

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54159; File No. SR-NASD-2006-058)

July 17, 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 Regarding Pricing for Non-Members Using the Nasdaq Market Center and 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 May 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 and II below, which Items have been prepared by Nasdaq. On June 12, 2006, Nasdaq filed 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

This filing relates to the pricing for non-members using the Nasdaq Market Center and Nasdaq's Brut and INET Facilities. The filing will apply to these non-members the same rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Nasdaq amended the description of the proposed rule change to indicate that when a market participant enters an order into Nasdaq's Brut or INET systems that is sent to a 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.

change that Nasdaq is instituting for members.⁴ Nasdaq seeks approval to implement the proposed rule change retroactively as of May 1, 2006. The text of the proposed rule change is below. Proposed new language is underlined.⁵

7010. System Services

(a) – (h) No change.

(i) Nasdaq Market Center and Brut Facility Order Execution

(1) - (7) No change.

(8) 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, SR-NASD-2006-023, [and] SR-NASD-2006-031, and SR-NASD-2006-057, 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, SR-NASD-2006-024, [and]SR-NASD-2006-032, and SR-NASD-2006-058.

(j) - (w) No change.

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⁴ See Securities Exchange Act Release No. 34-54160 (July 17, 2006). Notice of filing and immediate effectiveness of proposed rule change regarding the pricing schedule for NASD members using the Nasdaq Market Center and Nasdaq's Brut and INET Facilities.

⁵ Changes are marked to the rule text that appears in the electronic NASD Manual found at www.nasdaq.com, as amended by SR-NASD-2006-013 (January 30, 2006). The NASDAQ Stock Market LLC ("NASDAQ LLC") will not file conforming changes to its rules with regard to order execution and routing by non-members, since persons that are not members of NASDAQ LLC will not be permitted to use its order execution and routing systems.

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. 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

Nasdaq is reducing its fees for market participants routing orders from its three trading platforms – the Nasdaq Market Center, Brut, and Inet – to the American Stock Exchange (“Amex”). Specifically, whereas Nasdaq previously charged \$0.01 per share executed for routing such orders, the fee is be reduced to \$0.003 per share executed. However, an additional fee of \$0.01 will be charged in cases where the Amex specialist charges a fee to execute the order (which generally occurs when the order remains on the specialist book for more than a certain amount of time before being executed).

Nasdaq is also broadening the conditions under which a market participant may qualify for a reduced fee of \$0.0028 per share executed to access liquidity and route orders in Nasdaq-listed securities and exchange-traded funds. Currently, market participants qualify for the \$0.0028 fee (a reduction from the otherwise applicable fee of \$0.003 per share executed) if they (i) provide an daily average of more than 30 million shares of liquidity during a month and (ii) access and/or route a daily average of more than 50 million shares of liquidity during a month. With the proposed rule change, the reduced fee would also be available to market participants

that (i) provide a daily average of more than 20 million shares of liquidity during a month and (ii) access and/or route a daily average of more than 60 million shares of liquidity during a month. Thus, the change will broaden the availability of the reduced fee to market participants that provide comparatively less liquidity but access and/or route comparatively more liquidity.

Nasdaq is also adding rule text to clarify the application of its current fee schedule to orders that are entered into Brut or Inet, routed to the Nasdaq Market Center for execution, and then delivered for execution to an ECN that receives orders through the order delivery functionality of the Nasdaq Market Center. Because the current fee schedule is ambiguous as to the treatment of such orders, Nasdaq believes that the rule text should be clarified to reflect Nasdaq's interpretation of the fee schedule. Because the orders are transmitted using Brut/Inet routing technology and then transmitted again for execution through the systems of a third party, Nasdaq believes that it is most appropriate to categorize these orders as routed orders. Accordingly, routing fees, which range from \$0.001 to \$0.004 per share executed, apply rather than order execution or delivery fees.

SR-NASD-2006-057⁶ applied these changes to NASD members on an immediately effective basis. Nasdaq is submitting this filing to apply these changes to non-members, who Nasdaq anticipates will be allowed to continue to use the Brut and Inet facilities until NASDAQ LLC begins to operate as a national securities exchange.

⁶ See supra note 4.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,⁷ in general, and with Section 15A(b)(5) of the Act,⁸ 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.

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, 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. 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-2006-058 on the subject line.

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(5).

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-2006-058. 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 Section, 100 F Street, NE, Washington, DC 20549. 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-2006-058 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.⁹

⁹ The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

Specifically, the Commission believes that the proposed rule change, as amended, is consistent with Section 15A(b)(5) of the Act,¹⁰ 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.

The Commission notes that this proposal would retroactively modify pricing for non-NASD members using the Nasdaq Market Center and Nasdaq's Brut and INET Facilities that would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that became effective May 1, 2006, pursuant to SR-NASD-2006-057.

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-2006-057, which implemented those fees for NASD members and which became effective as of May 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,¹¹ to approve the proposed rule change, as amended, on an accelerated basis.

¹⁰ 15 U.S.C. 78o-3(b)(5).

¹¹ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change, as amended, (File No. SR-NASD-2006-058) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Nancy M. Morris
Secretary

¹² Id.

¹³ 17 CFR 200.30-3(a)(12).