

Important Notice. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate the 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-FICC-2005-08 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-FICC-2005-08. 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 filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at <http://www.ficc.com>. 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-FICC-2005-08 and should be submitted on or before May 17, 2005.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-1974 Filed 4-25-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51583; File No. SR-NASD-2005-042]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Non-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. Nasdaq has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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 the Substance of the Proposed Rule Change

Nasdaq proposes to establish fees for non-members using the new Nasdaq Workstation. 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.

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

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

#### 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

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 the elimination of SDPs would 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>

In SR-NASD-2005-041,<sup>7</sup> which is being filed on an immediately effective basis, Nasdaq has proposed applying the fee schedule described below to members using the new Workstation. In this filing, Nasdaq is proposing applying the same fee schedule to non-members that subscribe to this service. The non-members that currently subscribe to the NWII are service bureaus that use the NWII to monitor information supplied over NWII terminals for purposes of comparison with data supplied through their own services. Non-members are not permitted to use the NWII, and will

<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).

<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> Securities Exchange Act Release No. 51581 (April 20, 2005).

not be permitted to use the new Nasdaq Workstation, for purposes of entering quotes or orders.<sup>8</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, member 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>9</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.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>10</sup> in general, and Section 15A(b)(5)<sup>11</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 would result in non-members that receive the new Nasdaq Workstation paying the same fees for the service as will be paid by NASD members. Such

fees, when added to the fees for the TotalView and UQDF/UTDF data feeds, are identical to the current fees for the NWII. Because the new Workstation will allow the elimination of SDPs supporting the NWII, however, Nasdaq believes that 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder,<sup>13</sup> because Nasdaq has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Nasdaq provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change. At any time within 60 days of the filing of such 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 purpose of the Act.

## IV. Solicitation of Comments

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### Electronic Comments

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- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-042 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-2005-042. 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-2005-042 and should be submitted on or before May 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-1970 Filed 4-25-05; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>8</sup> In limited circumstances, non-members may report trades to Nasdaq. See NASD Rule 6120.

<sup>9</sup> The term "logon" refers to an individual right of access, and therefore is equivalent to the term "user" in the new rule.

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

<sup>11</sup> 15 U.S.C. 78o-3(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 200.30-3(a)(13).