

authority to issue and pledge up to an aggregate principal amount of \$963.5 million of first mortgage bonds as collateral securities ("Bank Collateral Securities"),<sup>2</sup> which \$963.5 million is not included in the \$940 million referenced above or in the Current Order's authorized amount of \$560 million of collateral securities related to tax-exempt bonds. Loans under these lines (which terminate no later than five years from the establishment of the facility) will have maturities of at least one year from the date of each borrowing.

The effective cost of capital on Secured Bank Debt will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided in no event will the effective cost of money exceed 500 basis points over the London Interbank Offered Rate for the relevant interest rate period.

EGSI (70-10158) proposes to issue Bank Collateral Securities pursuant to its Indenture of Mortgage, dated as of September 1, 1926, to JPMorgan Chase Bank, N.A. as successor Trustee, as amended and supplemented ("Mortgage). The Bank Collateral Securities would be issued on the basis of unfunded net property additions and/or previously retired bonds, as permitted and authorized by the Mortgage.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. E5-6359 Filed 11-16-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52757; File No. SR-NASD-2005-125]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for NASD Members Using the Nasdaq Market Center and Nasdaq's Brut Facility

November 9, 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 October 26, 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 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 modify the pricing for NASD members using the Nasdaq Market Center and Nasdaq's Brut Facility ("Brut"). Nasdaq states that it implemented the proposed rule change on November 1, 2005.

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

\* \* \* \* \*

#### 7010. System Services

(a)-(h) No change.

(i) Nasdaq Market Center and Brut Facility Order Execution

(1) The following charges shall apply to the use of the order execution services of the Nasdaq Market Center and Nasdaq's Brut Facility by members for Nasdaq-listed securities subject to the Nasdaq UTP Plan and for Exchange-Traded Funds listed on a *national securities exchange* [the American Stock Exchange; provided, however, that Directed Orders are not available for such Exchange-Traded Funds]. The term "Exchange-Traded Funds" shall mean Portfolio Depository Receipts, Index Fund Shares, and Trust Issued Receipts as such terms are defined in Rule 4420(i), (j), and (l), respectively.

## ORDER ENTRY

Non-Directed Orders and Preferred Orders .....	No charge.
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## ORDER EXECUTON

Non-Directed or Preferred Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the Nasdaq Market Center and/or Nasdaq's Brut Facility:

Charge to member entering order:

Average daily shares of liquidity provided through the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month:

Greater than 10 million .....	\$0.0027 per share executed (but no more than \$108 per trade for trades in securities executed at \$1.00 or less per share).
Greater than 2,000,000 but less than or equal to 10,000,000 .....	\$0.0028 per share executed (but no more than \$112 per trade for trades in securities executed at \$1.00 or less per share).
2,000,000 or less .....	\$0.0030 per share executed (but no more than \$120 per trade for trades in securities executed at \$1.00 or less per share).

Credit to member providing liquidity:

<sup>2</sup> This amount of first mortgage bonds is calculated to reflect the maximum aggregate principal amount of Secured Bank Debt issuable of

\$940 million, plus 3 month's interest at an assumed rate of 10%.

<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).

## ORDER EXECUTION—Continued

Average daily shares of liquidity provided through the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month:	
Greater than 20 million .....	\$0.0025 per share executed (but no more than \$100 per trade for trades in securities executed at \$1.00 or less per share).
Greater than 2,000,000 but less than or equal to 20,000,000 .....	\$0.0022 per share executed (but no more than \$88 per trade for trades in securities executed at \$1.00 or less per share).
Less than or equal to 2,000,000 .....	\$0.0020 per share executed (but no more than \$80 per trade for trades in securities executed at \$1.00 or less per share).
Non-Directed or Preferred Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the Nasdaq Market Center:	
Charge to member entering order:	
Average daily shares of liquidity provided through the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month:	
500,000 or less .....	\$0.001 per share executed (but no more than \$40 per trade for trades in securities executed at \$1.00 or less per share).
500,001 or more .....	\$0.001 per share executed (but no more than \$40 per trade for trades in securities executed at \$1.00 or less per share, and no more than \$10,000 per month).
Routed Orders	
Any order entered by a member that is routed outside of both the Nasdaq Market Center and Nasdaq's Brut Facility and that does not attempt to execute in Nasdaq's Brut Facility prior to routing.	
Any other order entered by a member that is routed outside of both the Nasdaq Market Center and Nasdaq's Brut Facility.	
Average daily shares of liquidity provided through the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month and average daily shares accessed through and/or routed from the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month (excluding orders routed outside of both the Nasdaq Market Center and Nasdaq's Brut Facility that do not attempt to execute in Nasdaq's Brut Facility prior to routing):	
Greater than 20 million shares of liquidity provided and greater than 40 million shares accessed and/or routed.	\$0.0025 per share executed.
Greater than 10 million but less than or equal to 20 million shares of liquidity provided and any amount accessed or routed, OR greater than 20 million shares of liquidity provided and 40 million or fewer shares accessed and/or routed.	\$0.0027 per share executed.
Greater than 2,000,000 but less than or equal to 10,000,000 shares of liquidity provided and any amount accessed and/or routed.	\$0.0028 per share executed.
Less than or equal to 2,000,000 shares of liquidity provided and any amount accessed and/or routed.	\$0.0030 per share executed.

## ORDER CANCELLATION

Non-Directed and Preferred Orders .....	No charge.
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(2)–(4) No change.

(5) There shall be no charges or credits for order entry, execution, routing, or cancellation by members accessing the Nasdaq Market Center or Nasdaq's Brut Facility to buy or sell exchange-listed securities subject to the Consolidated Quotations Service and Consolidated Tape Association plans, other than: (A) the charges in Rule 7010(i)(1) for Exchange-Traded Funds[ listed on the American Stock Exchange], (B) charges described in Rule 7010(d), (C) a fee of \$0.0004 per share executed for orders delivered by Nasdaq's Brut Facility to an exchange using the exchange's proprietary order delivery system if such orders do not attempt to execute in Nasdaq's Brut Facility or the

Nasdaq Market Center prior to routing to the exchange, and (D) a fee of \$0.009 per share executed for any limit order delivered by Nasdaq's Brut Facility to the New York Stock Exchange ("NYSE") using the NYSE's proprietary order delivery system if such an order is not an on-close order, is not executed in the opening, and remains at the NYSE for more than 5 minutes.

(6) No change.

(j)–(v) 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 is proposing to modify the fee schedule applicable to execution and routing of orders in exchange-traded funds ("ETFs") listed on exchanges other than the American Stock Exchange ("Amex"). The change proposed by this filing applies to NASD members that use the Nasdaq Market Center and Brut; in SR-NASD-2005-126, Nasdaq is proposing to make the same change applicable to non-members that use Brut. Nasdaq states that currently, execution and routing of Nasdaq-listed stocks and Amex-listed ETFs is subject to the fee schedule in NASD Rule 7010(i)(1), whereas execution and routing of other exchange-listed securities, including other exchange-listed ETFs, is generally not subject to per order routing and execution charges. Because an increasing number of ETFs are being listed on exchanges other than the Amex, however, Nasdaq states that it has concluded that it is necessary to apply the same fee schedule to all ETFs, to ensure that its fees are commensurate with the volumes of shares being routed and executed through its systems.<sup>5</sup>

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. Nasdaq states that the proposed change reflects the increased extent to which ETFs are being listed on exchanges other than the Amex and would result in the application of the same fee schedule to all ETFs, regardless of where they are listed.

*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-2005-125 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-2005-125. 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 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-2005-125 and should be submitted on or before December 8, 2005.

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

**Jonathan G. Katz,**  
Secretary.

[FR Doc. E5-6355 Filed 11-16-05; 8:45 am]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-52758; File No. SR-NASD-2005-126]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Modify the Pricing for Non-Members Using Nasdaq's Brut Facility**

November 9, 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 October 26, 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 and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and at

<sup>5</sup> The proposed rule change would also delete obsolete language regarding Directed Orders found in NASD Rule 7010(i)(1), to reflect the recent termination of Nasdaq's Directed Order functionality.

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

<sup>7</sup> 15 U.S.C. 78o-3(b)(5).

<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).

<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.