

interact.<sup>6</sup> As noted in SR-ISE-2004-24, the ISE treats orders and quotations differently, with ISE Rule 804(a) stating that only market makers may enter quotations on the ISE. Market makers use quotations to input and update prices on multiple series of options at the same time. Quotations generally are based on pricing models that rely on various factors, including the price and volatility of the underlying security. The ISE stated that as these variables change, a market maker's pricing model automatically updates quotations for some or all of an option's series. In contrast, an order is an interest to buy a stated number of contracts of one specific options series. The ISE noted that all ISE members, including ISE market makers, can enter orders.<sup>7</sup>

According to the ISE, the purpose of the one-second delay was to allow a market maker to update its quotations to reflect price changes in an underlying stock before another market maker's quotation could "hit" the updating market maker's quotation. In SR-ISE-2004-24, the ISE represented that it promptly processes quotation updates when it receives them, but that there is invariably a lag between the time the underlying stock price first changes and the time by which the ISE can process all the corresponding quotation changes. In SR-ISE-2004-24, the ISE also stated its belief that the one-second delay would allow the ISE the time to process quotation updates, without effecting multiple executions during the update process. In the Notice, the ISE noted, however, that the one-second delay may no longer be necessary as the ISE trading system and its market maker members' quoting systems continue to advance technologically. Accordingly, the ISE proposes an amendment to ISE Rule 804(d) to give the ISE the flexibility to remove the one-second delay. In making a determination to remove the one-second delay, the ISE stated that it would take into consideration input from its market maker members, particularly through the ISE's Market Maker Advisory Committee. The ISE also noted that any change made to the one-second delay would be implemented on a uniform, market-wide basis (as opposed to, for example, a class-by-class basis). Further, the ISE stated that it would inform its members of any changes made to the one-second delay by distributing a

Regulatory Information Circular prior to the implementation of any such change.

### III. Discussion

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 national securities exchange<sup>8</sup> and, in particular, the requirements of Section 6(b) of the Act<sup>9</sup> and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>10</sup> in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In SR-ISE-2004-24, the Commission noted the ISE's belief that, without the proposed one-second "timer" function, pricing inefficiencies would result on the Exchange, and ISE market makers would widen their quotations or limit size to avoid multiple executions against other market makers.<sup>11</sup> To the extent the ISE trading system and its market maker members' quoting systems continue to advance technologically to reduce the likelihood of market maker quotes interacting, the one-second delay may no longer be necessary. Accordingly, the Commission believes that granting the ISE the flexibility to remove the one-second delay in such circumstance is consistent with the Act. Additionally, the Commission believes that permitting the ISE to determine to reinstate the one-second delay also is consistent with the Act, if the reinstatement of the delay is necessary to avoid the interaction of market maker quotations. In determining whether to remove the one-second delay, the Commission understands that the ISE

<sup>8</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> In connection with the approval of SR-ISE-2004-24, the Commission granted ISE's request for a limited exemption from Rule 602 of Regulation NMS under the Act ("Quote Rule"). Specifically, the Commission granted ISE market makers an exemption from their obligations under paragraph (c)(2) of the Quote Rule with respect to trades with matching ISE market maker quotations for no more than one second, provided that the quotations are locked or crossed for no more than one second, and that such ISE market maker is firm to all other customer and broker-dealer orders, including orders for the accounts of other ISE market makers. See letter from Robert Colby, Deputy Director, Division of Market Regulation, Commission, to Michael Simon, Senior Vice President and General Counsel, ISE, dated June 24, 2004.

would consult with its market maker members, particularly through the Exchange's Market Maker Advisory Committee. Regardless of whether the ISE makes any changes to the one-second delay, the Commission notes that ISE market makers would be required to be firm for their quotations for the same size to customers and broker-dealer orders, including orders for the account of other ISE market makers.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-ISE-2005-48), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. E5-8071 Filed 12-28-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53005; File No. SR-NASD-2005-147]

### 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

December 22, 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 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

<sup>12</sup> 15 U.S.C. 78f(b)(2).

<sup>13</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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>6</sup> See Securities Exchange Act Release No. 49931 (June 28, 2004), 69 FR 40696 (July 6, 2004) ("SR-ISE-2004-24").

<sup>7</sup> ISE Rule 717 imposes various limitations on orders that Electronic Access Members may enter on the ISE, while ISE Rule 805 governs market maker orders.

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.

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

\* \* \* \* \*

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.

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 other order entered by a Participant that is routed outside of Nasdaq's INET System. \$0.0025 per share executed.

*Any other order entered by a Participant that is routed to the NASDAQ Opening or Closing Cross. \$0.001 per share executed.*

**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.

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.

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]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). [\$0.0005]\$0.01 per share executed

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®/FIX pair

• \$400 per month for each ITCH® data feed pair

• \$400 per month for each DROP® pair

• \$400 per month for each Compressed ITCH® data feed pair

• \$1000 per month for each Multicast ITCH® 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®/FIX pair

• \$800 per month for each ITCH® data feed pair

• \$800 per month for each DROP® 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.

\* \* \* \* \*

## 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; (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.

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

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

<sup>7</sup> 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. 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 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

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

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

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

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 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 January 19, 2006.

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

**Jonathan G. Katz,**  
Secretary.

[FR Doc. E5-8042 Filed 12-28-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53013; File No. SR-BSE-2005-49]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Market Opening Procedures of the Boston Options Exchange Facility

December 22, 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 November 4, 2005, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") 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

<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.