

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53257; File No. SR-NASD-2006-014)

February 8, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto to Modify the Pricing for Non-Members Using Nasdaq's Brut and Inet Facilities

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 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. On February 1, 2006, Nasdaq submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and at the same time is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for non-members using Nasdaq's Brut and Inet Facilities ("Nasdaq Facilities"). The filing will apply to these non-members the same unified pricing schedule that Nasdaq is instituting for members.⁴ Nasdaq requests

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Partial Amendment No. 1 clarifies that the proposed rule change was approved by the Nasdaq Board of Directors on February 1, 2006 and not January 24, 2006.

⁴ SR-NASD-2006-013 (January 30, 2006).

approval to implement the proposed rule change, as amended, retroactively as of February 1, 2006.

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

* * * * *

7010. System Services

(a) – (h) No change.

(i) Nasdaq Market Center and Brut Facility Order Execution

(1) - (6) No change.

(7) The fees applicable to non-members using Nasdaq’s Brut and Inet Facilit[y]ies 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, [and] SR-NASD-2005-154, and SR-NASD-2006-013, 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, [and] SR-NASD-2005-155, and SR-NASD-2006-014.

(j) - (v) No change.

(w) INET System Connectivity

(1) No change.

(2) The INET connectivity fees applicable to non-members [using Nasdaq’s INET Facility]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, [and]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, 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 III 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

On January 30, 2006, Nasdaq filed SR-NASD-2006-013 with the Commission, establishing a new fee and credit schedule (effective February 1, 2006) for order execution and routing by NASD members that spans activity on the Nasdaq Market Center, Brut, and Inet (the "Nasdaq Facilities"). Nasdaq proposes to establish that same fee and rebate structure for non-NASD members that use Brut and Inet. Nasdaq is seeking accelerated approval of the non-member fee and rebate structure as well as a retroactive effective date of February 1, 2006.

In SR-NASD-2005-128,⁵ Nasdaq's filing to establish rules for the newly acquired Inet ECN, Nasdaq committed that it would, within 60 days of the closing of the acquisition of Inet, file an integrated fee and credit structure governing the use of all of the Nasdaq Facilities. Nasdaq states that the fee and rebate structure is based on multiple volume-based usage tiers that take into account the combined volume of a market participant on all of the Nasdaq Facilities. Nasdaq believes that this integrated and uniform pricing structure would encourage activity on the Nasdaq Facilities and would not provide financial incentives to use one system versus the other. Nasdaq states that this non-member filing would ensure that both NASD members and non-NASD member users will pay equivalent fees and receive equivalent credits based on their trading activity and that the imposition of those fees would have begun on the same February 1, 2006 start date.

Nasdaq states that NASD Rules 4901 and 4952 currently provide that Brut and Inet will not be available to non-members after February 8, 2006. However, Nasdaq anticipates submitting an immediately effective rule change to extend this date in a manner that would allow at least some of Brut and Inet's current non-member broker-dealer subscribers to continue using these systems during the transitional period prior to the date on which The NASDAQ Stock Market LLC ("NASDAQ LLC") begins to operate as a national securities exchange (the "Operational Date").⁶ The Commission-

⁵ Securities Exchange Act Release Nos. 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (SR-NASD-2005-128) and 52723 (November 2, 2005), 70 FR 67513 (November 7, 2005) (SR-NASD-2005-128).

⁶ Nasdaq filed this rule change on February 7, 2006 (SR-NASD-2006-002).

approved rules of NASDAQ LLC⁷ provide that all users of the Nasdaq Facilities after the Operational Date must be members of NASDAQ LLC, and Nasdaq is making all non-member subscribers aware of the need to become members of NASDAQ LLC if they wish to continue to use any of the Nasdaq Facilities after the Operational Date.⁸ Nasdaq believes that this filing is necessary, however, to ensure that non-members using Brut and Inet prior to the Operational Date would be subject to the same fee structure as members, regardless of the duration of their actual period of usage. Therefore, Nasdaq believes that, even if the period of non-member usage is not extended beyond February 8, 2006, this filing would be needed to establish the fees and credits for non-members between February 1, 2006 and February 8, 2006.

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)(5) of the Act,¹⁰ in particular, in that the proposed rule change, as amended, 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, as amended, applies to non-members that use Brut and Inet a fee change that is being implemented for NASD members that use the Nasdaq Facilities. Accordingly, Nasdaq believes that the proposed rule change, as amended,

⁷ Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3350 (January 23, 2006) (File No. 10-131) (approving registration of Nasdaq Stock Market LLC as a National Securities Exchange).

⁸ See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131).

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78o-3(b)(5).

promotes an equitable allocation of fees between members and non-members using Nasdaq's order execution facilities.

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

Nasdaq states that written comments were neither solicited nor received.

III. 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-2006-014 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-2006-014. 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-2006-014 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.¹¹ Specifically, the Commission believes that the proposed rule change, as amended, is consistent with Section 15A(b)(5) of the Act,¹² which requires that the rules of the self-regulatory organization provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facilities or system which it operates or controls.

¹¹ The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78q-3(b)(5).

The Commission notes that this proposal would retroactively modify pricing for non-NASD members using the Nasdaq Facilities that would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that became effective February 1, 2006, pursuant to SR-NASD-2006-013.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day of the date of publication of the notice thereof in the Federal Register. The Commission notes that the proposed fees for non-NASD members are identical to those in SR-NASD-2006-013, which implemented those fees for NASD members and which became effective as of February 1, 2006. The Commission notes that this change will promote consistency in Nasdaq's fee schedule by applying the same pricing schedule with the same date of effectiveness for both NASD members and non-NASD members. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,¹³ to approve the proposed rule change, as amended, on an accelerated basis.

¹³ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change, as amended, (File No. SR-NASD-2006-014), is approved on an accelerated basis.

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

Nancy M. Morris
Secretary

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).