

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-2002-174 and should be submitted by January 17, 2003.

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

J. Lynn Taylor

Assistant Secretary

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47067; File No. SR-NASD-2002-177]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pricing Schedule for Nasdaq Trading Applications' Tools Plus Product

December 20, 2002.

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 13, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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. 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 7050(e)(2), the pricing schedule for Nasdaq Trading Applications' Tools Plus product. Nasdaq will implement the proposed rule change immediately upon filing.

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

* * * * *

7050. Other Services

- (a)-(d) No Change.
- (e) Software Products
 - (1) No change.
 - (2) The following deposits and fees shall be paid by all customers of Tools Plus:
 - (A) No change.
 - (B) Terminal Charge

| Fee Charge | Price |
|--|-----------------------------------|
| Terminal Charge per <i>full functionality</i> terminal [{"PT"}] equipped with Tools Plus (More than 30 terminals if customer signs two-year contract). | \$500/[PT] <i>terminal</i> /month |
| (All other situations) | \$759/[PT] <i>terminal</i> /month |
| <i>Terminal Charge per correspondent/floor broker terminal equipped with Tools Plus</i> ... | <i>\$350/terminal/month</i> |
| Minimum [fee] <i>Terminal Charge</i> | \$2,000/month |
| (C) Fee Charge | Price |
| Connection Charge to Nasdaq Computer-to-Computer Interface (CTCI) | \$265/month |
| Connection Charge to Nasdaq Service Delivery Platform (SDP) (charged to subscribers who handle customer orders). | \$250/month |
| Installation Fee ³ (one-time charge for Tools Plus and includes [one] <i>up to 15</i> terminals). | [\$13,550] <i>16,000</i> |
| (each additional <i>set of up to 15</i> terminals) ³ | [\$140] <i>13,000</i> |
| Port Charges (one-time charge per line) | \$1,250 |
| (one-time aggregate charge for two lines) | \$2,500 |
| Training Fee on-site at customers | \$400/day (plus travel expenses) |
| Training Fee for course at Nasdaq Tools | \$150/course |
| Electronic communication network (ECN) maintenance charge (charged to subscribers who route orders to ECN). | \$250/per ECN/month |

Market data redistribution charges, which are set by the relevant market data provider, are passed through to Tools Plus subscribers at cost.

(D) No change.

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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 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 below in Sections A, B, and C, of the most significant aspects of such statements.

¹² 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Installation Fee includes two hours of on-site training of customer personnel and all programming

costs associated with one customized interface for the customer to access its clearing firm.

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

1. Purpose

Nasdaq is proposing to make several modifications to the price schedule for the Tools Plus software product offered by Nasdaq Trading Applications ("NTA") (formerly Nasdaq Tools, Inc.). Specifically, Nasdaq is (i) modifying the price for installation of NTA's Tools Plus system, and (ii) establishing a price for a new type of Tools Plus terminal that Nasdaq will make available for use by correspondents and floor brokers.⁴ Tools Plus is a software product that provides subscribers with order management and routing, trade reporting, clearing, and regulatory compliance functionality.

Installation Fee

Under the current pricing schedule for Tools Plus, a customer pays a fee of \$13,550 for the installation of its first Tools Plus terminal and an incremental fee of \$140 for the installation of each additional Tools Plus terminal. When Nasdaq installs Tools Plus at the offices of a customer, it must procure Nasdaq-owned hardware, such as servers, routers, and switches, that interfaces with the customer's terminals, as well as commercial software products that run on this equipment. The amount and complexity of hardware and software required to support each customer differs, based on a complex set of variables, including the number of employees of the customer that will use the product; the number, volume, and liquidity of the securities traded by the customer, the extent to which the customer engages in pre-open trading; and the data processing options selected by the customer. Nasdaq represents that the installation fee is intended to cover the costs of this hardware and software, as well as associated Nasdaq personnel costs. Nasdaq has concluded, however, that the current level of installation fees does not cover these costs in many cases. Accordingly, Nasdaq is increasing the basic installation fee to \$16,000, with this fee covering the first 15 terminals installed. The fee for additional terminals will be \$13,000 for

⁴ To date, all of Nasdaq's customers for Tools Plus have been NASD members. Nasdaq anticipates, however, that some of the users of floor broker terminals may be non-members. Accordingly, Nasdaq represents that it will file a separate proposed rule change to establish Tools Plus pricing for non-members at levels identical to those established for members, and will not offer Tools Plus products to non-members prior to the effective date of that filing.

each group of up to 15 terminals installed.

Correspondent/Floor Broker Terminal

Nasdaq is proposing to offer Tools Plus terminals with reduced functionality for use by correspondent firms or floor brokers to route orders to specified broker-dealers with whom they have an established relationship, at a reduced fee of \$350 per terminal per month.⁵ Unlike a full functionality terminal, the terminals would not contain functionality to accept order flow, to compile statistics on order execution, or to route orders to a wide range of market centers. Accordingly, Nasdaq believes that these terminals should be offered at a reduced price.

2. Statutory Basis

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

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

Nasdaq believes that the proposed rule change will not 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 on the proposed rule change contained in this filing.

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)(ii) of the Act⁸ and subparagraph (f) of Rule 19b-4 thereunder,⁹ because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 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

⁵ *Id.*

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)

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 the 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-2002-177 and should be submitted by January 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47025; File No. SR-NYSE-2002-59]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Pilot Programs for Mediation and Administrative Conferences

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 November 4, 2002 the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (SR-NYSE-2002-59) as described in Items I, II and

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.