

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54375; File No. SR-NASD-2006-092)

August 28, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Pricing Schedule for NASD Members Using the ITS/CAES System, Brut, and Inet to Trade Securities Not Listed on The NASDAQ Stock Market LLC

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 July 31, 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 filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> 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 Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for NASD members using the ITS/CAES System and Brut and Inet (“Nasdaq Facilities”) to trade securities that are not listed on The NASDAQ Stock Market LLC (“Nasdaq Exchange”).<sup>5</sup> Nasdaq states that it will implement the proposed

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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).

<sup>5</sup> The Commission notes that Nasdaq filed a proposed rule change to apply the same pricing change to non-members. See Securities Exchange Act Release No. 54376 (August 28, 2006) (File No. SR-NASD-2006-093).

rule change on August 1, 2006. The text of the proposed rule change is set forth below.

Proposed new language is underlined; proposed deletions are in [brackets].<sup>6</sup>

**7010. System Services**

(a) – (h) No change.

(i) [Nasdaq Market Center]ITS/CAES System, 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]ITS/CAES System, 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 The NASDAQ Stock Market LLC [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, of The NASDAQ Stock Market LLC. For purposes of determining a member's volume in all securities under Rule 7010(i), the term "Nasdaq Facilities" shall also be deemed to include the member's volume in Nasdaq-listed securities through the facilities of The NASDAQ Stock Market LLC.

**Order Execution**

Order that accesses the	
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<sup>6</sup> Nasdaq states that changes are marked to the rule text that appears in the electronic NASD Manual found at [www.nasd.com](http://www.nasd.com), as further amended on an immediately effective basis by SR-NASD-2006-078 (June 30, 2006). See Securities Exchange Act Release No. 54268 (August 3, 2006), 71 FR 45882 (August 10, 2006). Nasdaq states that prior to the date when the Nasdaq Exchange begins to trade securities that are not listed on the Nasdaq Exchange, the Nasdaq Exchange will file a conforming change to the rules of the Nasdaq Exchange. The rules of the Nasdaq Exchange are found at [www.complinet.com/nasdaq](http://www.complinet.com/nasdaq).

<p>Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the Nasdaq Facilities:</p>	
<p>Charge to member entering order:</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; or members with an average daily volume through the Nasdaq Facilities in all securities during the month of (i) more than 20 million shares of liquidity</p>	<p>\$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)</p>

provided, and (ii) more than 60 million shares of liquidity accessed and/or routed	
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>	
[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 ]	[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]
[Any other order entered by a member that is routed outside	

of the Nasdaq Facilities:]	
<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; or members with an average daily volume through the Nasdaq Facilities in all securities during the month of (i) more than 20 million shares of liquidity provided, and (ii) more than 60 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]	<p>[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</p>

	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)] <u>(7)</u>
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	\$0.003 per share executed (plus, in the case of orders charged a fee by the Amex specialist, \$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 per share executed
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(2) No change.

(3) [Closing Cross] Reserved

[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] Reserved

[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) [IPO/Halt Cross] Reserved



[Members shall be assessed the following Nasdaq Market Center execution fees for quotes and orders executed in the Nasdaq IPO/Halt Cross:]

[All quotes and orders executed in the Nasdaq IPO/Halt Cross]	[\$0.0005 per share executed.]
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(6) Except as provided in paragraph (7), 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 for a <u>Covered Security listed on NYSE and The NASDAQ Stock Market LLC:</u>	<u>\$0.0007 per share executed</u>
<u>Credit to a member providing liquidity for other Covered Securities:</u>	

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 but less than 10 million shares of liquidity provided	\$0.0005 per share executed
Members with an average daily volume through the Nasdaq Facilities in Covered Securities during the month of 10 million or more shares of liquidity provided	\$0.0006 per share executed
Other members	No credit

### **Order Routing**

Order routed to Amex	\$0.003 per share executed (plus, in the case of orders charged a fee by the Amex specialist, \$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)(7)
Order for NYSE-listed Covered Security routed to venue other than the NYSE	\$0.001 per share executed
Order for Covered Security listed on venue other than the NYSE and routed to venue other than Amex	\$0.003 per share executed

(7) The following [classes] charges 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] <u>\$0.0002 per share executed (but no more than \$60,000 per month)</u>
Order that does not attempt to execute in the Nasdaq Facilities prior to routing and	<u>\$0.0003 per share executed</u>

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]

(8) When a market participant enters an order into Nasdaq's Brut or Inet systems that is sent to an ITS/CAES System [Nasdaq Market Center] market participant that charges an access fee to Brut or Inet, the market participant entering the order shall be charged (i) the applicable execution fee of the Nasdaq Facilities, or (ii) in the case of executions against Quotes/Orders at less than \$1.00 per share, a pass-through of the access fee charged to Brut or Inet.

(9) No change.

(j) - (y) 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 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

**Transition to Operation of the Nasdaq Exchange**

Nasdaq proposes to amend NASD Rule 7010(i), which has historically contained the fees for the trading systems of The Nasdaq Stock Market, to reflect the Nasdaq Exchange's commencing operations for trading of securities listed on the Nasdaq Exchange. During a transitional period, the Nasdaq Exchange will operate for its own listed stocks, while The Nasdaq Stock Market, Inc. continues to operate under authority delegated by NASD to provide quotation, execution, and trade reporting services for non-Nasdaq listed securities. Nasdaq states that the Brut and Inet platforms owned by Nasdaq will be operated as facilities of the Nasdaq Exchange for purposes of trading Nasdaq-listed securities, and as facilities of NASD for purposes of trading non-Nasdaq securities. Accordingly, Nasdaq is amending NASD Rule 7010(i) to remove fees and credits associated with trading Nasdaq-listed stocks, which are now

contained in Rule 7018 of the Nasdaq Exchange.<sup>7</sup> Nasdaq states that NASD Rule 7010(i) would continue to govern fees and credits for the ITS/CAES System (formerly the Nasdaq Market Center) operated by Nasdaq for trading non-Nasdaq securities, as well as Brut and Inet to the extent that they are used for trading non-Nasdaq securities. The ITS/CAES System, Brut and Inet are collectively referred to in the proposed rule as the Nasdaq Facilities.

Nasdaq states that, because the level of some of the current fees for transactions in non-Nasdaq stocks depends upon a market participant's monthly transaction volume in all securities (i.e., Nasdaq-listed and non-Nasdaq listed), Nasdaq is adding a sentence to the proposed rule to provide that, for purposes of determining a member's volume in all securities under NASD Rule 7010(i), the term "Nasdaq Facilities," shall also be deemed to include the member's volume in Nasdaq-listed securities traded through the facilities of the Nasdaq Exchange (i.e., the Nasdaq Market Center, Brut and Inet). Nasdaq states that this clarification is necessary to ensure that fees and credits for trading non-Nasdaq securities remain at their current levels during the transitional period before the Nasdaq Exchange begins to trade non-Nasdaq securities.

### **Fee changes**

Nasdaq also proposes to change its fees for routing orders to the New York Stock Exchange ("NYSE") through its DOT system. NYSE recently announced that it would impose a significant fee increase on broker-dealers, such as Nasdaq's Brut broker-dealer, that route orders

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<sup>7</sup> See Securities Exchange Act Release No. 54285 (August 8, 2006) (File No. SR-NASDAQ-2006-023) (notice of filing and immediate effectiveness of proposed rule change regarding technical and conforming changes to Nasdaq Rule 7018). Telephone conversation among John Yetter, Senior Associate General Counsel, Nasdaq, David Liu, Special Counsel, Division of Market Regulation ("Division"), Commission, and Theodore S. Venuti, Attorney, Division, Commission, on August 14, 2006.

to the NYSE floor through DOT, effective August 1, 2006.<sup>8</sup> Nasdaq states that as a result, it must pass these increased costs through to market participants that make use of the routing service. Specifically, for orders that attempt to execute in the Nasdaq Facilities prior to routing and that are not charged a fee by the NYSE specialist,<sup>9</sup> Nasdaq is proposing a charge of \$0.0002 per share executed; however, the total fee for all such orders routed during a month is capped at \$60,000. For orders that are routed through DOT but that do not attempt to execute in the Nasdaq Facilities, the routing fee is \$0.0003 per share executed, with no cap.

Finally, to encourage greater liquidity provision with respect to securities that are listed on both the NYSE and the Nasdaq Exchange, Nasdaq proposes to increase the credit to liquidity providers in these securities, from \$0.0005 or \$0.0006 per share executed (depending on the member's volume) to \$0.0007 per share executed. Nasdaq believes that the change would promote greater competition between Nasdaq and NYSE and enhance market quality with respect to Nasdaq's trading of these dual-listed securities.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>10</sup> in general, and with Section 15A(b)(5) of the Act,<sup>11</sup> 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.

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<sup>8</sup> See Securities Exchange Act Release No. 54142 (July 13, 2006), 71 FR 41493 (July 21, 2006) (File No. SR-NYSE-2006-46). Effective August 1, 2006, the NYSE is imposing a new charge of \$0.00025 per share executed, subject to a monthly cap of \$750,000.

<sup>9</sup> Nasdaq states that the NYSE specialist fees are distinct from the new DOT fees imposed by the NYSE itself. Specialist fees are generally imposed when orders routed to the NYSE remain unexecuted for a period of time. The routing fee for orders that are charged by the specialist remains \$0.01 per share executed.

<sup>10</sup> 15 U.S.C. 78q-3.

<sup>11</sup> 15 U.S.C. 78q-3(b)(5).

Nasdaq states that its changes in routing fees are necessitated by increased costs imposed on Nasdaq's routing broker-dealer by NYSE. Nasdaq believes that the increased liquidity provider credit for dual-listed stocks will promote greater competition between the two primary listing markets in the U.S. Finally, Nasdaq believes the changes to reflect operation of the Nasdaq Exchange for trading Nasdaq-listed securities are needed to maintain the current levels of other fees and credits associated with trading non-Nasdaq securities.

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

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>12</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>13</sup> because it establishes or changes a due, fee, or other charge applicable only to a member 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 the 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>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</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 No. SR-NASD-2006-092 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 No. SR-NASD-2006-092. 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 will also 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 No. SR-NASD-2006-092 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>14</sup>

Nancy M. Morris  
Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).