

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51581; File No. SR-NASD-2005-041]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Members Using the New Nasdaq Workstation

April 20, 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 March 30, 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. Pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(1), (2), and (5) thereunder,<sup>4</sup> Nasdaq has designated this proposal in part as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, in part as establishing or changing a due, fee, or other charge, and in part as a proposal effecting a change in an existing order-entry or trading system of a self-regulatory organization, which renders the proposed rule change effective immediately upon filing. 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 amend NASD Rule 7010 to establish fees for the new Nasdaq Workstation and to file a Head Trader Alert regarding the Nasdaq Workstation and the new Nasdaq Information Exchange ("QIX") protocol. Nasdaq will begin making the Nasdaq Workstation available to users on or about May 2, 2005.

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

##### The New Nasdaq Workstation

As announced in recent Nasdaq Head Trader alerts,<sup>5</sup> Nasdaq is replacing its current front-end workstation, the Nasdaq Workstation II® (the "NWII"), with a new front-end offering. The new Nasdaq Workstation<sup>SM</sup> will be available through a dedicated high-bandwidth circuit or an Internet broadband connection, but in contrast to the NWII, the new Nasdaq Workstation will not require use of a service delivery platform ("SDP"), a hardware unit located at the subscriber's premises. Nasdaq believes that the elimination of SDPs will result in substantial cost savings to users of the new Nasdaq Workstation in comparison with the NWII. The main version of the Nasdaq Workstation will be referred to as "Nasdaq Workstation Trader," and can be used by members for order and quotation entry, trade reporting, and outbound order routing.<sup>6</sup>

The new Nasdaq Workstation will include all of the same functionality as the NWII, however, with the exception of a little-used market statistic query function. Accordingly, firms may continue to use the Workstation either as their primary trading medium or as a supplemental backup system. Nasdaq expects to discontinue support of the NWII by the end of October 2005. Firms

that currently use the NWII will need to transition to the new Workstation or another front-end solution by that time. Nasdaq will contact all NWII customers to assist them in their transition. Customers will be provided with materials and training support for the transition.

The fee for the new Nasdaq Workstation will be \$435 per user per month, plus charges for any market data services received through the Workstation. The fee for the NWII is \$525 per logon<sup>7</sup> per month for the first 150 logons, but the NWII includes an entitlement to Total View data and UQDF/UTDF data, which otherwise cost \$70 per user per month and \$20 per user per month respectively. Thus, the fee for the new Workstation plus Total View data and UQDF/UTDF data is identical to the fee for Nasdaq's current NWII offering.

To ease the transition from NWII to the new Workstation, Nasdaq will allow current NWII users to use any form of the new Nasdaq Workstation without charge for a 60-day period commencing on the firm's scheduled first date of use of the new service, provided that users continue to pay charges for existing NWII service during that period.

##### QIX

In SR-NASD-2005-002<sup>8</sup> and Nasdaq Head Trader Alert 2005-009, Nasdaq announced that its new QIX communication protocol would support a full range of "post-trade" trade reporting functionality. As of the date of this filing, however, trade reporting functionality through QIX has not been placed into production for any market participants. As a result of the low level of interest expressed by market participants in using QIX for trade reporting, Nasdaq has decided not to support trade reporting through QIX. As is currently the case, trades executed through the execution services of the Nasdaq Market Center, including trades stemming from quotes/orders submitted through QIX, will be reported to the Nasdaq Market Center automatically, without a need for specialized trade reporting functionality. Trade reporting functionality will continue to be available to market participants that need it through the computer-to-computer interface ("CTCI") protocol, the new Nasdaq Workstation, and in the second quarter of this year, though FIX.

<sup>5</sup> See Nasdaq Head Trader Alert 2005-019 (March 1, 2005) and Nasdaq Head Trader Alert 2005-009 (January 25, 2005) ([http://www.nasdaqtrader.com/dynamic/newsindex/headtraderalerts\\_2005.stm](http://www.nasdaqtrader.com/dynamic/newsindex/headtraderalerts_2005.stm)) and Nasdaq Head Trader Alert 2004-105 (July 30, 2004). Nasdaq filed Head Trader Alert 2005-009 as an exhibit to Securities Exchange Act Release No. 51170 (February 9, 2005), 70 FR 7988 (February 16, 2005) (SR-NASD-2005-002) and is filing Nasdaq Head Trader Alert 2005-019 as an exhibit to this filing.

<sup>6</sup> Nasdaq's current Weblink ACT product, which is used for trade reporting, is being renamed "Nasdaq Workstation Post Trade."

<sup>7</sup> The term "logon" refers to an individual right of access, and therefore is equivalent to the term "user" in the new rule.

<sup>8</sup> Securities Exchange Act Release No. 51170 (February 9, 2005), 70 FR 7988 (February 16, 2005) (SR-NASD-2005-002).

<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).

<sup>4</sup> 17 CFR 240.19b-4(f)(1), (2), and (5).

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>9</sup> in general, and Section 15A(b)(5)<sup>10</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. Nasdaq also believes that the proposed rule change will result in subscribers being eligible to receive the new Nasdaq Workstation at a price that, when added to the price for the TotalView and UQDF/UTDF data feeds, is identical to the current price for the NWII. Because the new Workstation will allow the elimination of SDPs supporting the NWII, however, Nasdaq believes the proposed rule change would result in substantial cost savings for subscribers that opt to receive the new Workstation service.

### 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

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 has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and subparagraphs (f)(1), (2), and (5) of Rule 19b-4 thereunder, because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, establishes or changes a due, fee, or other charge, and effects a change in an existing order-entry or trading system.<sup>12</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-2005-041 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2005-041. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. 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-2005-041 and should be submitted on or before May 17, 2005.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-1975 Filed 4-25-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51573; File No. SR-NYSE-2004-71]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Amend NYSE Rule 104 Regarding the Requirement That Specialists Obtain Floor Official Approval for Destabilizing Dealer Account Transactions in ETFs

April 19, 2005.

On December 15, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("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 to amend NYSE Rule 104 regarding the requirement that specialists obtain floor official approval for destabilizing dealer account transactions in ETFs. On February 28, 2005, the NYSE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on March 15, 2005.<sup>4</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>6</sup> which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative practices, to promote just and equitable principles

<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> Amendment No. 1 superseded the originally filed proposed rule change in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 51329 (March 8, 2005), 70 FR 12769.

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78o-3.

<sup>10</sup> 15 U.S.C. 78o-3(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(1), (2), and (5).