

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53504; File No. SR-NASD-2006-031)

March 16, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reduce Routing Charges for NASD Members

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 March 1, 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, 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 reduce its routing fees and eliminate a port fee waiver currently available to certain INET users. Nasdaq states that it will implement the proposed rule change immediately. Nasdaq states that this filing is applicable only to

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<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).

NASD members. Nasdaq states that it is also submitting a separate filing to establish the same routing price reductions and port fee waiver elimination for non-NASD members that use its systems.<sup>5</sup>

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in [brackets].<sup>6</sup>

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#### **7010. System Services**

(a) through (h) No change.

#### **(i) Nasdaq Market Center, Brut, and Inet Order Execution and Routing**

(1) The following charges shall apply to the use of the order execution and routing services of the Nasdaq Market Center, Brut, and Inet (the "Nasdaq Facilities") by members for all Nasdaq-listed securities subject to the Nasdaq UTP Plan and for Exchange-Traded Funds that are not listed on Nasdaq. 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.

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<sup>5</sup> See File No. SR-NASD-2006-32 (March 1, 2006).

<sup>6</sup> Changes are marked to the rule text that appears in the electronic NASD Manual found at [www.nasd.com](http://www.nasd.com). Prior to the date when The Nasdaq Stock Market LLC ("Nasdaq LLC") commences operations, Nasdaq LLC will file a conforming change to the rules of Nasdaq LLC approved in Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131).

## Order Execution

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 Facilities:	
Charge to member entering order:	
Members with an average daily volume through the Nasdaq Facilities in all securities during the month of (i) more than 30 million shares of liquidity provided, and (ii) more than 50 million shares of liquidity accessed and/or routed	\$0.0028 per share executed (or, in the case of executions against Quotes/Orders at less than \$1.00 per share, 0.1% of the total transaction cost)

Other members	\$0.0030 per share executed (or, in the case of executions against Quotes/Orders at less than \$1.00 per share, 0.1% of the total transaction cost)
Credit to member providing liquidity:	
Members with an average daily volume through the Nasdaq Facilities in all securities during the month of more than 30 million shares of liquidity provided	\$0.0025 per share executed (or \$0, in the case of executions against Quotes/Orders at less than \$1.00 per share)
Other members	\$0.0020 per share executed (or \$0, in the case of executions against Quotes/Orders at less than \$1.00 per share)

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 Facilities:	
Charge to member entering order:	
Members with an average daily volume through the Nasdaq Facilities in all securities during the month of more than 500,000 shares of liquidity provided	\$0.001 per share executed (but no more than \$10,000 per month)
Other members	\$0.001 per share executed
<b>Order Routing for Nasdaq-Listed Securities</b>	

<p>Any order entered by a member that is routed outside of the Nasdaq Facilities and that does not attempt to execute in the Nasdaq Facilities prior to routing</p>	<p>The greater of (i) \$0.004 per share executed or (ii) a pass-through of all applicable access fees charged by electronic communications networks that charge more than \$0.003 per share executed</p>
<p>Any other order entered by a member that is routed outside of the Nasdaq Facilities:</p>	
<p>Members with an average daily volume through the Nasdaq Facilities in all securities during the month of (i) more than 30 million shares of liquidity provided, and (ii) more than 50 million shares of liquidity accessed and/or routed</p>	<p>The greater of (i) \$0.0028 per share executed or (ii) a pass-through of all applicable access fees charged by electronic communications networks that charge more than \$0.003 per share executed</p>

Other members	The greater of (i) \$0.0030 per share executed or (ii) a pass-through of all applicable access fees charged by electronic communications networks that charge more than \$0.003 per share executed
<b>Order Routing for Exchange-Traded Funds Not Listed On Nasdaq</b>	
Order routed to the New York Stock Exchange ("NYSE") through its DOT system	See DOT fee schedule in Rule 7010(i)(6)
Any other order entered by a member that is routed outside of the Nasdaq Facilities and that does not attempt to execute in the Nasdaq Facilities prior to routing	\$0.004 per share executed
Order routed to the American Stock Exchange ("Amex") after attempting to execute in the Nasdaq Facilities	\$0.01 per share executed

Order routed through the Intermarket Trading System ("ITS") after attempting to execute in the Nasdaq Facilities	\$0.0007 per share executed
Order routed to venues other than the NYSE and Amex after attempting to execute in the Nasdaq Facilities	\$0.003[5] per share executed

(2) For purposes of assessing Nasdaq Facilities fees and credits hereunder, (A) a Discretionary Order that executes prior to being displayed as a Quote/Order will always be deemed to be accessing liquidity unless it is executed by (or receives delivery of) a displayed Discretionary Order at a price in the discretionary price range of the displayed Discretionary Order, and (B) a Discretionary Order that executes after being displayed as a Quote/Order will always be deemed to be providing liquidity, unless the displayed Discretionary Order executes against (or is delivered to) a Quote/Order or Non-Directed Order that has not been designated "Immediate or Cancel," at a price in its discretionary price range

(3) Closing Cross

Market-on-Close and Limit-on-Close orders executed in the Nasdaq Closing Cross	\$0.0005 per share executed
All other quotes and orders executed in the Nasdaq Closing Cross	No charge for execution

(4) Opening Cross

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, Good-till-Cancelled, Immediate-or-Cancel, 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) Except as provided in paragraph (6), the following charges shall apply to the use of the order execution and routing services of the Nasdaq Facilities by members for securities subject to the Consolidated Quotations Service and Consolidated Tape Association plans other than Exchange-Traded Funds ("Covered Securities"):

### Order Execution

Order that accesses the Quote/Order of a Nasdaq Facility market participant:	
Charge to member entering order	\$0.0007 per share executed
Credit to member providing liquidity:	
Members with an average daily volume through the Nasdaq Facilities in Covered Securities during the month of more than 5 million shares of liquidity accessed, provided, or routed	\$0.0005 per share executed
Other members	No credit

### Order Routing

Order routed to Amex	\$0.01 per share executed
Order routed through the ITS	\$0.0007 per share executed

Order routed to NYSE	See DOT fee schedule in Rule 7010(i)(6)
Order for NYSE-listed Covered Security routed to venue other than the NYSE	\$0.001[5] per share executed
Order for Covered Security listed on venue other than the NYSE and routed to venue other than Amex	\$0.003[5] per share executed

(6) The following classes shall apply to the use of the Nasdaq Facilities by members for routing to the NYSE through its DOT system for all securities, including Exchange-Traded Funds:

Order charged a fee by the NYSE specialist	\$0.01 per share executed
Order that attempts to execute in the Nasdaq Facilities prior to routing and that is not charged a fee by the NYSE specialist	No charge

Order that does not attempt to execute in the Nasdaq Facilities prior to routing and that is not charged a fee by the NYSE specialist:	
Average daily shares of liquidity routed through Nasdaq's DOT linkage by the member during the month:	
More than 30 million	\$0.0001 per share executed
Between 2,000,001 and 30 million	\$0.0003 per share executed
Between 250,001 and 2 million	\$0.0005 per share executed
Between 100,001 and 250,000	\$0.001 per share executed
100,000 or less	\$0.01 per share executed

(7) The fees applicable to non-members using Nasdaq's Brut and Inet Facilities shall be the fees established for members under Rule 7010(i), as amended by SR-NASD-2005-019, SR-NASD-2005-035, SR-NASD-2005-048, SR-NASD-2005-071, SR-NASD-

2005-125, SR-NASD-2005-137, SR-NASD-2005-154, SR-NASD-2006-013, and SR-NASD-2006-023, and as applied to non-members by SR-NASD-2005-020, SR-NASD-2005-038, SR-NASD-2005-049, SR-NASD-2005-072, SR-NASD-2005-126, SR-NASD-2005-138, SR-NASD-2005-155, SR-NASD-2006-014, and SR-NASD-2006-024.

(j) through (v) No Change

**(w) INET System Connectivity**

(1) The following charges shall apply to telecommunication protocols used to access Nasdaq's INET System :

**Port Fees:**

**Connectivity to Harborside Financial Center and Secaucus**

**Datacenters**

\$400 per month for each port pair, other than Multicast ITCH<sup>®</sup> data feed pairs, for which the fee is \$1000 per month

Internet Ports: An additional \$200 per month for each Internet port that requires additional bandwidth.

**Connectivity to Chicago Datacenter**

\$800 per month for each port pair

[All port fees, not including Internet Bandwidth surcharges, will be waived for Subscribers that for a calendar month have an average daily share volume for executed orders exceeding 30 million shares of added liquidity.]

**INET Terminal Fees:**

Each ID is subject to a minimum commission fee of \$50 per month unless it executes a minimum of 100,000 shares.

Each ID receiving market data is subject to pass-through fees for use of these services. Pricing for these services is determined by the exchanges and/or market center.

Each ID that is given web access is subject to a \$50 monthly fee.

**Portal Fees:**

Each ID is subject to a monthly user fee of \$150

Each ID receiving market data is subject to pass-through fees for use of these services. Pricing for these services is determined by the exchanges and/or market center.

(2) The INET connectivity fees applicable to non-members shall be the fees established for members under Rule 7010(w), as established by SR-NASD-2005-128 and amended by SR-NASD-2005-147 and SR-NASD-2006-013, and as applied to non-members by SR-NASD-2005-128, SR-NASD-2005-148, and SR-NASD-2006-014.

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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 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

In order to encourage greater use of Nasdaq routing facilities, Nasdaq is proposing to reduce its routing fees as follows:

(1) Nasdaq would reduce, from \$0.0015 to \$0.001, the fee per share executed for routing orders in New York Stock Exchange (“NYSE”) listed securities to venues other than the NYSE;

(2) Nasdaq would reduce, from \$0.0035 to \$0.003, the fee per share executed for routing orders in securities listed on a venue other than the NYSE and routed to venues other than the American Stock Exchange (“AMEX”);

(3) Nasdaq would reduce, from \$0.0035 to \$0.003, the fee per share executed for routing orders in Non-Nasdaq Exchange Traded Funds (“ETFs”) to venues other than the NYSE or AMEX.

Finally, Nasdaq is proposing to eliminate the port fee waiver for Nasdaq’s INET facility subscribers that for a calendar month average daily execution of orders in the INET system of in excess of 30 million shares of added liquidity. Nasdaq states that this port fee waiver is part of INET’s legacy pricing structure and is inconsistent with Nasdaq’s integrated pricing structure in which no other system provides such fee waivers.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>7</sup> in general, and with Section 15A(b)(5) of the Act,<sup>8</sup> in particular,

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<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

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. In particular, Nasdaq states that the proposal will reduce routing costs for market participants and more closely unify Nasdaq pricing policies across all of its systems.

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>9</sup> and subparagraph (f)(2) of Rule 19b-4<sup>10</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.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

#### 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-2006-031 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-031. 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-2006-031 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.<sup>11</sup>

Nancy M. Morris  
Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).