

<sup>8</sup> 15 U.S.C. 78o–3.

<sup>9</sup> 15 U.S.C. 78o–3(b)(5).

*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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

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 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-2005-075 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NASD-2005-075. 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 the principal office of Nasdaq.

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-2005-075 and should be submitted on or before July 27, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-3537 Filed 7-5-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51931; File No. SR-NASD-2005-052]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and No. 2 Thereto Relating to Honorarium for Arbitrators Deciding Discovery-Related Motions

June 28, 2005.

#### I. Introduction

On April 14, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change relating to an honorarium for arbitrators deciding

discovery-related motions. On April 29, 2005, NASD Dispute Resolution submitted Amendment No. 1 to the proposed rule change. On May 6, 2005, NASD Dispute Resolution submitted Amendment No. 2. The proposed rule change, as amended, was published for comment in the **Federal Register** on May 19, 2005.<sup>3</sup> The Commission received one comment on the proposal. For the reasons discussed below, the Commission is approving the proposed rule change, as amended.

## II. Description of the Proposed Rule Change

### A. Description of the Proposal

In 2002, NASD Dispute Resolution conducted arbitrator focus groups across the country. One of the consistently raised concerns was the amount of time and effort invested by chairpersons in reviewing and deciding various discovery motions, especially in situations in which the motions are decided without a hearing (*i.e.*, on the papers). Also, Dispute Resolution staff has found that the current lack of compensation for deciding such motions has made it more difficult to recruit current arbitrators to become chairpersons. Currently, arbitrators are not compensated for deciding discovery motions on the papers. Arbitrators are compensated, however, when they conduct pre-hearing conferences to hear arguments from parties regarding discovery motions.

NASD, therefore, proposed to adopt a rule to compensate arbitrators in the amount of \$200 (the same amount that is paid for an arbitrator to participate in a pre-hearing conference regarding discovery) to decide discovery motions on the papers. The new rule language states that NASD will pay arbitrators an honorarium of \$200 to decide a discovery-related motion without a hearing session. For purposes of this rule, a discovery-related motion and any replies or other correspondence relating to the motion will be considered to be a single motion. If more than one arbitrator considers a discovery-related motion, each arbitrator will receive \$200. The panel will allocate the cost of the honoraria as part of the eventual arbitration award. The rule will not apply to simplified cases administered under Rules 10203 and 10302.

### B. Comment Summary

The proposal was published for comment in the **Federal Register** on

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

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

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

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

<sup>3</sup> See Securities Exchange Act Release No. 51693 (May 12, 2005), 70 FR 28972 (May 19, 2005) (the "Notice").