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–2005–133 and should be submitted on or before January 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7840 Filed 12–23–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52978; File No. SR–NASD–2005–141]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Modify the Execution Fees for Quotes and Orders Executed in the Nasdaq Opening Cross

December 19, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 5, 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. On December 9, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the execution fees for quotes and orders in the Nasdaq Opening Cross. Nasdaq will implement the proposed rule change on January 3, 2006. Additions are *italicized,* and deletions are in brackets.

* * * * *

7010. System Services

(a)–(h) No change

(i) Nasdaq Market Center and Brut Facility Order Execution

(1)–(3) No change.

(4) Opening Cross

[For a period of three months commencing on the date Nasdaq implements its Opening Cross (as described in Rule 4704(d)), members shall not be charged Nasdaq Market Center execution fees, or receive Nasdaq Market Center liquidity provider credits, for those quotes and orders executed in the Nasdaq Opening Cross.]

Commencing on January 1, 2006, members shall be assessed the following Nasdaq Market Center execution fees for quotes and orders executed in the Nasdaq Opening Cross:

Market-on-Open, Limit-on-Open and Day orders executed in the Nasdaq Opening Cross—$0.0005 per share executed for the net number of buy and sell shares up to a maximum of $10,000 per firm per month

All other quotes and orders executed in the Nasdaq Opening Cross—No charge for execution

(5) and (6) No change.

(j)–(w) 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 aspects of such statements.

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

1. Purpose

Nasdaq has determined to establish the following pricing for the Nasdaq Opening Cross beginning January 3, 2006. Nasdaq will assess a fee of $0.0005 per share executed during the Nasdaq Opening Cross for all Market-on-Open, Limit-on-Open, and Day orders that are executed in the Opening Cross. That fee will be assessed on the difference between the total number of shares of buy (sell) interest minus the total number of shares of sell (buy) interest executed by that firm for all stocks.

The fee will be capped at $10,000 per firm per month for all stocks combined. At this time, Nasdaq will assess no fees and offer no rebates for quotations and other orders executed during the Nasdaq Opening Cross. Nasdaq will monitor the effectiveness of the proposed pricing schedule in preserving and enhancing the success of the Nasdaq Opening Cross to date.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A of the Act,[6] in general, and Section 15A(b)(5)[7] 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.

The proposed fees for Market-on-Open, Limit-on-Open, and Day orders are consistent with the statute in that they are designed to result in an execution charge approximating the execution charge for quotes and orders entered and executed in the Nasdaq Market Center throughout the trading day. Assessing no fee and offering no rebate for quotations and other orders executed during the Nasdaq Opening Cross is consistent with the statute because it is designed to encourage the entry of Imbalance Only orders to minimize imbalances resulting from the Opening Cross algorithm, and to preserve the Opening Cross liquidity provided by quotations and orders from the continuous market.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq made non-substantive changes to the text of the proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(5).

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 has neither solicited nor received comments on the proposed rule change.

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 [8] and subparagraph (f)(2) of Rule 19b–4 thereunder.[9] 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.[10] Nasdaq will implement the proposed rule change on January 3, 2006.

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.* Please include File Number SR–NASD–2005–141 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–2005–141. 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 the filing also will be available for inspection and copying at the principal offices 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–2005–141 and should be submitted on or before January 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] The effective date of the original proposed rule change is December 5, 2005, and the effective date of Amendment No. 1 is December 9, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on December 9, 2005, the date on which Nasdaq submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52979; File No. SR–NASD–2005–135]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to the Status of Former Registered Persons Serving in the Armed Forces of the United States

December 19, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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

NASD is proposing to amend NASD IM–1000–2 to toll the two-year expiration provisions for qualification examination requirements set forth in NASD Rules 1021(c), 1031(c), and 1041(c) for certain former registered persons serving in the Armed Forces of the United States, including persons who commence their active military duty within two years after they have ceased to be registered with a member and persons who terminate their registration with a member while on active military duty.

Below is the text of the proposed rule change. Proposed new language is in *italics.*

* * * * *

IM–1000–2. Status of Persons Serving in the Armed Forces of the United States

(a)–(b) No Change.

(c) Status of Formerly Registered Persons

(1) If a person who is currently not registered with a member volunteers for or is called into active duty in the Armed Forces of the United States at any time within two years after the date the person ceases to be registered with a member, NASD will defer the lapse of registration requirements set forth in Rules 1021(c), 1031(c), and 1041(c) (i.e., toll the two-year expiration provisions for qualification examination requirements). NASD will defer the lapse of registration requirements commencing on the date the person begins actively serving in the Armed Forces of the United States, provided that NASD is properly notified of the person's period of active military service within 90 days following his or her completion of active service or upon his or her re-registration with a member, whichever occurs first. The deferral will terminate 90 days following the person's completion of active service in the Armed Forces of the United States. Accordingly, if such person does not re-register with a member within 90 days following his or her completion of active service in the Armed Forces of the United States, the amount of time in which the person must become re-registered with a member without being subject to the qualification examination requirements shall consist of the standard two-year period provided in Rules 1021(c), 1031(c), and 1041(c)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.