

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53730; File No. SR-NASD-2006-054)

April 26, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change for Handling by INET and Brut of Sub-Penny Orders in Securities Listed on the New York Stock Exchange LLC or the American Stock Exchange 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 April 21, 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 this proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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 has filed with the Commission a proposed rule change for the handling by Nasdaq’s INET and Brut systems of sub-penny orders priced under \$1.00 for securities listed on the New York Stock Exchange LLC (“NYSE”) or the American Stock Exchange LLC

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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).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> On March 31, 2006, Nasdaq filed this rule proposal without designating it as immediately effective. See SR-NASD-2006-042. At the request of the Commission staff, Nasdaq has withdrawn that filing.

("Amex"). Nasdaq has made this filing at the request of the Commission staff. 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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#### **4904. Entry and Display of Orders**

(a) No change

(b) Display of Orders – The System will display orders submitted to the System as follows:

(1) and (2) No change

(3) Minimum Price Variation — The minimum quotation increment for System Securities shall be \$0.01 for quotations priced at or above \$1.00 per share and \$0.0001 for quotations priced below \$1.00 per share; provided, however, that if the Securities and Exchange Commission ("SEC") permits, with respect to any security, the display, rank or acceptance of quotations priced at or above \$ 1.00 per share in an increment smaller than \$0.01, then the minimum quotation increment for such a security shall be the minimum permitted by the SEC or \$0.0001, whichever is greater. Quotations failing to meet this standard shall be rejected. A quotation for a security listed on the New York Stock Exchange or the American Stock Exchange and properly (not in violation of this paragraph) priced in an increment of less than \$0.01 will be adjusted by the System down (for bids) or up (for offers) to the nearest \$0.01 increment prior to display, execution or routing. A quotation so adjusted will have no price priority over equivalent quotations that did not require adjustment under this paragraph.

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<sup>6</sup> Changes are marked to the rule text that appears in the electronic NASD Manual found at [www.nasdaq.com](http://www.nasdaq.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).

(4) No change

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**4962. Minimum Quotation Increment**

The minimum quotation increment in the INET System for quotations of \$1.00 or above in Nasdaq-listed securities and in securities listed on a national securities exchange shall be \$0.01.

The minimum quotation increment in the INET System for quotations below \$1.00 in Nasdaq-listed securities and in securities listed on a national securities exchange shall be \$0.0001.

However, if the Securities and Exchange Commission ("SEC") permits, with respect to any security, the display, rank or acceptance of quotations priced at or above \$1.00 per share in an increment smaller than \$0.01, then the minimum quotation increment for such a security shall be the minimum permitted by the SEC or \$0.0001, whichever is greater. A quotation for a security listed on the New York Stock Exchange or the American Stock Exchange and properly (not in violation of this paragraph) priced in an increment of less than \$0.01 will be adjusted by the INET System down (for bids) or up (for offers) to the nearest \$0.01 increment prior to display, execution or routing. A quotation so adjusted will have no price priority over equivalent quotations that did not require adjustment under this paragraph.

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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

Consistent with Rule 612 of Regulation NMS,<sup>7</sup> as of January 31, 2006, the Nasdaq Market Center ("NMC") and Nasdaq's Brut and INET facilities accept quotes that are in increments of least \$0.0001 if these quotes are priced below \$1.00. Quotes priced above \$1.00 are accepted by the NMC, Brut, and INET in increments of at least \$0.01. These principles apply equally to Nasdaq-listed securities and to securities listed on other exchanges.

At the request of the Commission staff, in order to accommodate the NYSE and the Amex, the NMC continues to adjust all proper (i.e., priced under \$1.00 and in increments of not less than \$0.0001) sub-penny quotes in NYSE- and Amex-listed securities as soon as it receives them.<sup>8</sup> Offers are adjusted upwards to the next whole cent, while bids are adjusted downward to the next whole cent. However, Nasdaq's INET and Brut facilities currently do not adjust proper sub-penny quotes in NYSE- or Amex-listed securities and instead allow sub-penny executions in such securities as contemplated under Rule 612.

The purpose of this filing is to implement within INET and Brut the same adjustment mechanism as was implemented earlier this year in the NMC. Specifically, proper (i.e., priced under \$1.00 and in increments of not less than \$0.0001) sub-penny quotes in NYSE- and Amex-listed securities will be adjusted on receipt by the Brut and INET Systems. Offers will be adjusted upwards to the next whole cent, while bids will be adjusted downward to the next whole

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<sup>7</sup> 17 CFR 242.612.

<sup>8</sup> See Securities Exchange Act Release No. 34-53203 (Jan. 31, 2006), 71 FR 6300 (Feb. 7, 2006) (rule change to enable the NMC to continue adjusting sub-penny quotes priced below \$1.00 in NYSE and Amex securities).

cent. The ability of Brut or INET to accept sub-penny quotes in Nasdaq-, NYSE-, or Amex-listed securities is not affected by this proposal.

As with the NMC sub-penny quote adjustments, Nasdaq views this rule change for Brut and INET, which is also being made at the request of the Commission staff, as temporary in nature because it will continue to deprive investors of the ability, envisioned in Rule 612, to trade in sub-pennies those NYSE- and Amex-listed stocks that are priced below \$1.00. When Nasdaq determines that this approach is no longer appropriate, it will change the rule described herein by making an immediately effective filing with the Commission.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>9</sup> in general, and with Section 15A(b)(6) of the Act,<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade.

### 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

Because the proposed 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 after the date of the filing, or such shorter time as the

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<sup>9</sup> 15 U.S.C. 78q-3.

<sup>10</sup> 15 U.S.C. 78q-3(b)(6).

Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

The Exchange has asked the Commission to waive the 30-day operative delay and allow the proposed rule change to become operative on May 1, 2006. The Commission hereby grants that request.<sup>13</sup> The Commission believes that the Exchange's proposal to round away all proper sub-penny quotes in NYSE- and Amex-listed securities immediately upon receipt by Brut or INET raises no new regulatory issues, as Nasdaq implemented the same adjustment mechanism earlier this year in the NMC and Rule 612 does not require that accepted sub-penny quotes priced below \$1.00 be displayed, executed, or routed in sub-pennies. Furthermore, this rule change will bring the quoting conventions of two Nasdaq trading facilities, Brut and INET, into line with those of the NMC without any further delay, thereby reducing the possibility of investor confusion. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.

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>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). As required by Rule 19b-4(f)(6)(iii) under the Act, the Exchange also provided with the Commission with written 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 the proposed rule change.

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

#### 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-2006-054 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-2006-054. 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-2006-054 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).