

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53203; File No. SR-NASD-2006-016)

January 31, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish a Mechanism for Handling Sub-Penny Orders in Securities Listed on the New York Stock Exchange or the American Stock Exchange

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 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 and II below, which Items have been prepared by Nasdaq. Nasdaq filed this proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective immediately 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 establish a mechanism for handling sub-penny orders in securities listed on the New York Stock Exchange (“NYSE”) or the American Stock Exchange (“Amex”) due to readiness issues at those two exchanges and to make another

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).

minor adjustment in the related rule language. The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in [brackets].⁵

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6330. Obligations of CQS Market Makers

(a) through (c) No change

(d) Minimum Price Variation

(1) No change

(2) [When a quotation properly (not in violation of paragraph (1) above) priced in an increment of less than \$0.01 is routed for execution via the ITS System to a market that does not accept quotations in increments of less than \$0.01, such a quotation is rounded down (for bids) or up (for offers) to the nearest \$0.01 increment.] A quotation for a security listed on the New York Stock Exchange or the American Stock Exchange and properly (not in violation of paragraph (1) above) priced in an increment of less than \$0.01 will be adjusted by the Nasdaq Market Center 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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⁵ Changes are marked to the rule text that appears in the electronic NASD Manual found at www.nasd.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).

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.

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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

On December 22, 2005, Nasdaq filed with the Commission a rule change⁶ to align Nasdaq's rules on minimum pricing increments with Rule 612 of the Commission's Regulation NMS.⁷ Consistent with Rule 612, the Nasdaq Market Center ("NMC") and Nasdaq's BRUT and INET facilities now accept quotes that are in increments of least \$0.0001 if these quotes are priced below \$1.00 or if they are in securities exempted by the Commission under Rule 612.⁸ Quotes priced above \$1.00 will be accepted by the NMC, BRUT, and INET in increments of at least \$0.01 (unless they are in securities exempted by the Commission). These principles apply equally to Nasdaq-listed securities and to securities listed on other exchanges.

Under the present proposal, which is being made to accommodate the NYSE and the Amex, the NMC will 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. Offers will be adjusted upwards to the next whole cent, while bids will be adjusted downward to the next whole cent. Sub-penny quotes that are adjusted in this

⁶ See Securities Exchange Act Release No. 53017 (December 22, 2005), 70 FR 77225 (December 29, 2005). The rule change was effective immediately upon filing, but not operational until January 31, 2006.

⁷ 17 CFR 242.612.

⁸ The present proposed rule change clarifies with respect to INET that the minimum pricing increment will, in fact, be \$0.0001, as opposed to \$0.001. This filing also includes an additional conforming change to the INET rules, to clarify that any security that receives the Commission's permission for sub-penny quoting above \$1.00 will be eligible for such quoting on INET.

manner will be displayed, executed, or routed, as otherwise applicable, at the adjusted price and will not be accorded any price priority over the equivalent unadjusted whole-cent quotes. The NMC will adjust all sub-penny quotes that it receives for NYSE and Amex securities, regardless of whether such quotes are entered into the NMC directly or routed from another trading venue (including when the quotes are routed to the NMC from Nasdaq's BRUT or INET facilities).

The ability of the NMC, BRUT, or INET to accept sub-penny quotes in Nasdaq-, NYSE-, or Amex-listed securities is not affected by this proposal. However, the "accepted" sub-penny quotes for NYSE- or Amex-listed stocks will be adjusted before being displayed in the NMC or routed via the ITS linkage from the NMC to the NYSE or the Amex.

Nasdaq views the proposal described above as temporary because it will, in most cases, 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,⁹ in general, and with Section 15A(b)(6) of the Act,¹⁰ in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to, and perfect the mechanism of, a free and open market.

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78o-3(b)(6).

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 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 Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² The Commission hereby waives the 30-day operative delay.¹³ The Commission has previously determined that, for NMS stocks, quoting below \$1.00 in sub-penny increments should be permitted

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive this requirement.

¹³ 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).

and codified that view in Rule 612(b) of Regulation NMS.¹⁴ The proposed rule change to clarify that the minimum pricing increment for INET will be \$0.0001 is consistent with Rule 612(b) and raises no new regulatory issues. With regard to the Exchange's proposal to round away all proper sub-penny quotes in NYSE- and Amex-listed securities immediately upon receipt by the NMC, the Commission believes that such rounding is non-controversial, as Rule 612 does not require that accepted sub-penny quotes priced below \$1.00 be displayed, executed, or routed in sub-pennies. 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.

IV. 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

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37555 (June 29, 2005).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2006-016 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-2006-016. 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-2006-016 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.¹⁵

Nancy M. Morris
Secretary

¹⁵ 17 CFR 200.30-3(a)(12).