

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53111; File No. SR-NASD-2006-002)

January 12, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Related to Non-NASD Member Broker-Dealer Access to Nasdaq's Brut Facility

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 January 3, 2006, 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. On January 12, 2006, Nasdaq submitted Amendment No. 1 to the proposed rule change.³ Nasdaq has filed the proposal pursuant to Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6) 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 continue to provide, through February 8, 2006, broker-dealers that are not members of the NASD access to Nasdaq's Brut facility. Nasdaq states that it would implement the proposed rule change, as amended, immediately. Nasdaq has designated this proposal as non-controversial and has requested that the Commission waive the five-day pre-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 made technical changes to the proposed rule change.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

filing requirement and the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.⁶

The text of the proposed rule change, as amended, is below. Proposed new language is underlined; proposed deletions are in [brackets].

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4901. Definitions

(a) through (h) No Change

(i) The term “Participant” shall mean an NASD member that fulfills the obligations contained in Rule 4902 regarding participation in the System. Until [December 31, 2005,] February 8, 2006, the term “Participant” shall also include non-NASD [members] broker/dealers that desire to use the System and otherwise meet all other requirements for System participation.

(j) through (w) 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, as amended, and discussed any comments it received on the proposed rule change, as amended. 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.

⁶ 17 CFR 240.19b-4(f)(6)(iii).

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

1. Purpose

Under current NASD Rule 4901(i), entities that are not members of the NASD may use the Brut system until December 31, 2005. Nasdaq proposes to amend this provision so as to allow non-NASD member broker-dealers to use the Brut system through February 8, 2006.⁷ Nasdaq notes that the continued provision of such access impacts seven current Brut broker-dealer users (four active and three inactive), which Nasdaq believes is similar to access already being provided by the Arca Trading subsidiary of the Archipelago Exchange.⁸ Nasdaq commits that Brut will not accept any new broker-dealer subscribers to its system that are non-NASD members during the extended access period for current non-NASD member broker-dealer system users proposed in this filing.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,⁹ in general, and with Section 15A(b)(6) of the Act,¹⁰ in particular, in that it is designed to promote just and equitable principles of trade, and to remove impediments to a free and open market and a national market system.

⁷ Nasdaq states that non-NASD member entities that are not broker-dealers will not be able to use the Brut system beyond December 31, 2005. Nasdaq states that the February 8, 2006 date was selected to coincide with the current deadline for non-NASD member broker-dealers to leave Nasdaq's INET Facility. See Securities Exchange Act Release No. 52902 (December 7, 2005); 70 FR 73810 (December 13, 2005) (SR-NASD-2005-128). Nasdaq states that the INET Facility is expected to be merged into the Brut broker-dealer in the near future.

⁸ See Securities Exchange Act Release No. 52497 (September 22, 2005); 70 FR 56949 (September 29, 2005) (SR-PCX-2005-90).

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78o-3(b)(6).

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

Nasdaq does not believe that the proposed rule change, as amended, 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 foregoing proposed rule change, as amended, is subject to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder¹² because the proposal: (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 prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that Nasdaq has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

Nasdaq has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay. The Commission believes that waiving the five-day pre-filing requirement and the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will permit current non-NASD member broker-dealers continued access to the Brut system without disruption. In addition, the Commission notes that

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

the proposed rule's February 8, 2006 date matches the date for which non-NASD members are required to leave Nasdaq's INET facility. For these reasons, the Commission designates the proposed rule change, as amended, to be effective and operative upon filing with the Commission.¹³

At any time within 60 days of the filing of such proposed rule change, as amended, 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.¹⁴

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2006-002 on the subject line.

¹³ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ The effective date of the original proposed rule change is January 3, 2006 and the effective date of Amendment No. 1 is January 12, 2006. 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 January 12, 2006, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2006-002. 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, as amended, 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 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-2006-002 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Nancy M. Morris
Secretary

¹⁵ 17 CFR 200.30-3(a)(12).