

on a line-by-line basis. Thus, a firm that used some lines to provide service bureau functionality while using other lines for its own use would identify its service bureau lines and would pay the fee only with respect to those lines.

Even after the implementation of this proposed rule change, it is likely that service bureau customers would pay less for connectivity to Nasdaq than firms that connect directly. Accordingly, Nasdaq will closely monitor connectivity costs and may make additional pricing modifications in the near future.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,¹⁰ particularly subsection 15A(b)(5),¹¹ because 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 that the NASD operates or controls. Nasdaq believes that the proposed rule change would help to address an existing disparity between the charges paid by market participants for direct CTCI connections to Nasdaq and the much lower charges paid by market participants for access through service bureaus.

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 neither solicited nor received written comments with respect to the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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. In particular, the Commission requests comment on Nasdaq's proposal to implement the proposed rule change retroactively as of April 1, 2003. The Commission notes that the retroactive implementation of the proposed fee change would enable Nasdaq to charge for services that it has already rendered.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2003-50 and should be submitted by May 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-10097 Filed 4-23-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47697; File No. SR-NASD-2003-68]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Its Restrictions on Non-Cash Compensation in Connection With Corporate Financing and Direct Participation Programs

April 18, 2003.

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 April 7, 2003, the National Association of Securities Dealers, Inc. ("NASD"), 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 the NASD. The NASD has designated the proposed rule change as one that constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule pursuant to rule 19b-4(f)(1) under the Act,³ which renders it effective upon receipt of the filing by the Commission. 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

The NASD is proposing a proposed rule change to codify in NASD rules 2710 (Corporate Financing rule) and 2810 (Direct Participation Programs or "DPP" rule) its stated policies, practices, and interpretations regarding members' receipt of non-cash compensation in connection with the sale and distribution of securities. The express prohibitions on the receipt of non-cash compensation currently in the Corporate Financing rule and the DPP rule generally limit the receipt of such items to \$100 per person annually and do not include certain detailed exceptions under NASD rules 2820 (Variable Contracts rule) and 2830 (Investment Company rule) for members selling mutual fund shares and variable annuities. The proposed rule change would codify exceptions in the Variable Contracts and Investment Company rules for members selling debt, equity,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(1).

Release No. 44144 (April 2, 2001), 66 FR 18332 (April 6, 2001) (SR-NASD-00-81).

¹⁰ 15 U.S.C. 78o-3.

¹¹ 15 U.S.C. 78o-3(b)(5).

¹² 17 CFR 200.30-3(a)(12).

DPP, and real estate investment trust ("REIT") securities—while maintaining the current non-cash compensation prohibitions on the receipt of gifts with more than a *de minimus* value, payments and reimbursements preconditioned on the achievement of a sales target, and payments and reimbursements for travel and meetings that are not *bona fide* due diligence meetings or training and education meetings. In addition, the proposed rule change will codify the NASD's policy and practice of applying Interpretive Material issued by NASD staff relating to the non-cash compensation provisions uniformly and consistently to the Corporate Financing rule, the DPP rule, the Investment Company rule, and the Variable Contracts rule. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2710. Corporate Financing Rule—
Underwriting Terms and Arrangements

(a)–(b) No Change

(c) Underwriting Compensation and Arrangements

(1)–(5) No Change

(6) Unreasonable Terms and Arrangements

(A) No Change

(B) Without limiting the foregoing, the following terms and arrangements, when proposed in connection with the distribution of a public offering of securities, shall be unfair and unreasonable:

(i)–(xii) No Change

(xiii) [for a member or person associated with a member to accept, directly or indirectly, any non-cash sales incentive item including, but not limited to, travel bonuses, prizes and awards, from an issuer or an affiliate thereof in excess of \$100 per person per issuer annually. Notwithstanding the foregoing, a member may provide non-cash sales incentive items to its associated persons provided that no issuer, or an affiliate thereof, including specifically an affiliate of the member, directly or indirectly participates in or contributes to providing such non-cash sales incentive; or].

(xiv)–(xv) Renumbered (xiii)–(xiv).

(7)–(8) No Change

(d) Non-Cash Compensation

(1) Definitions

The terms "compensation," "non-cash compensation" and "offeror" as used in this Section (d) of this Rule shall have the following meanings:

(A) "Compensation" shall mean cash compensation and non-cash compensation.

(B) "Non-cash compensation" shall mean any form of compensation

received in connection with the sale and distribution of securities that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.

(C) "Offeror" shall mean an issuer, an adviser to an issuer, an underwriter and any affiliated person of such entities.

(2) Restrictions on Non-Cash Compensation

In connection with the sale and distribution of a public offering of securities, no member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided in this provision. Non-cash compensation arrangements are limited to the following:

(A) Gifts that do not exceed an annual amount per person fixed periodically by the Board of Governors¹ and are not preconditioned on achievement of a sales target.

(B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.

(C) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not conditioned by the member on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by subparagraph (d)(2)(D);

(ii) the location is appropriate to the purpose of the meeting, which shall mean an office of the issuer or affiliate thereof, the office of the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;

(iii) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(iv) the payment or reimbursement by the issuer or affiliate of the issuer is not conditioned by the issuer or an affiliate of the issuer on the achievement of a sales target or any other non-cash compensation arrangement permitted by subparagraph (d)(2)(D).

(D) Non-cash compensation arrangements between a member and its

associated persons or a company that controls a member company and the member's associated persons, provided that no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and

(E) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in subparagraph (d)(2)(D).

A member shall maintain records of all non-cash compensation received by the member or its associated persons in arrangements permitted by subparagraphs (d)(2)(C)–(E). The records shall include: The names of the offerors, non-members or other members making the non-cash compensation contributions; the names of the associated persons participating in the arrangements; the nature and value of non-cash compensation received; the location of training and education meetings; and any other information that proves compliance by the member and its associated persons with subparagraph (d)(2)(C)–(E).

(d) Renumbered as (e).

* * * * *

2810. Direct Participation Programs

(a) No Change

(b) Requirements

(1)–(3) No Change

(4) Organization and Offering Expenses

(A)–(D) No Change

(E) [No member or person associated with a member shall directly or indirectly accept any non-cash compensation or sales incentive item including, but not limited to, travel bonuses, prizes, and awards offered or provided to such member or its associated persons by any sponsor, affiliate of a sponsor or program. Notwithstanding the foregoing, a member may provide non-cash compensation or sales incentive items to its associated persons provided that no sponsor, affiliate of a sponsor or program, including specifically an affiliate of the member, directly or indirectly participates in or contributes to providing such non-cash compensation. Further, this subparagraph shall not prohibit a person associated with a member from accepting any non-cash sales incentive item offered directly to that person by a sponsor, affiliate of a sponsor or program where:

(i) the aggregate value of all such items paid by any sponsor or affiliate of

¹ The current annual amount fixed by the Board of Governors is \$100.

a sponsor to each associated person during any year does not exceed \$100.00;

(ii) the value of all such items to be made available in connection with an offering is included as compensation to be received in connection with the offering for purposes of subparagraph (B); and

(iii) the proposed payment or transfer of all such items is disclosed in the prospectus or similar offering document,]

(F) Renumbered to (E).

(5)–(6) No Change

(c) Non-Cash Compensation

(1) Definitions

The terms “compensation,” “non-cash compensation” and “offeror” as used in this section (c) of this rule shall have the following meanings:

(A) “Compensation” shall mean cash compensation and non-cash compensation.

(B) “Non-cash compensation” shall mean any form of compensation received in connection with the sale and distribution of direct participation securities that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.

(C) “Offeror” shall mean an issuer, sponsor, an adviser to an issuer or sponsor, an underwriter and any affiliated person of such entities.

(2) Restriction on Non-Cash Compensation

In connection with the sale and distribution of direct participation securities, no member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided in this provision. Non-cash compensation arrangements are limited to the following:

(A) Gifts that do not exceed an annual amount per person fixed periodically by the Board of Governors¹ and are not conditioned on achievement of a sales target.

(B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.

(C) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) associated persons obtain the member’s prior approval to attend the meeting and attendance by a member’s associated persons is not conditioned by the member on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by subparagraph (c)(2)(D);

(ii) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;

(iii) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(iv) the payment or reimbursement by the offeror is not conditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement permitted by subparagraph (c)(2)(D).

(D) Non-cash compensation arrangements between a member and its associated persons or a company that controls a member company and the member’s associated persons, provided that no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member’s or non-member’s organization of a permissible non-cash compensation arrangement; and

(E) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in subparagraph (c)(2)(D).

A member shall maintain records of all non-cash compensation received by the member or its associated persons in arrangements permitted by subparagraphs (c)(2)(C)–(E). The records shall include: the names of the offerors, non-members or other members making the non-cash compensation contributions; the names of the associated persons participating in the arrangements; the nature and value of non-cash compensation received; the location of training and education meetings; and any other information that proves compliance by the member and its associated persons with subparagraph (c)(2)(C)–(E).

(c) Renumbered as (d).

* * * * *

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

In its filing with the Commission, the NASD 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. The NASD 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 NASD is proposing to codify a stated policy, practice, and interpretation that the more detailed non-cash compensation provisions in the Variable Contracts rule and Investment Company rule apply to the sale and distribution of public offerings of securities and direct participation securities as governed by the Corporate Financing rule and DPP rule, respectively. The NASD is proposing to conform the language in the Corporate Financing rule and the DPP rule to be consistent with the more detailed language contained in the Variable Contracts rule and the Investment Company rule. NASD staff has consistently applied the more detailed provisions in Variable Contracts rule and the Investment Company rule to the sale and distribution of public offerings of securities and DPP securities.

Since 1994, the Commission, the NASD, and the securities industry have raised concerns about actual and potential conflicts of interest in the retail brokerage business created by a broad range of compensation practices whereby program sponsors or issuers provide incentives or rewards to individual broker-dealers and their registered representatives for selling the issuer’s products. NASD staff believes that the use of non-cash compensation can create significant point-of-sale incentives that may compromise suitability determinations and heighten the potential for loss of supervisory control over sales practices. In addition, NASD staff believes that the use of non-cash compensation incentives may result in the loss of investor confidence by increasing the perception of inappropriate practices.

Responding to these concerns, the NASD in January 1999 amended the Variable Contracts rule and the Investment Company rule to establish comprehensive restrictions on the use of non-cash compensation in connection with the sale and distribution of investment company securities and

¹ The current annual amount fixed by the Board of Governors is \$100.

variable contracts.⁴ These amendments generally limited the manner in which members can pay for or accept non-cash compensation and detail the types of non-cash compensation that are permissible. The amendments also provided limited exceptions to the non-cash compensation restrictions for payments or reimbursements that are in connection with training and education meetings. The 1999 amendments also defined certain key terms, such as "compensation" and "non-cash compensation."

Current provisions of the Corporate Financing rule and the DPP rule limit the receipt of non-cash compensation by member firms and associated persons in connection with the sale and distribution of DPP securities, REIT programs, and corporate debt and equity offerings. These types of non-cash compensation, adopted in 1988, are not as comprehensive as the restrictions that were later adopted in the Variable Contracts rule and the Investment Company rule in 1999.

Generally, consistent with the current non-cash compensation requirements in NASD rules 2820 and 2830, the proposed rule change will conform the text of NASD rules 2710 and 2810 to rules 2820 and 2830: (1) Adopt definitions of the terms "compensation," "non-cash compensation," and "offeror;" (2) provide express exceptions from the non-cash compensation limitations for *bona fide* training and education meetings; and (3) prohibit, with certain exceptions, members or persons associated with members from directly or indirectly accepting or paying any non-cash compensation in connection with public offerings of debt or equity securities or transactions in direct participation programs.

Consistent with NASD rules 2820 and 2830, the proposed rule change will provide express exceptions from the non-cash compensation provisions that would permit: (1) Gifts of up to \$100 per associated person annually; (2) an occasional meal, ticket to a sporting event or theater, or comparable entertainment; (3) payment or reimbursement for training and education meetings held by broker-dealers or issuers/sponsors for the purpose of educating associated persons of broker-dealers, so long as certain conditions are met; (4) in-house sales incentive programs of broker-dealers for their own associated persons; and (5) contributions by any non-member

company or other member to a broker-dealer's permissible in-house sales incentive program, provided there is compliance with certain criteria.

NASD staff has consistently been concerned about the use of sales incentives in connection with the sale of any type of securities to a member's customers, including transactions in DPP securities, REIT programs, and corporate debt and equity offerings. For example, these incentive programs may offer registered representatives exotic trips or expensive merchandise if they sell a specific dealer's product. The NASD believes that the potential conflicts of interest that arise from the receipt of non-cash compensation in connection with the sale of variable products and mutual fund securities also exist in connection with the sale of these types of securities.

Since January 1999, through interpretive advice, responses to exemptive requests, and in the course of the filing review process under the DPP and Corporate Financing rules, NASD staff has consistently applied the non-cash compensation prohibitions in NASD rules 2820 and 2830 to sales of variable annuities, mutual funds, DPP securities, REIT programs, and corporate debt and equity offerings. Accordingly, although training and education meetings are not specifically permitted under the DPP and Corporate Financing rule, the NASD has recognized that *bona fide* training and education meetings that meet the strict requirements set out in the Variable Contracts rule and Investment Company rule can be held consistent with the non-cash compensation prohibitions.

DPP Rule. Paragraph (b)(4)(E) of the DPP rule currently prohibits a member or associated person from accepting, directly or indirectly, non-cash compensation or sales incentive items from any sponsor or affiliate of a sponsor, unless the following requirements are satisfied: (1) The aggregate value of all such items received annually does not exceed \$100; (2) the value of all such items is included as compensation received in connection with the offering; and (3) the proposed payment of such items is disclosed in the prospectus.

The DPP rule currently does not contain an exception for training and education meetings. Through interpretive advice, the NASD has approved members' receipt of non-cash compensation in connection with *bona fide* training and education meetings. The NASD considers such a meeting to be one that educates registered representatives and assists them in making a suitability determination

regarding a DPP product for their customers and that is otherwise in compliance with the training and education provisions of NASD rules 2820 and 2830. In Notice to Members 85-29 (April 1985), the NASD announced that reimbursement for training and education meetings is permitted under the DPP rule if the expenses are recognized as underwriting compensation, disclosed in the prospectus, and come within the 10% limit on underwriting compensation permitted under the rule. NASD staff has consistently applied the 10% compensation limit and training and education policies in the DPP rule set forth in Notice to Members 85-29 to REIT offerings that are filed with the Corporate Financing Department under the Corporate Financing rule.

Corporate Financing Rule. Although the rule language of the non-cash compensation provision in the Corporate Financing rule is different from the language of the non-cash compensation provision in the DPP rule, paragraph (c)(6)(B)(xiii) of the Corporate Financing rule currently contains a provision that prohibits a member or associated person from accepting, directly or indirectly, non-cash compensation or sales incentive items in excess of \$100 per person per issuer annually from any issuer or affiliate thereof. The rule does not contain an exception for training and education meetings.

Training and Education Meetings. Currently, both the Variable Contracts rule and the Investment Company rule contain an express exception to the non-cash compensation provisions for training and education meetings that the industry believes are necessary to educate representatives about their products. The rules, however, contain conditions that must be satisfied before the exception can be used. Specifically, they require prior approval of attendance by the associated person from his or her member firm, satisfaction of the recordkeeping requirements, that attendance at the meeting not be preconditioned on the achievement of a sales target, that the location of the meeting be an office of the offeror or facility in the vicinity of the office, and that no reimbursement be provided for expenses of a guest.

Since the adoption of these provisions, the NASD has issued strict guidelines on the appropriate use of the training and education exception through Regulatory & Compliance Alerts, interpretive letters, and other correspondence with members. This guidance has stated that a sponsor is not permitted to pay for certain expenses in

⁴ See Securities Exchange Act Release No. 40214 (July 15, 1998), 63 FR 39614 (July 23, 1998) (SR-NASD-97-35).

connection with a training and education meeting, including, but not limited to, golf outings, cruises, tours, and other entertainment. The NASD believes that amending the non-cash compensation provisions of the DPP and Corporate Financing rules will codify stated policy, practice, and interpretive advice and make these rules generally consistent with those governing variable annuities and mutual funds. The NASD believes, in addition, that these amendments will allow this body of interpretive guidance to be applied consistently with respect to training and education meetings relating to any of the relevant products.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,⁵ which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; and, in general, to protect investors and the public interest. The NASD believes the proposed rule change will make the non-cash compensation provisions of the Corporate Financing rule and the DPP rule comparable to the more detailed non-cash compensation provisions that are currently in the Variable Contracts rule and the Investment Company rule. The proposed rule change also will provide expressly that NASD Interpretive Materials will apply to all four rules.

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

The NASD 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 NASD has represented that the proposed rule change is effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act⁶ and rule 19b-4(f)(1) thereunder,⁷ in that it constitutes a

stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2003-68 and should be submitted by May 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-10099 Filed 4-23-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47686; File No. SR-NASD-2003-59]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Fees for Nasdaq's InterMarket

April 16, 2003.

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 March 31, 2003, the National Association of Securities Dealers, Inc. (“NASD” or “Association”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), filed a proposed rule change with the Securities and Exchange Commission (“SEC” or “Commission”). The proposed rule change is 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 Association under section 19(b)(3)(A)(ii) of the Act,³ which renders the proposal effective upon filing with the Commission. 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 modify the existing execution fees for Nasdaq InterMarket trades executed through the InterMarket Trading System (“ITS”) and Nasdaq's Computer Assisted Execution System (“CAES”). The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

7010. System Services

(a)-(c) No change.

(d) Computer Assisted Execution Service.

The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per *share* transaction charge plus equipment-related charges.

(1) Service Charges

\$100 per month for each market maker terminal receiving CAES.

(2) Transaction Charges

(A) \$0.003 per share executed up to a maximum of \$75 per execution shall be paid by an order entry firm or CAES market maker that enters an order into CAES that is executed in whole or in part, and [\$0.002] *\$0.0015* per share executed up to a maximum of \$50 per execution shall be credited to the CAES market maker that executes such an order.

(B) \$0.002 per share executed up to a maximum of \$75 per execution shall be

⁵ 15 U.S.C. 78o-3(b)(6).

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(1).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).