

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54015; File No. SR-NASD-2006-067)

June 19, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify NASD Rule 7010(c)(2) to allow NASD Members to Receive Transaction Credits for Automated Executions in Tape B Securities on an Estimated Monthly Basis

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 May 30, 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. Nasdaq has filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

Nasdaq proposes to modify the methodology for distributing transaction credits under NASD Rule 7010(c)(2). Nasdaq will implement the proposed rule change with respect to invoices to be distributed on or about June 10, 2006. The text of the proposed rule change is available at NASD and at the Commission and at www.nasdaq.com/about/RuleFilings2006.stm.

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 proposes to modify its current transaction credit program applicable to liquidity providers for automated executions in Tape B securities.⁶ Under the proposal, NASD members would be eligible to receive transaction credit payments on an estimated, monthly basis for quotes and orders posted by such members in Tape B securities that are executed by inbound marketable orders through ITS/CAES, Inet or Brut. Nasdaq is proposing the change as a competitive response to NYSE Arca, which instituted a similar estimated monthly credit program for Tape B securities last year.⁷

⁶ Tape B securities include securities that are listed for trading on the American Stock Exchange and certain other securities that are deemed to be eligible for such listing.

⁷ Securities Exchange Act Release No. 51990 (August 15, 2005), 70 FR 49351 (August 23, 2005)(SR-PCX-2005-16).

Currently, members that earn credits for such transactions receive them on a quarterly basis, after Nasdaq has received its share of market data revenue for Tape B from the Consolidated Tape Association (“CTA”) Plan. Under this proposal for estimated payments, members would be able to receive their share of credits, based on an estimate, on a monthly basis before the quarterly revenues from the CTA Plan are paid to Nasdaq. A member’s estimated monthly amounts will be calculated by using the tape credit percentage specified in NASD Rule 7010(c)(2) (currently 50%) and applying such percentage to the estimated value of the member’s trading activity. Nasdaq will, however, hold back a percentage of the estimated credit until Nasdaq receives payment for its share of market data revenue for the quarter, in order to ensure that it does not provide credits to market participants in excess of its actual obligations. The held-back percentages would be credited through a true-up calculation after Nasdaq receives its share of market data revenue for the quarter. Nasdaq expects the holdback percentage to be about 10%, but may vary it from month to month as needed to ensure that estimated payments do not exceed actual obligations. In accordance with Nasdaq’s credit policies, all credits will be applied to outstanding balances due to Nasdaq from members before any direct payments are made.

As an example, assume a firm is liquidity provider for 100,000 trades during each month of a quarter. If Nasdaq estimates that each trade will generate \$1.00 in market data revenue under the CTA Plan, the firm’s estimate for each month of the quarter would be \$50,000 ($100,000 \times \1.00×0.50), from which Nasdaq would hold back \$5,000 ($\$50,000 \times 0.10$). Therefore, the firm would be credited \$45,000 each month. Assume that after the end of the quarter, the payments received from the plan amount to \$0.95 per trade. At that time, Nasdaq would determine that the firm’s actual credit for each month of the quarter was \$47,500 ($100,000$

x \$0.95 x 0.50) and Nasdaq would provide a true-up credit of \$2,500 for each month (the actual of \$47,500 less the estimated credit of \$45,000) for a total quarterly true-up of \$7,500.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁸ in general, and with Section 15A(b)(5) of the Act,⁹ 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. The proposed rule change allows all NASD members eligible to receive transaction credits for providing liquidity to support executions in Tape B securities to receive credits on an estimated monthly basis.

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, as amended.

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

Because the foregoing rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(5).

public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

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.

Nasdaq has asked that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) under the Act.¹² The Commission believes such waiver is consistent with the protection of investors and the public interest, for it will allow Nasdaq to modify the methodology for distributing transaction credits under NASD Rule 7010(c)(2) in such a way as to remain competitive within the marketplace. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹³

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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-NASD-2006-067 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASD-2006-067. 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 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-2006-067 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Nancy M. Morris
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).